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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D.R. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.M. et al.,

Defendants and Appellants.

B296991

Los Angeles County
Super. Ct. Nos.
CK77832B,
CK77832C,
CK77832D

APPEALS from orders of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant T.M.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant Daniel R.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother and father separately appeal from the juvenile court's orders terminating their parental rights under section 366.26 of the Welfare and Institutions Code¹ to their three children: D.R., born September 2011, A.R., born December 2012, and I.R., born December 2016. We find no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *Earlier dependency*

In May 2012 and December 2012, the Los Angeles County Department of Children and Family Services (DCFS) filed section 300 petitions on behalf of D.R. and A.R.,² respectively, based on parents' substance abuse, which were sustained. The court returned the children to mother in October 2014 and terminated its jurisdiction in June 2015. The court granted sole legal and physical custody of the children to mother with visitation for father.³

¹ All statutory references are to the Welfare and Institutions Code.

² The petition filed on behalf of A.R. was based on mother's substance abuse only.

³ Mother and father also each had another child who was declared a dependent of the juvenile court with whom they did not reunify.

2. *Current dependency petition and initial detention*

In December 2016, DCFS received a third-party report that the family was homeless, living in their car, and parents were not feeding their children properly. The reporting party alleged parents were smoking methamphetamine in front of the children, and there were syringes, cockroaches, and waste inside the car. Mother had given birth to I.R. that day, and the family was at the hospital.

A DCFS social worker went to the hospital to investigate. The baby had tested negative for amphetamines, but mother's presumptive test was positive. Mother said she had not used drugs in over a year, but her confirmation test returned a positive result for methamphetamine.

The DCFS social worker checked the family's car in the hospital parking lot. Clothes, trash, old food, and toys were in it, but there were no syringes or cockroaches. D.R. and A.R. were sleeping in the back seat. After speaking to their father, the social worker spoke to D.R. and A.R. privately. Five-year old D.R. confirmed he had not eaten that day. He was scared the social worker would take him away. Four-year old A.R. looked disheveled and her hair was matted. She would not speak to the social worker.

Parents gave consent for the children to be detained with the paternal grandmother. The social worker interviewed the children again at the paternal grandmother's house. D.R. said he was happy not to be sleeping in the truck anymore. When asked, D.R. said his parents did not hit him, but hit his sister "if she touched daddy's 'Pipe.'" He saw his parents use the pipe. He denied that anyone "touched him on his private parts." When asked, he told the social worker he did not eat every day and said,

“sometimes I was very hungry.” A.R. was shy and did not want to talk with the social worker.

On December 23, 2016, DCFS filed a section 300 juvenile dependency petition on behalf of the three children. The petition alleged parents’ history of substance abuse prevented them from providing proper care and supervision of the children. The petition asserted (1) mother had a seven-year history of drug abuse and is a current user of amphetamine and methamphetamine, and (2) father had a history of methamphetamine and alcohol abuse and a drug-related criminal history. The petition also referred to parents’ earlier dependency history.

That day the juvenile court ordered the three children detained with the paternal grandmother. Parents were not present at the hearing. Parents were not to visit the children until they contacted DCFS.

3. *Jurisdiction/disposition*

a. *March 2017 jurisdiction/disposition report*

A DCFS dependency investigator interviewed the family members in February 2017. At the time, mother was 26 and father was 48 years old. Parents had never married. They were living together in a motel, but mother hoped to secure more stable housing. Both parents said they were employed.

Mother revealed her substance abuse began when she was 12 years old; she started using methamphetamine at age 15. Mother told the investigator she had not used drugs while pregnant with I.R. “because of what happened with my other kids.” She could not explain the positive toxicology screen for methamphetamine at I.R.’s birth. She said she had completed

one inpatient and one outpatient drug treatment program and had not had any relapses since the earlier dependency case.

Father told the investigator he was exposed to drugs and drug sales as a child by his mother—paternal grandmother—who was a heavy user while he was growing up. He first tried cocaine when he was in the fifth grade. He helped paternal grandmother bag cocaine and made a few drug deliveries for her. He said he had “‘done them all,’” from powder cocaine and heroin to PCP and “rock” cocaine. He began using methamphetamine to help him “‘get off the rock.’” Father said he had been sober for many years and was committed to remaining clean. He tested negative for drugs and alcohol in December 2016.

