Filed 10/24/18 In re Bella M. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re BELLA M., a Person Coming Under the Juvenile Court Law.	B289023 (Los Angeles County Super. Ct. No. CK59155)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RUTH H., Defendant and Appellant.	

Appeal from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Ruth H. (mother) appeals from the findings and order terminating her parental rights under Welfare and Institutions Code section 366.26.[1] Mother[2] contends the court abused its discretion when it denied her request to have her six-year-old daughter, Bella M., testify. Mother sought to introduce Bella's testimony in support of the parental relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother was a longtime user of methamphetamine, and her four oldest children were detained from parental custody

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

[2] Father is not a party to this appeal.

and declared dependents in 2009. On September 26, 2011, the dependency court terminated mother's parental rights as to those four children.

This case concerns mother's two youngest children: Bella, who was born in January 2012, and Mason M., who was born in January 2013.[3] In May 2014, the Los Angeles County Department of Children and Family Services (Department) started an investigation after mother's erratic behavior led to a psychiatric hospitalization. The children were detained and placed with foster parents. The court granted mother and father twice weekly monitored visits. The court exercised dependency jurisdiction based on mother's unresolved history of substance abuse and her failure to reunify with the four older siblings.

Between May and December 2014, mother's visits were consistent and positive, and foster parents did not report any concerns. Mother enrolled in a substance abuse program and was testing negative for drug use. However, in December and January, mother had a series of setbacks[4] and she briefly relapsed into drug use, failing to appear for drug tests five times and testing positive once. By February 2015, she was again consistently testing negative for drugs.

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[3] In early filings, the Department gave dates of birth for both children as one year earlier, but the dates were corrected in later filings.

[4] Father dropped out of the picture and had no contact with the Department after November 2014.

During this time, the Department reported no problems with visitation, which remained consistent.

At the six-month hearing on March 24, 2015, the court found mother to be in partial compliance with reunification services, ordering visits and reunification services to continue. The foster parents advised the social worker that they were not interested in adoption, but were willing to continue as foster parents until a permanent placement was found. In April 2015, the Department worked with mother and the foster parents to change the visitation schedule from twice weekly two-hour visits to weekly four-hour visits on Saturdays, in order to accommodate mother's work schedule. Mother maintained consistent visitation and her visits remained monitored.

By July 2015, mother had obtained employment and was living with her sister. She completed a parenting course and a one-year drug treatment program, and had connected with a sponsor. She felt ready for unmonitored visits, but the Department had not yet liberalized the visits because mother had three no-shows and one positive drug test, scattered amongst 18 negative drug tests. The social worker observed that mother struggled to control her anger when she was upset. The Department recommended continued reunification services, as mother was highly motivated, but needed more time to demonstrate full compliance. By the time the Department prepared a last minute information in September 2015, mother had missed four of five drug tests, and so the Department recommended against liberalizing

her visitation. At the 12-month review hearing, the court found mother in partial compliance with her case plan, ordered continued family reunification services, and granted the Department the discretion to liberalize mother's visits to be unmonitored.

In October and November 2015, mother missed almost all of her drug tests, testing negative only once, and testing positive for amphetamines and methamphetamines twice. She maintained visitation, except for a three-week period when she did not visit the children. The foster parents reported she was appropriate, but would sometimes cut the visits short because she was tired. By December, the Department recommended terminating mother's reunification services.

At the 18-month review hearing on December 17, 2015, the court terminated mother's reunification services, and scheduled a hearing for permanency planning under section 366.26. It directed the Department to begin the process under the Interstate Compact on the Placement of Children (ICPC; Fam. Code, § 7900 et seq.) to possibly place the children with a paternal aunt in Texas. The court also ordered mother's monitored visits to continue. The foster parents[5] were aware that the children had an out-of-state relative who was interested in adopting them. They

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[5] A review report from April 2016 identified the foster parents by a different last name than in earlier reports, but states the foster family "has provided on-going care for the children since detention."

informed the social worker that if efforts to place the children with family did not succeed, a relative of the foster parents was interested in adopting.

Between December 2015 when her reunification services were terminated and April 2017, mother visited the children less frequently and her visits remained monitored. On October 6, 2016, the Department reported mother was only visiting the children twice a month, and that no visit took place during August. Mother would sometimes call to change the time or location of the visit at the last minute. When a social worker asked Bella about her mother, she stated "I miss her."

In October 2016, the paternal aunt who was being evaluated as a permanent placement for the children was in the process of moving from Texas to California. The Department reported it would wait until the aunt had completed her move to conduct the required evaluations. In November 2016, the adoptions social worker contacted the foster parents' niece to inform her about the adoption process, as she had also expressed a desire to adopt the children. By April 2017, the niece had completed the necessary classes and submitted documentation for a home study. The children were already familiar with her because of her relationship with the foster parents. By July 20, 2017, the children's placement had transitioned from foster parents to their niece and her husband as prospective adoptive parents. A home study was approved in January 2018.

In the meantime, Mother restarted therapy in August 2016 and achieved sobriety in October 2016. Mother maintained her sobriety and consistently attended therapy. Sometime after April 2017, mother resumed more consistent visitation with the children, and the prospective adoptive parents reported that visits were appropriate.

In late July 2017, mother filed a petition under section 388 seeking reinstatement of reunification services, as well as unmonitored visits. The court denied the petition without a hearing.

In a status review report prepared in early February 2018, a social worker observed that the children's transition to living with their prospective adoptive parents in July 2017 was "effortless" as they already knew the couple and were used to spending time with them at family gatherings and weekend dinners. Mother reported she loves her children and asked whether the prospective adoptive parents were open to having an "open adoption." When the social worker explained that the prospective adoptive parents were not open to such an arrangement, mother responded "I know they are good people and that they will take good care of my kids; I just hate the fact that I may lose them."