D.R. would not answer the investigator’s direct questions. He asked her if she was going to take him away. The investigator asked D.R. about the pipe he had mentioned. He said parents “used to smoke in my face and they used to put a lighter to it and smoke it.” A.R. also asked the investigator if she was going to take her away. She did not answer the investigator’s questions about the pipe or drugs. Both children told the investigator they liked living with their grandmother and wished to remain in her home at that time.

Parents had not seen their children since their detention. In February 2017, mother told the DCFS social worker parents had been regularly talking to the children by phone, but in February paternal grandmother stopped accepting their calls. Mother also said parents were not comfortable with paternal grandmother monitoring visits because their relationship with her was strained.

In contrast, paternal grandmother told the investigator that mother “never call[s].” She said she could not monitor visits

but was willing to facilitate them. DCFS reported it would work with parents to establish a monitor and develop a visitation schedule.

b. *Jurisdiction and disposition hearing*

On March 2, 2017, the juvenile court sustained the section 300 petition, declared the children dependents of the juvenile court, and ordered DCFS to provide reunification services. The court ordered parents to complete a full substance abuse program with aftercare, random drug testing, and a 12-step program; attend parenting classes; participate in individual counseling; and participate in family preservation when appropriate. The court ordered “standard” monitored visitation, but its order does not state the frequency or duration of visits. Parents did not appear at the hearing.

On March 7, 2017, a social worker spoke to mother about parents’ failure to appear at the recent hearing. Mother said they had, but the case already had been heard. Mother also said she had been trying to reach the children, but paternal grandmother still would not return her calls.

4. ***Section 342 petition alleging sexual abuse and May 30, 2017 detention***

In February 2017, DCFS received a referral alleging D.R. and A.R. had been sexually abused by parents. Paternal grandmother informed DCFS that D.R. and A.R. engaged in sexualized behavior, including touching themselves and putting their fingers in their own rectums. Paternal grandmother reported D.R. told her that mother had touched his buttocks and his penis, mother and father had touched and sucked his penis and nipples, and parents had him and A.R. get into the bed with them while parents were naked. Paternal grandmother reported

A.R. acted out how mother licked her finger and put it in her vagina. Paternal grandmother told the social worker the children did not like talking about their parents.

A DCFS social worker interviewed the children about the allegations in February 2017. D.R. denied that anyone touched him on his private areas. He also denied he had lain naked on the bed with anyone. A.R. did not respond to questions about her parents.

The police investigated the allegations of sexual abuse. D.R. and A.R. attended a forensic interview on February 9, 2017, but because they were “‘all over the place,’” the interviewer recommended a second interview be scheduled.

In May 2017, paternal grandmother told the DCFS social worker the older children cried and said they did not want to see their parents if she asked them about visits. The children also told the social worker they did not want to see parents. According to paternal grandmother, the children acted out after they thought they were going to see their parents: they had nightmares, had difficulty settling down, and wet their beds.

The DCFS service log shows a monitored visit with mother was scheduled for late March 2017, but paternal grandmother told the social worker D.R. and A.R. cried and refused to go to the visit. Mother visited with I.R., however, and I.R. reacted well to her. Paternal grandmother also brought I.R. for a visit with mother in April 2017, but D.R. and A.R. did not want to come. Mother's visit with I.R. again was appropriate: mother fed, sang, and talked to I.R., and comforted her when she cried. In early May 2017, D.R. and A.R. drove with paternal grandmother for I.R.'s visit, but they did not want to come into the DCFS office to see mother. D.R. said he would talk to her on the phone.

On May 30, 2017, DCFS filed its section 342 petition alleging parents sexually abused D.R. and A.R., placing all three children at serious risk of harm and sexual abuse. At the detention hearing held that same day, the juvenile court ordered forensic interviews for D.R. and A.R. and that parents' visits take place in a therapeutic setting. Parents did not appear at the hearing. They also had yet to enroll in their court-ordered programs.