Mother filed a second section 388 petition on January 25, 2018, attaching documentation of her continuing sobriety and participation in programs, as well as positive observations about her visits with the children.

The Department's March 20, 2018 interim review report contained information from a social worker's

interview with the children a week earlier. Mason and Bella were five and six years old, respectively. The children did not appear interested in talking about mother and were not too responsive when the social worker mentioned mother's name. When the social worker asked who the children play with at the park, the children initially identified their current and former caregivers (the prospective adoptive parents and former foster parents) and other relatives of their caregivers; they did not mention mother. When the social worker asked about mother by name, Bella said "She's our mom from the park, or Chuck E. Cheese or the place where you run." She spoke positively about playing with mother, but identified her prospective adoptive mother in more of a parental role, stating "Before I lived with [foster mother] but I wanted to change because it's a better house. I saw this house and I liked this house. I saw a new mom and I wanted to go with [prospective adoptive mother] and I moved into this house. And I like going up the hill because sometimes I can roll." When Mason was asked about mother by name, he only said "she has a house. She plays with us. We play tag." He did not make any other statements about mother.

On March 23, 2018, the court held hearings under sections 388 and 366.26. It considered mother's section 388 petition first. During argument, mother's counsel emphasized the consistency of mother's visitation and her persistence in achieving and maintaining sobriety. She pointed out that Bella knew mother as her mother and

counted on maintaining that relationship. Minor's counsel joined in support of mother's petition, arguing that when the children grew older, "they'll want to know if their Mother had an opportunity to get them back and if Mother tried . . . ." Because mother had completed her programs and maintained visits, mother's counsel argued for giving mother an additional six months of reunification services. Counsel for the Department noted that four years had passed since the court originally imposed a case plan, the children were now five and six years old, and had lived apart from mother for over four years—either with foster parents or the prospective adoptive parents. She argued permanency with the prospective adoptive parents was in the children's best interests, especially because mother's current living situation did not permit the children to live with her even if the court granted additional reunification services. The court denied mother's section 388 petition, noting that the outcome might have been different if mother had made some of her progress two years earlier. The case was almost five years old, the children had been out of mother's custody for four years, and it was not in their best interests to grant mother's petition.

When the court started the hearing under section 366.26, mother's counsel asked to briefly question Bella. Minor's counsel objected, and both minor's counsel and the court asked mother's counsel for an offer of proof. Mother's counsel explained that in order to prove the parental relationship exception, mother must show that it would be

detrimental for the children to lose their relationship with a parent, not for mother to lose contact with the child. She continued, "And I do believe that Bella's testimony could be significant as to how she feels about her mother." The court responded, "What is the offer of proof? What would Bella say?" Mother's counsel responded, "I believe Bella would say that she would be devastated if she never saw her mother again. I believe Bella would say that she would like to continue to have [mother] be her mother and she would like to continue to see her on a continual basis and that if she did not see her that would be devastating to her." Minor's counsel countered that Bella's statements were already in the Department's reports, noting Bella had been interviewed multiple times regarding adoption. The court ruled it would not permit Bella to testify, noting "her testimony is based in these reports and she understands adoption and she is very comfortable with it. So I'm going to deny your calling for the five year old to testify today."

The court found the children were likely to be adopted and ordered parental rights terminated.

DISCUSSION

Mother contends the dependency court abused its discretion when it denied her request to present Bella's testimony in support of the parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

Standard of Review

The abuse of discretion standard of review applies to the court's order denying mother's request to present Bella's testimony. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612 (*Grace P.*) [applying abuse of discretion standard of review to court's denial of contested hearing after parent made an offer of proof]; *In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592 [trial judge has discretion to determine whether minor's testimony is required for termination of parental rights]; see also *J.H. v. Superior Court* (2018) 20 Cal.App.5th 530, 536 [court's decision on witness testimony reviewed for abuse of discretion].) A trial court abuses its discretion when a decision is arbitrary, capricious or patently absurd, or exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) "[W]hen two or more inferences can be reasonably deduced from the facts, we may not substitute our decision for the juvenile court's decision." (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 419.)

The standard of review applied in this instance is different from the substantial evidence standard applicable when reviewing a trial court's application of the parental relationship exception. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.)[6] Mother does not contend that the court

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[6] "[S]ome courts have applied different standards of review. (*In re K.P.* [(2012)] 203 Cal.App.4th [614,] 621–622 [question of whether beneficial parental relationship exists is reviewed for substantial evidence, whereas question of

erroneously denied application of the parental relationship exception, likely because after the court refused to permit her to call Bella, she did not argue the exception applied.

Parental Relationship Exception

"By the time of a section 366.26 hearing, the parent's interest in reunification is no longer an issue and the child's interest in a stable and permanent placement is paramount." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) Under section 366.26, subdivision (c)(1), if the court finds by clear and convincing evidence that it is likely the dependent child will be adopted, "the court shall terminate parental rights and order the child placed for adoption." The parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), applies only if "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and

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whether relationship provides compelling reason for applying exception is reviewed for abuse of discretion]; *In re C.B.* (2010) 190 Cal.App.4th 102, 122–123 [abuse of discretion standard governs review, but 'pure' factual findings reviewed for substantial evidence]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [(*Jasmine D.*)] [applying abuse of discretion standard].)" (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.)

the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

In analyzing whether a parent has met his or her burden to show application of the parent-child relationship exception, the dependency court considers two prongs. The first prong examines the quantitative question of how consistently a parent has maintained visitation with the child. (*Grace P., supra*, 8 Cal.App.5th at p. 612.) "[T]he second prong involves a qualitative, more nuanced analysis, and cannot be assessed by merely looking at whether an event, i.e. visitation, occurred. Rather, the second prong requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination." (*Id.* at p. 613.)

"To avoid termination of parental rights, it is not enough to show that a parent-child bond exists." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1200.) The parent asserting the parental relationship exception will not meet his or her burden by showing the existence of a "friendly and loving relationship," an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) "A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*).) Furthermore, evidence of frequent and loving contact is not enough to

establish a beneficial parental relationship. (*Ibid.*; *In re J.C., supra*, 226 Cal.App.4th at p. 529.) Mother also must show she occupies a parental role in the child's life. (*Breanna S., supra*, at p. 646; *In re G.B., supra*, 227 Cal.App.4th at p. 1165.) A court must find that the parent-child relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The parent must also establish "the child would suffer detriment if his or her relationship with the parent were terminated." (*In re C.F.*, *supra*, at p. 555.) "A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Due process

Due process is "a flexible concept dependent on the circumstances." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122 (*Tamika T.*).) "'Parents have a fundamental liberty interest in the care, custody, and management of their children.' [Citation.] Unlike a criminal defendant, a parent in a dependency proceeding does not have a right 'to full confrontation and cross-examination' under the Sixth Amendment of the federal Constitution or article I, section 15 of the California Constitution. [Citations.]" (*In re Daniela G.* (2018) 23 Cal.App.5th 1083, 1092 [minor's testimony excluded from jurisdiction hearing based on potential trauma of testifying]; see also *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817 ["due process is not synonymous with full-fledged cross-examination rights"]; *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1089 [emphasizing the trial court's role in deciding whether to permit child's testimony at termination proceeding "only after a careful weighing of the interests involved" based on possible trauma to the child as well as the necessity of such testimony in the resolution of the issues before the court].) A parent's right to call witnesses in a dependency case is "subject to evidentiary principles." (*Grace P.*, *supra*, 8 Cal.App.5th at p. 612.) "Since due process does not authorize a parent 'to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will

present relevant evidence on the issue he or she seeks to contest.' [Citation.]" (*Ibid*.)

Before granting a request to present testimony, a court may "request an offer of proof to clearly identify the contested issue(s) so it can determine whether a parent's representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses." (*Tamika T., supra,* 97 Cal.App.4th at p. 1122.) The parent's offer of proof "must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued." (*Id.* at p. 1124; see also *Grace P.*, *supra*, 8 Cal.App.5th at p. 612.)

A court deciding whether to terminate parental rights at a hearing under section 366.26 is not required to obtain direct testimony from the child about the impact of termination. Reviewing courts have rejected the argument that a trial court "must specifically ask how the child feels about ending the parental relationship," noting instead that "the evidence need not be in the form of direct testimony in court or chambers; it can be found in court reports prepared for the hearing." (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 820–821.) "[I]n honoring [children's] human dignity . . . we should not carelessly impose upon them decisions which are heavy burdens even for those given the ultimate responsibility to decide. To ask children with whom they prefer to live or to ascertain what they wish through other evidence is one thing. To ask those children to choose whether they ever see their natural parent again or to give

voice to approving that termination is a significantly different prospect. . . . [W]e conclude that in considering the child's expression of preferences, it is not required that the child specifically understand the proceeding is in the nature of a termination of parental rights." (*In re Leo M.*, *supra*, 19 Cal.App.4th at p. 1593.)

Denying mother's request to present Bella's testimony was not an abuse of discretion

Mother contends that the court's refusal to allow her to call Bella to testify violated due process because it denied her right to present relevant, non-cumulative evidence to establish the parental relationship exception. She argues *Grace P.* is directly on point and it was an abuse of discretion to deny her request to call Bella as a witness because the impact of the court's decision was to deny her right to a contested hearing on the parental relationship exception. We disagree.

In *Grace P.*, *supra*, 8 Cal.App.5th at page 610, the dependency court denied a father's request to schedule the section 366.26 hearing for a contest, denying him the opportunity to present any evidence in support of the parental relationship exception. The appellate court reasoned father's due process rights were violated because the record did not permit it to conclude that father was incapable of proving the exception. (*Id.* at p. 615.) Here, the court scheduled the section 366.26 hearing for a contest.

During the hearing, the court had before it not only the Department's reports, but also evidence mother had presented in support of her petition under section 388, seeking reinstatement of reunification services. Mother did not seek to testify on her own behalf or present testimony from anyone other than Bella, nor did she seek to cross-examine social workers about their reports. Instead, she only sought brief testimony from Bella, arguing that the testimony "could be significant as to how she feels about her mother."

It is not arbitrary or capricious for the trial court to have concluded that even if Bella were to testify consistent with the offer of proof, such testimony was inadequate to support application of the parental relationship exception. Mother's counsel stated Bella would testify that she would "like to continue to have [mother] be her mother and that she would like to continue to see [mother] on a continual basis and that if she did not see [mother] that would be devastating to her." The proffered testimony ignores the larger context of Bella's current circumstances.

Bella has lived in foster care since she was two years old. By the time the section 366.26 hearing took place in March 2018, Bella had spent over two-thirds of her young life cared for by adults other than her mother. She lived with foster parents for three years, and has lived with her prospective adoptive parents, close relatives of her foster parents, for almost a full year. During that time, mother initially maintained consistent visits, but was not able to

test negative for drugs for a long enough time period for the visits to be liberalized beyond four-hour Saturday monitored visits. After mother's reunification services were terminated in December 2015, mother visited the children less frequently, not visiting at all during the month of August 2016. Only once the children were placed with their prospective adoptive parents in July 2017 did mother start visiting more consistently and seek reinstatement of reunification services. Mother's visits remained monitored the entire time.