On June 15, 2017, a DCFS social worker visited the children at paternal grandmother's home. When asked, D.R. said he felt safe in his home and he loved his " 'grandma.' " He said he did not want to visit his parents; he just wanted to " 'say hi.' "

On June 26, 2017, parents appeared for the arraignment hearing on the section 342 petition. The juvenile court continued the hearing and ordered DCFS to prepare a progress report to address setting up visits for parents and the children in a therapeutic setting.

On July 19, 2017, DCFS informed the court it had been unable to facilitate visitation for parents. The children's therapist did not wish to conduct visits at her office because she did not want the children to associate their place of therapy with a negative situation in the event the visit did not go well. She observed D.R. and A.R. "to be anxious when their parents are mentioned" and fearful of them. The therapist did not recommend visitation at this time. Neither parent had contacted the social worker about visitation.

Based on that information, the juvenile court ordered visits to take place at the DCFS office two to three times a week for a minimum of two to three hours per visit.

5. *August 31, 2017 status review report*

As of the completion of DCFS's status report on August 1, 2017, neither parent had enrolled in any court-ordered programs.

On July 12, 2017, the children's therapist reported both D.R. and A.R. had displayed some sexualized behaviors during treatment sessions and demonstrated knowledge of sexual content. The therapist reviewed the February 2017 MAT assessment⁴ of the children. She noted it reported D.R. described being naked in bed with his parents and having his "private parts touched," and A.R. described "her butt being licked by her father." The therapist did not believe the children would benefit from visits with their parents at that time.

As of August 1, 2017, father had not participated in any visits.

Paternal grandmother told DCFS she wanted to adopt the children if parents failed to reunify with them.

6. *Jurisdiction/disposition report for section 342 petition and follow-up reports*

a. *Parents' response*

A DCFS investigator interviewed mother on August 15, 2017, about the sexual abuse allegations. Mother accused paternal grandmother of "making these allegations up." Mother denied that anyone slept nude with the children or that they had been exposed to sexual activity. She said D.R. and A.R. had not acted out sexually when in parents' care. Mother admitted she had not enrolled in any services as of August 15, 2017. Father did not make himself available for an interview.

⁴ "MAT" stands for multidisciplinary assessment team. Both A.R. and D.R. were evaluated in February 2017.

b. *Statements about children*

D.R. and A.R. participated in a forensic interview on August 10, 2017. The children did not disclose sexual abuse by their parents. When asked whether anything happened to what D.R. described as his “‘butt cheeks,’” he said, “‘Only grandma allowed to touch cola.’” He denied having touched anyone’s “‘cola’” and said he would tell the police if someone touched him. When asked with whom he would like to live, D.R. was nonresponsive, stating, “‘That’s what the police write?’” A.R. identified her “private area” to the interviewer as “‘butt.’” When asked if anyone touched her “‘butt’” she said, “‘No.’”

On May 19, 2017, the children’s pediatrician wrote that D.R. and A.R. “demonstrate sexualized behaviors that are not normal for children of their age, and they lack normal social cues of children their age.” They also had developed symptoms of post-traumatic stress disorder (PTSD). Behavioral pediatricians re-iterated D.R.’s and A.R.’s PTSD diagnosis in August 2017 and stated they “support [paternal grandmother’s] request that [the children] not be allowed to contact” parents.

c. *Visitation*

Parents participated in a one hour, monitored visit with all three children on August 3, 2017. This appears to be parents’ first visit with D.R. and A.R. since their December 2016 detention. Parents brought gifts for the children, and the children responded well to seeing their parents. D.R. hugged father and said, “‘I miss you daddy.’” D.R. and A.R. were happy and excited to play with the toys parents brought. D.R. said, “‘This is the best day ever.’” A.R. skipped and smiled. During the visit, both D.R. and A.R. looked out the window of the

visitation room to see if paternal grandmother was in the waiting room.