By the time the children were placed with the prospective adoptive parents, they described mother as having a more limited role in their lives, explaining, for example, that she was someone they enjoyed playing with at the park. In contrast, the children were closely bonded to their prospective adoptive parents, making a remarkably smooth and positive transition from the foster parents' home to the prospective adoptive parents' home. Responses from both children to questions from the social worker demonstrated that they thought of mother as a playmate at the park, whereas they considered the prospective adoptive parents and extended family as family members. There was no evidence in the record that mother had occupied anything close to a parental role in the children's lives.

Nothing in counsel's offer of proof regarding Bella's expected testimony would establish that preserving her relationship with mother would promote her well-being "to such a degree as to outweigh the well-being [she] would gain

in a permanent home with new, adoptive parents." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) In addition, while mother's sobriety and stability have improved dramatically, she was never able to achieve unmonitored visits with the children, a fact that makes application of the parental benefit exception even more unlikely. (See *In re K.P.*, *supra*, 203 Cal.App.4th at p. 621 [emphasizing importance of parent playing a parental role with day-to-day interactions and responsibilities]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [while day-to-day contact is not required, it is difficult to demonstrate a beneficial parent-child relationship when visits remain monitored]; *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1109 [parent's failure to progress beyond monitored visitation with a child and to fulfill a "meaningful and significant parental role" justifies order terminating parental rights].)

Mother also argues the court abused its discretion because it denied her request for Bella's testimony under a mistaken impression that (1) the Department's reports reflected that Bella understood the implications of adoption, and (2) that Bella was five years old, not six. Neither fact, however, establishes the court abused its discretion in denying mother's request to have Bella testify about her relationship with mother. Nothing in section 366.26 requires the court to determine whether a child understands the implications of adoption. In fact, *In re Leo M.* cautions against placing such a heavy burden on a minor. (*In re Leo M.*, *supra*, 19 Cal.App.4th at p. 1594 [finding no abuse of

discretion in refusing to permit testimony from a five year old child].) The court—not the child—must determine whether the benefit of adoption is outweighed by the benefit to the child of preserving parental rights. (*Breanna S., supra,* 8 Cal.App.5th at pp. 646–647.) And while a child's age can be relevant to a court's decision on the parent's request to elicit testimony, it is not dispositive.

Mother's request for testimony and her brief on appeal focused primarily on her bond with Bella. The Department's reports also note the mother's bond with Bella is stronger than her bond with Mason, who was even younger when he was removed from mother's custody, and has therefore spent a larger proportion of his life without viewing mother in a parental role.

Considering the extensive evidence in the record that the relationship between mother and the children was not significant enough to warrant application of the parental relationship exception, we do not find it was an abuse of discretion for the court to deny mother's request to call Bella to testify about the nature of her relationship to mother.

DISPOSITION

The order terminating parental rights under section 366.26 is affirmed.

MOOR, J.,

I concur:

BAKER, Acting P.J.

Jaskol, J., dissenting
In re Bella M.
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I dissent. On these facts, I believe mother had a due process right to present Bella's proffered testimony to establish the existence of the beneficial relationship exception to termination of parental rights.

A. The beneficial relationship exception

Welfare and Institutions Code section 366.26, subdivision (c)(1),[1] prohibits a juvenile court from terminating parental rights when "(B) The court finds a compelling reason for determining that termination would be detrimental to the child [because] . . . (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."[2] (§ 366.26, subd. (c)(1)(B)(i).)

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[1] Further statutory references are to the Welfare and Institutions Code.

[2] The majority does not dispute that mother has "maintained regular visitation and contact" with the children within the meaning of the statute. (§ 366.26, subd. (c)(1)(B)(i).) Therefore, this appeal concerns only the requirement that mother prove termination would be detrimental to the children because they "would benefit from continuing the relationship" with her. (*Ibid.*)

In applying this statutory exception to termination of parental rights (the beneficial relationship exception), courts have created a daunting burden for parents attempting to retain their parental rights at a section 366.26 selection and implementation hearing. In *In re Autumn H.* (1994) 27 Cal.App.4th 567, the court construed the exception to require parents to prove "the [parent/child] relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Id.* at p. 575.)

In *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, the court stated that a parent's "frequent and loving contact" with the child is not sufficient to establish the beneficial relationship exception. (*Id.* at p. 1418.) The court concluded the parents in that case failed to establish the existence of the exception because they "had not occupied a parental role in relation to [the children] at any time during their lives." (*Id.* at p. 1419.)

Subsequently, courts have held a parent's failure to demonstrate he or she occupied a parental role at the time of

the section 366.26 hearing precluded application of the beneficial relationship exception. (See, e.g., *In re Derek W.* (1999) 73 Cal.App.4th 823, 827 ["the parent must show that he or she occupies a 'parental role' in the child's life"]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 ["a *parental* relationship is necessary for the [beneficial relationship] exception to apply" (original emphasis)].)

By the time of a section 366.26 hearing, the juvenile court has already removed the child from the parent and terminated the parent's reunification services. (See *In re Grace P.* (2017) 8 Cal.App.5th 605, 611; *In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) In the typical case, the parent's visits with the child at this point are monitored. Under these circumstances, even a parent who regularly visits the child is likely to face serious obstacles in attempting to prove that he or she occupies a "parental role" (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827) or that the parent's relationship with the child "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents" (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575).

B. A parent's right to present evidence at a section 366.26 hearing

The heavy burden parents must carry to prove the existence of the beneficial relationship exception heightens the importance of ensuring the section 366.26 hearing satisfies due process requirements. As one court recently noted, "[t]he application of the beneficial parent relationship exception requires a robust individualized inquiry given that

'[p]arent-child relationships do not necessarily conform to a particular pattern,' and no single factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive." (*In re Grace P.*, *supra*, 8 Cal.5th at p. 613.)