Parents visited with the children again on August 15, 2017, but “the children had difficulty managing.” A.R. “continually requested to go home and asked, ‘Where is my grandma?’ ” I.R. also cried for most of the visit before falling asleep.

d. *Placement with paternal grandmother*

DCFS observed the children to have “a strong bond and relationship” with paternal grandmother. Earlier, the children told the DCFS investigator “they like living with their grandmother and wish to remain in her home.” Paternal grandmother “expressed great concern for the children’s welfare and her willingness to ensure their ongoing needs including physical, mental, emotional, and medical care are met.”

On August 30, 2017, the court set the section 342 petition for adjudication on November 20, 2017.

7. *Adjudication of the section 342 petition*

a. *Further statements about alleged abuse*

On September 22, 2017, a DCFS social worker met with the children at their school and spoke to A.R.’s teacher. The teacher said A.R. told her that her parents scare her. The child told the teacher that mother hit her in the face with her hand.

The teacher said A.R. expresses fear when the subject of parents comes up in class and appears anxious after visiting her parents.

In its November 20, 2017 last minute information for the court, DCFS reported a social worker telephoned A.R.’s teacher in October 2017. The teacher told the social worker A.R. did not act out sexually and had not made statements about sexual abuse. A.R. told her teacher, “ ‘I don’t want to be with my mommy she slaps me.’ ” The teacher described A.R. as “ ‘emotional,

distressed, and very anxious when she knows she will go to visits.’ ”

The social worker interviewed A.R. a few days later. A.R. confirmed mother slapped her face when she lived with parents. A.R. also agreed she liked the visits with parents. The social worker also interviewed D.R. When asked if he was “scared” of his parents, D.R. said, “ ‘Yeah because they put their finger in my cola.’ ” D.R. also said parents hit him in the face, but denied they hit A.R. in the face. He said they hit her “ ‘[i]n the butt.’ ”

b. *Parents’ progress with their case plans*

Mother had enrolled in a treatment program at the end of August 2017. She tested positive for amphetamines and methamphetamine in September 2017, but her two October tests were negative. Father was not participating in any court-ordered programs.

c. *Visitation*

The children had been participating in weekly, one-hour, monitored visits with parents at the DCFS office. They had two visits in September and three in October 2017. Parents were appropriate during the visits, and the children appeared to be happy when they saw parents. DCFS noted, “When the children arrive to the office with [paternal grandmother] they voice that they do not want to see mother and father; however, when they see mother and father they smile and become excited.”

On November 7, 2017, the court ordered DCFS to ensure mother’s visits with children are two to three times per week for two to three hours per visit.

On November 20, 2017, the court adjudicated the section 342 petition. Parents pleaded no contest. The juvenile court sustained count b-1 of the petition, finding the children were at

risk of harm based on the following amended allegations:
D.R and A.R. “have disclosed that they were touched in an inappropriate sexual manner while in the care and custody of their parents”; and they “have displayed excessive sexual acting out behaviors since being removed from the care and custody of their parents.” The court dismissed the remaining counts of the petition.

8. *Combined six- and twelve-month review*

a. *Parents’ compliance with case plan*

By after December 2017, mother’s participation in her drug treatment program had “‘gotten better.’” She was scheduled to complete treatment February 29, 2018. She participated on and off in individual counseling. Father enrolled in a treatment program in November 2017, but was discharged from it due to lack of participation. Father enrolled in individual counseling in December 2017, but had not made an appointment with a therapist.

b. *Visitation*

Parents participated in three monitored visits with children in November 2017. D.R. refused to visit on November 8, 2017. Parents expressed their concern to the social worker that paternal grandmother had coached D.R. to say he did not want to visit. The social worker agreed to meet paternal grandmother in the parking lot to get the children rather than have her come into the lobby.

On November 15 and 29, 2017, parents visited with I.R. only, as D.R. and A.R. did not want to visit parents. Mother asked to have an additional visit with I.R. during the week while the older children were at school.

On November 22, 2017, a new social worker visited the children at paternal grandmother's home. She observed that when paternal grandmother told the children they would be going to visit their parents later that day, D.R. "started rocking back and forth saying 'no no no no no,'" A.R. started to cry, said she did not want to go, and ran into her bedroom and shut the door. D.R. then ran into his room and shut the door.