"Parents have a fundamental liberty interest in the care, custody, and management of their children. [Citation.] The state and federal Constitutions guarantee no state shall deprive parents of this interest in their children without due process of law . . . . [Citations.]" (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 777 (*David B.*).)

To decide what process is due, courts consider and balance "(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the [dignity] interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*David B.*, *supra*, 140 Cal.App.4th at pp. 777-778, internal quotation marks and citations omitted.)

As noted, by the time of the section 366.26 hearing, a parent's reunification services have been terminated and "the focus [has] shift[ed] to the needs of the child for

permanency and stability." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Nonetheless, the parent's interest in preserving his or her parental rights is not a trivial one. If the juvenile court terminates those rights, the parent may be barred from any future contact with his or her children.

Therefore, "[p]arents can request a contested [§ 366.26] hearing . . . to present evidence supporting their claim that an exception to termination of parental rights exists." (*In re Grace P.*, *supra*, 8 Cal.5th at p. 611.) "The contested hearing solely provides the parent the opportunity to make his or her best case regarding the existence of a beneficial parental relationship that has been fostered by continued and regular contact." (*Id.* at p. 615.)

The juvenile court, however, may "'request an offer of proof to clearly identify the contested issue(s) so it can determine whether a parent's representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses.'" (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 612.) "The parent's offer of proof 'must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.'" (*Ibid.*)

In *In re Grace P.*, *supra*, 8 Cal.App.5th 605, the father made an offer of proof to support his request for a contested hearing on the application of the beneficial relationship exception, stating his daughter would testify that she enjoyed the father's visits, she would like the visits to continue, she saw him as a father figure and she would be

sad if he was not her father. (*Id.* at p. 610.) The father also stated he would testify about the positive quality of his visits, how he parented his children during the visits, and how the children considered him to be a father figure. (*Id.* at pp. 610, 614.) The juvenile court concluded the offer of proof was inadequate because the court could not find the father had a stronger and more important bond with the children than the bond they had with their caregivers. (*Id.* at p. 610.) The court therefore denied the request for a contested hearing and terminated the father's parental rights. (*Id.* at p. 611.) The father appealed.

On appeal, the Department argued the father's offer of proof was inadequate because the proposed testimony would not provide new information to the court since the Department's own reports documented the father's interactions with the children. (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 615.) The Department also argued the father "was incapable of proving a sufficiently strong relationship with the children to satisfy the [beneficial relationship] exception." (*Ibid.*)

The Court of Appeal rejected the Department's arguments because they were "based entirely on the evidence it offered at the [§ 366.26] selection and implementation hearing. Father's proposed evidence, which purported to address the existence of a beneficial parent-child relationship, was not admitted. Without such evidence, we cannot conclude that Father was incapable of proving the exception. Without the evidence, we cannot

conclude that Father's and Grace's testimony would be duplicative of the [Department's] reports. On the contrary, the offer of proof indicated that Father and Grace would expound on the details of the relationship that has been positively (though concisely) documented by [the Department]." (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 615.)

The Court of Appeal accordingly reversed the order terminating parental rights, concluding "[the father's] proffered evidence was consequential to and probative of the issue of his relationship with the children and the detriment they would suffer by its severance." (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 614.)

C. Mother should have been permitted to present Bella's proffered testimony

1. Background.

Without disagreeing with the majority opinion's statement of facts, I highlight and add some points contained in the record.

The Department removed the children from their parents in May 2014, when Bella was two years, three months old and Mason was one year, three months old. Mother was the children's sole caregiver until they were removed from her custody.

In the Jurisdiction/Disposition Report filed on July 1, 2014, the Department recommended that the juvenile court bypass reunification and proceed directly to the section 366.26 selection and implementation hearing because the

parents had previously failed to reunify with their four older children.

Subsequently, the Department received positive reports about the parents' visits with the children. A report attached to a July 28, 2014 Last Minute Information for the Court stated *Bella was "maintaining her attachment to her bio parents, whom she looks forward to visiting on a regular basis . . . ."* (Emphasis added.)

A Last Minute Information for the Court dated September 23, 2014 stated: "The children seem to miss mother when the visits end. . . . [Maternal aunt] reports that both parents are appropriate and that *they take on a parental role during the visits*. [Maternal aunt] merely observes and *[the parents] provide all care that would be expected of a parent[ ] such as redirecting the children or preparing meals*." (Emphasis added.)

Based on the visits and the parents' cooperation, the Department changed its recommendation and asked the juvenile court to order reunification services. The court granted the parents reunification services and monitored visits, and gave the Department discretion to liberalize the visits.

In a Last Minute Information for the Court dated December 3, 2014, the Department stated: "Foster parents report the quality of [parents'] visitation is good."

The Department's March 24, 2015 report for the six-month review hearing stated the "quality of [mother's] visitation is good" and also stated: "The children are

receptive to mother and appear to enjoy visits with mother." The Department recommended that the court continue mother's services. However, the Department declined to liberalize mother's visits because she had experienced a relapse. The Department recommended that the court terminate father's services because he was no longer complying with his case plan.

On May 4, 2015, mother met with the foster counselor at Bella's school to discuss Bella's individualized education plan (IEP). Mother reviewed and signed the IEP.

At the six-month review hearing on May 13, 2015, the court continued mother's services and terminated father's services. The court ordered that mother's visits would remain monitored.

In the July 21, 2015 report for the twelve-month review hearing, the Department stated: "Foster parents report the quality of [mother's] visitation is [*sic*]." The report did not provide any other information about the quality of mother's visits. Although mother wished to have unmonitored visits, the Department believed mother "ha[d] not shown consistency with weekly drug testing" and therefore it did not liberalize mother's visits. The Department recommended mother continue to receive services.