Parents missed their scheduled visits in December 2017. They did not see the children again until January 2018. Mother participated in five of nine three-hour visits with the children in January 2018.⁵ (Father went to four visits.) Parents were appropriate with children, brought them toys, and engaged them in play. D.R. and A.R. ran to parents and asked them for hugs. Mother held and sang to I.R.

In January 2018, the children's therapist reported D.R. and A.R. continued "to express that they are afraid of their parents."

On January 31, 2018, the court held a combined six- and twelve-month review hearing. The court concluded mother had made substantial progress toward alleviating or mitigating the causes necessitating the dependency, but father's progress had been minimal. The court terminated father's reunification services and continued services for mother. The court found mother had "consistently and regularly contacted and visited" the children.

⁵ Beginning in January 2018, parents were scheduled to have two three-hour, monitored visits with the three children on Sundays at a park, and on Wednesdays at a DCFS office, and a third three-hour visit with only I.R. on Fridays at the office.

9. *Eighteen-month review period*

a. *Parents' progress with case plan*

In its status review report filed June 1, 2018, DCFS noted mother had made efforts to address the concerns that resulted in the dependency, but she had not been consistent in her program attendance or drug testing. DCFS was concerned mother was falsifying her support group meeting attendance. Mother told the social worker she was working with a sponsor and reported she attended support group meetings throughout April and May 2018. Mother's sponsor told DCFS she had not seen mother since September 2017, however.

In its addendum report filed August 9, 2018, DCFS reported mother had been terminated from her treatment program on June 1, 2018, but re-enrolled in the program on June 20, 2018. Father remained out of compliance with his court-ordered case plan.

b. *Children's therapy and medical appointments*

In November 2017, the juvenile court ordered DCFS to explore whether conjoint counseling would be appropriate. For the April 2018 progress hearing, DCFS reported that in January 2018, clinicians asked both D.R. and A.R. about conjoint counseling with their parents. D.R. said, " 'If you do, I am never going to come back here again.' " A.R. responded, " '[N]o way Jose, I don't like that, they hit me.' " Children's new therapists were scheduled to meet with mother on April 6, 2018, but she missed the visit.

Mother met individually with the children's therapists on April 17 and 26, 2018. She also attended a parent-child session with D.R. and A.R. in early May 2018. Parents missed two individual parent sessions that month but attended the parent

sessions with the children's therapists in June 2018. Mother also went to a parent session and separate family sessions with A.R. and D.R. in July 2018. A.R. responded well to the conjoint session.

In February 2018, DCFS asked the court to authorize a medical procedure to place tubes in A.R.'s ears. A social worker discussed the procedure with mother. Mother wished to discuss the procedure with the pediatrician first. She finally scheduled an appointment with the doctor for early June 2018, but failed to attend. As a result, the court ordered paternal grandmother could consent to the medical procedure.

c. Visitation

Mother participated in fewer than half of the scheduled thrice-weekly visits from February to April 2018. Father participated in even fewer visits.⁶ Parents attended only two of 13 visits in May 2018. Parents missed visits by canceling, arriving more than 15 minutes late resulting in the visit's cancelation, failing to confirm the visit in advance, or failing to show up for a confirmed visit. Parents attended more visits in June and July 2018. They saw the children seven times in June and 10 times in July, missing three visits each month.

The DCFS reports and services logs describe parents' monitored visits with children in detail; we summarize them. Parents' visits generally were positive and their quality seemed to improve over time. Mother or father sometimes missed part of a visit to get food for their children, but they also arrived

⁶ Mother attended five of 12 visits in both February and March, and six of 13 visits in April. Father attended only two of the visits in February, four in March, and five in April.

prepared with food, drinks, toys, and activities for children. DCFS reported parents arrived late to visits, but within the 15-minute grace period.

At first, parents sometimes struggled to control the children's behavior. Mother had a harder time reaching D.R., and father struggled developing a relationship with I.R., but parents' interactions with children improved over time. They disciplined children appropriately, engaged children in conversations and redirected them, and used positive reinforcement.