At the twelve-month review hearing on July 21, 2015, the court set the matter for a contested hearing to consider whether mother should have unmonitored visits. On the September 16, 2015 contest date, the Department submitted

a report stating mother was not testing consistently. The court ruled mother's visits would remain monitored.

The Department's November 23, 2015 report for the eighteen-month review hearing stated mother had relapsed, testing positive for amphetamines and methamphetamines in October 2015. The Department also noted mother had not visited the children in the last three weeks. The Department recommended that the court terminate mother's reunification services and schedule the section 366.26 hearing.

On December 17, 2015, the Department submitted an interim review report stating mother had resumed her weekly visits with the children and enrolled in an inpatient drug program. Nonetheless, citing a November 10, 2015 positive drug test, the Department continued to recommend that the court terminate mother's services. That same day, the court terminated mother's services and set the section 366.26 hearing.

On April 13, 2016, the Department reported: "*Bella cries when her mother leaves the visit, as she would like to spend more time with her mother*." (Emphasis added.) Mother was visiting an average of once per month. The Department also reported that mother had "ceased participation in her drug treatment program and other services previously offered."

In an October 6, 2016 report, the Department stated mother was visiting twice per month. According to the Department, "it has been reported that during the visits

mother is appropriate and attends to her children; the children show comfort in the care of their mother and are affectionate with her." "*Bella stated 'I miss her' when asked about her mother*." (Emphasis added.) A "Child Welfare Services Case Plan Update" attached to the report stated: "The children have expressed that they are happy being with their foster parents but have reported that they miss their mother."

The Department's April 6, 2017 report stated: "This CSW has monitored a visit for the mother and . . . noted that the mother is attentive to her children; she plays with them; brings them toys and snacks; and the children show comfort in her care." *Bella stated, "'I love my mommy; I miss her*.'" (Emphasis added.)

On July 14, 2017, the Department re-placed the children with foster mother Mrs. Mendoza and her husband, who wished to adopt the children.

On July 26, 2017, mother filed a section 388 petition asking the court to return the children to her and grant family maintenance services or, in the alternative, reinstate her family reunification services and/or grant unmonitored visitation. Mother argued she had nearly completed a six-month substance abuse program, provided fifteen clean tests, attended weekly counseling sessions, attended twelve therapy sessions at a mental health services provider, and had positive and consistent visits with her children. Mother attached exhibits to support her request. The court denied the petition without a hearing.

In its August 3, 2017 status review report, the Department observed that mother's visits had been "consistent" during the last period of Department supervision. Mother was on time for her visits and was appropriate and attentive to the children during the visits. The Department observed "[t]he children show comfort in the care of their mother and are affectionate with her and the mother reciprocates such affection." As in the April 6, 2017 report, Bella stated, "'I love my mommy; I miss her.'"

In its section 366.26 report dated August 3, 2017, the Department stated that "although [the children] report wanting to live with [Mrs. Mendoza and her husband,] *they also still desire to live with their mother*." (Emphasis added.)

In a report filed January 9, 2018, the Department stated mother continued to visit the children consistently. Mother asked if the foster parents would consider an "open adoption" so mother could have contact with the children after they were adopted, but the foster parents refused. The report also stated: ". . . *Bella states that she loves her mother and misses her when she does not see her*." (Emphasis added.)

On January 25, 2018, mother filed a second section 388 petition, asking the court to order the children returned to her or, in the alternative, restore her family reunification services and grant unmonitored visitation. Mother argued she has been sober since October 30, 2016; she completed a six-month outpatient program; she has maintained her sobriety by attending AA/NA programs and working with a

sponsor; she works with a therapist; she has a support system; she receives appropriate mental health services and has been consistent with treatment and medication; during visits the children tell her they miss her and wish to go to her home; and it would be detrimental to her children's well-being to sever the close bond they have with her. Mother submitted exhibits to support her petition. The court set the section 388 petition for hearing on March 23, 2018, the same day as the section 366.26 hearing.

In a report filed March 21, 2018, the Department stated mother's visits with the children remained consistent. While describing mother as "appropriate and attentive to her children during her visit" the report also stated mother "tends to favor Bella and at times ignores Mason." The report nonetheless stated "[t]he children show comfort in the care of their mother and are affectionate with her and the mother reciprocates such affection." Like the January 9, 2018 report, the March 21 report stated: ". . . Bella states that she loves her mother and misses her when she does not see her."

In its March 23, 2018 Interim Review Report, the Department recommended the court deny mother's section 388 petition. It stated that when the Department's Dependency Investigator (DI) interviewed the children, they "did not appear interested in talking about mother nor [were] they too responsive when this DI mentioned mother's name. . . . It was not until this DI specifically asked about mother and encouraged the children to speak about her that

they made reference to her." When the DI asked who Ruth (mother) is, Bella said: "She's our mom from the park, or Chuck E. Cheese or the place where you run. I like to play with her. She's always 'it' when I ask her. I say, 'Can you be it because I'm bored.' And last time I hit myself at a McDonalds. Sometimes, I do like paint with her and sometimes she brings me toys and sometimes she gives us candy. [¶] Before I lived with [prior foster parent] Lita but I wanted to change because it's a better house. I saw this house and I liked this house. I saw a new mom and I wanted to go with [current foster parent] Rosa and I moved into this house." Mason said: "Ruth is . . . she has a house. She plays with us. We play tag."

The Department's March 23 report also included extensive negative commentary about mother from the children's current foster parents. For example, "[t]he caregivers believe the mother's knowledge of the children's possible adoption and replacement appeared to influence mother's compliance with the visitation schedule." The foster mother stated: "If [the children] were to go back with [mother], I wouldn't feel too badly for Bella, I would feel bad for Mason because [mother is] not nice to him. I'm afraid that she's going to leave them alone or hit him and be mean to him. I'm not that worried about her because she's been loved by her. But him, I worry about him, that he'll be a statistic in East L.A."

The report concluded "the children's emotional and overall wellbeing is at risk of detriment should they be

uprooted from their current home." In addition, the Department believed it was not in the children's best interest to reinstate mother's reunification services because this would place the children's plan of permanency at risk and they "appear to be happy and flourishing in the current caregiver's home."

At the March 23, 2018 hearing on mother's section 388 petition, mother's counsel and minors' counsel both argued in favor of the petition, with minors' counsel asking the court to order the Department to provide mother six additional months of reunification services.[3] The Department's counsel conceded that mother had completed her case plan. The Department's counsel argued, however, that the children had been out of mother's care for four years and it was in their best interest to proceed toward a permanent plan of adoption with their current caregivers.

The court denied the section 388 petition, telling mother: "Had you done some of the work that you've done now two years ago, I would have been in a different situation but you haven't had your children in your care and custody for four years. . . . And for me to find that it's in the children's best interest when you've had nothing but monitored visits, although you tried to be a parent, you're

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[3] "[T]he paramount duty of counsel for minors [in dependency proceedings] is . . . to advocate for what the lawyer believes to be in the client's best interests . . . ." (*In re Zamer G.* (2007) 153 Cal.App.4th 1253, 1265, emphasis omitted.)

not the parent and haven't done anything as a parent and these children need permanence." The court found mother had complied with her case plan but it was not in the children's best interest to grant mother further reunification services.

The court then turned to the section 366.26 hearing. Mother's counsel asked to question Bella briefly. Minors' counsel objected but did not state a basis for the objection. The court and minors' counsel both asked for an offer of proof. Mother's counsel explained the beneficial relationship exception required proof that it would be detrimental for the child to lose a parent and "Bella's testimony could be significant as to how she feels about her mother." Asked to be more specific, mother's counsel stated: "I believe Bella would say that she would be devastated if she never saw her mother again. I believe Bella would say that she would like to continue to have [mother] be her mother and that she would like to continue to see her on a continual basis and that if she did not see her that would be devastating to her."

Minors' counsel responded that Bella's statements "are in today's Interim Review Report and also in previous reports. She's been interviewed multiple times to her understanding of the position on permanency planning, specifically adoption. So I believe that her statements are clear in the report. She does not need to testify."

The court denied mother's request, stating: "I'm not going to allow [Bella] to testify. Her testimony is based in these reports and she understands adoption and she is very

comfortable with it. So I'm going to deny your calling for the five year old to testify today."[4] The court then terminated mother's parental rights over her counsel's objection.

2. The reasoning of *In re Grace P.* applies here

Although the majority distinguishes *In re Grace P.*, *supra*, 8 Cal.App.5th 605, I believe its reasoning governs this case.

To begin with, the record discloses more evidence of a bond between mother and Bella – and more risk of detriment to Bella if the bond is severed – than the majority opinion acknowledges. Mother was Bella's sole caregiver until the Department removed her in May 2014, when Bella was two years, three months old. And the Department's reports consistently describe Bella's statements and conduct demonstrating her love and attachment to her mother:

Jul. 28, 2014: Bella is "maintaining her attachment to her bio parents, whom she looks forward to visiting on a regular basis . . . ."

Sept. 23, 2014: "The children seem to miss mother when the visits end. . . . "[Maternal aunt] reports that both parents are appropriate and that they take on a parental role during the visits. [Maternal aunt] merely observes and [the parents] provide all care that would be expected of a parent[ ] such as redirecting the children or preparing meals."

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[4] Bella was six years old.

Dec. 3, 2014:	"Foster parents report the quality of [parents'] visitation is good."
Mar. 24, 2015:	"The children are receptive to mother and appear to enjoy visits with mother."
Apr. 13, 2016:	"Bella cries when her mother leaves the visit, as she would like to spend more time with her mother."
Oct. 6, 2016:	"[I]t has been reported that during the visits mother is appropriate and attends to her children; the children show comfort in the care of their mother and are affectionate with her." "Bella stated 'I miss her' when asked about her mother." "The children have expressed that they are happy being with their foster parents but have reported that they miss their mother."
Apr. 6, 2017:	"This CSW has monitored a visit for the mother and . . . noted that the mother is attentive to her children; she plays with them; brings them toys and snacks; and the children show comfort in her care." Bella stated, "'I love my mommy; I miss her.'"
Aug. 3, 2017:	Mother's visits were "consistent" during the last period of Department supervision. Mother was on time for her visits and was appropriate and attentive to the children during the visits. "The children show comfort in the care of their mother and are

affectionate with her and the mother reciprocates such affection." Bella stated, "'I love my mommy; I miss her.'" "[A]lthough [the children] report wanting to live with [Mrs. Mendoza and her husband,] they also still desire to live with their mother."

Jan. 9, 2018: ". . . Bella states that she loves her mother and misses her when she does not see her."

Mar. 21, 2018: Mother's visits with the children remain consistent. Mother was "appropriate and attentive to her children during her visit" but "tends to favor Bella and at times ignores Mason." "The children show comfort in the care of their mother and are affectionate with her and the mother reciprocates such affection." ". . . Bella states that she loves her mother and misses her when she does not see her."

By contrast, nothing in the record shows that, at the time of the section 366.26 hearing, Bella had any understanding that her relationship with her mother might come to an end. As far as the record reveals, Bella never had any reason or opportunity to express how she would feel if she lost that relationship. Thus, the record contains no support for the juvenile court's belief that Bella "understands adoption and she is very comfortable with it."

Courts have a "mandatory duty . . . to 'consider the child's wishes to the extent ascertainable' prior to entering an order terminating parental rights under section 366.26, subdivision (c)." (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591.) The majority observes that a court considering whether to terminate parental rights is not required to obtain direct testimony from the child about the impact of termination but may obtain the needed information from "'court reports prepared for the hearing.'" (Majority op., p. 16.) Here, however, the juvenile court excluded Bella's testimony in the mistaken belief that the Department's reports showed Bella "understands adoption and she is very comfortable with it." Thus, it does not appear the juvenile court complied with the mandatory duty to consider Bella's wishes to the extent ascertainable prior to terminating mother's parental rights.

As a result, as in *In re Grace P.*, *supra*, 8 Cal.App.5th 605, the juvenile court decided the beneficial relationship exception did not apply, and terminated mother's parental rights, "based entirely on the evidence [the Department] offered at the [§ 366.26] selection and implementation hearing." (*Id.* at p. 615.) "[Mother's] proposed evidence, which purported to address the existence of a beneficial parent-child relationship, was not admitted." (*Ibid.*)

The majority disagrees with this conclusion. According to the majority, at the section 366.26 hearing, the juvenile court also had before it evidence mother had presented in support of her section 388 petition. In addition, mother

could have sought to testify on her own behalf or present testimony from witnesses other than Bella, such as Department social workers. (Majority op., p. 18.)

On the first point, the record shows the juvenile court did not receive mother's section 388 petition in evidence during the section 366.26 hearing, which followed but was separate from the section 388 hearing. Therefore, there is no basis for the conclusion that the court considered mother's evidence submitted in support of her section 388 petition in connection with the section 366.26 hearing. Even assuming the juvenile court considered mother's section 388 petition at the section 366.26 hearing, the section 388 petition was not an adequate substitute for Bella's proffered testimony.

On the second point, the juvenile court had just rejected mother's contention, in her section 388 petition, that her children would suffer detriment if their close bond with her was severed. Mother was not required to engage in the futile act of making her contention again if she could not also present Bella's supporting testimony.[5] (See *Doster v. County of San Diego* (1988) 203 Cal.App.3d 257, 262 ["The law does not require a party to participate in futile acts"].) Similarly,

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[5] In addition, courts may discount as "self-serving" the testimony of parents in dependency cases. (See, e.g., *In re J.C.* (2014) 226 Cal.App.4th 503, 533-534 [affirming order terminating parental rights where only mother's "self-serving declaration" countered social worker's conclusion that child would suffer no detriment from termination of parental rights].)

the negative attitude toward mother expressed in the Department's March 23, 2018 Interim Review Report suggests it would have been futile for mother to call any social workers as witnesses.

The conclusion is inescapable that the only witness whose testimony could have made a difference at the section 366.26 hearing was Bella. As in *In re Grace P.*, mother's offer of proof "indicated that [Bella] would expound on the details of the relationship [with mother] that has been positively (though concisely) documented by [the Department]" in prior reports. (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 615.) Without Bella's testimony, it is in my view impossible to "conclude that [mother] was incapable of proving the [beneficial relationship] exception." (*Ibid.*)

Again, the majority disagrees, holding the juvenile court did not abuse its discretion in concluding that even if Bella had testified consistently with mother's offer of proof, mother would not have been able to establish the beneficial relationship exception to termination of parental rights. (Majority op., p. 18.) The majority reasons that, at the time of the section 366.26 hearing, Bella had spent over two-thirds of her life in the care of foster parents. (Majority op., p. 18.) The majority also recounts mother's (ultimately successful) struggle to overcome her substance abuse problem. (Majority op., p. 20.)

The majority takes a false step, however, in asserting that by July 2017, the children "thought of mother as a playmate at the park" and not as a family member.

(Majority op., p. 19.) The majority bases this conclusion on the Department's March 23, 2018 Interim Review Report, which departs sharply from earlier reports reflecting Bella's attachment to her mother.

We are not, however, conducting a substantial evidence review of the juvenile court's decision to credit the March 23 report rather than the information in the prior reports evidencing Bella's bond with her mother. Instead, we are weighing the effect on mother's due process rights of the juvenile court's decision to exclude mother's best evidence that, contrary to the Department's March 23 report, termination of her parental rights would result in devastating harm to Bella. (See *In re Grace P.*, *supra*, 8 Cal.5th at p. 615 ["The contested hearing solely provides the parent the opportunity to make his or her best case regarding the existence of a beneficial parental relationship"].)

Thus, the fact that the record contains evidence that supports the decision to terminate parental rights does not answer the question presented here: can we conclude as a matter of law – as the majority does – that Bella's testimony would have provided no basis for a conclusion "that preserving her relationship with mother would promote her well-being 'to such a degree as to outweigh the well-being [she] would gain in a permanent home with new, adoptive parents'"? (Majority op., pp. 19-20.)

If we assume that termination of parental rights is a foregone conclusion at the section 366.26 hearing, we are not

complying with the Legislature's directive – and the constitutional mandate – to ensure that parents can exercise their due process right to present relevant evidence establishing the existence of the beneficial relationship exception. Mother's offer of proof demonstrated she could present relevant evidence in the form of Bella's testimony that she would be devastated if her relationship with her mother was severed. (See *In re Grace P.*, *supra*, 8 Cal.App.5th at p. 613 [parent must "prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination"].) I would hold that the exclusion of Bella's proffered testimony violated mother's due process rights, requiring reversal.

CONCLUSION

I would reverse the judgment and remand for a new section 366.26 hearing at which mother may present Bella's testimony.

JASKOL, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.