Parents acted appropriately with children. They played with children and engaged them with games, toys, and interactive activities. Parents taught and helped children develop skills—playing catch, counting, writing, singing, manners—and encouraged them. Mother comforted and soothed the children.

The children generally were happy and comfortable around parents. They ran toward parents and hugged them and were affectionate at times. For example, at a visit in March 2018, D.R. told father he hoped they could live with parents again. In April 2018, D.R. drew a picture that said, “I love you dad and mom.” During a June 2018 visit, A.R. said, “I love you mom.” D.R. and A.R. asked mother about father when he was not at visits.

At the same time, DCFS reported both D.R. and A.R. initially would not get out of the car for visits with parents, stating they were afraid. Their resistance diminished as they participated in visits, however. D.R. became upset when parents did not appear for a visit, and A.R. described parents as “‘mean’” if they did not attend.

D.R. continued to refuse to participate in some visits. He refused to participate in a visit with parents at the park on June 24, 2018.⁷ During that visit, A.R. commented, “‘[D.R.] missed all the fun.’” On August 12, 2018, D.R. again did not want to visit parents. When parents had not shown up within the 15-minute waiting time, the social worker canceled that visit; D.R. responded, “‘yay.’”

d. *August 21, 2018 18-month review hearing*

During the first eight days of August, mother attended two visits and father one. In its last minute information for the court filed August 16, 2018, DCFS asked the court to reduce parents’ visits from three times a week to one time a week because parents’ nonappearance at scheduled visits was negatively affecting the children.

At the August 21, 2018 review hearing, the juvenile court found mother’s progress had been partial and terminated her reunification services. The court set a section 366.26 permanency planning hearing for December 2018.

10. *December 2018 section 366.26 report and February 2019 status review report*

a. *Visitation*

By mid-September 2018, the children had not visited with parents in four weeks. A social worker informed mother that parents’ visits now were once a week—Wednesdays from 3:00 to 6:00 p.m. Mother missed the September 19 and October 3, 2018 visits because she was late, and asked to begin visits at 3:30 p.m.

⁷ At the end of this visit, father told the social worker he did not want the children in paternal grandmother’s home. He said parents did not communicate with paternal grandmother and accused her of “causing the issues” with the visits.

Thus, parents' first visit with the children since early August 2018 was not until October 10, 2018. D.R. and A.R. ran to parents and hugged them. The children had a good time playing with parents, who had brought toys and food. Parents also visited on October 24 and 31, 2018. D.R. refused to leave the car for the visit on Halloween, however.

Mother participated in three of four scheduled visits in November 2018. She also visited I.R. in the hospital and gave consent for I.R. to have an MRI under sedation. One of the November visits was between A.R. and mother only. D.R. was ill and I.R. remained in the hospital. A.R. was happy to see mother and hugged her back. She asked about father, who was not there. Parents visited the three children together for the other two November visits. The children were happy to see parents. Parents and children interacted well together, and parents were attentive. For one of the visits, DCFS reported, "Mother did very well with the children and seemed to have a great rapport with them as she was able to calm them down when needed and teach them about manners."

Parents missed two visits in December 2018. They visited the children only once, on December 12, 2018.

Mother attended three of four visits in January 2019. Father attended one. The two older children did not want to go to the January 2 and 9, 2019 visits. Parents visited with I.R. on January 2, and mother alone visited with I.R. on January 9. Mother asked the social worker to assist her in contacting the children. She again told the social worker she felt paternal grandmother had coaxed and coached the children to refuse to visit parents. At the last reported visit on January 23, 2019, D.R. and I.R. appeared happy to see mother and enjoyed coloring

and playing piggyback with her. A.R. was not there due to illness. Father was at work.

b. *Children's placement*

DCFS reported paternal grandmother wanted to co-adopt the children with her son, the children's paternal uncle. DCFS stated grandmother had ensured the children's needs were met and followed through with the children's services, therapy appointments, and visits with parents.

DCFS reported the social worker had observed the children interact with paternal grandmother and their uncle in "an appropriate, loving and nurturing manner." It found "[t]he children appear to have a very strong bond with each other and the [care givers]." DCFS also reported that both D.R. and A.R. said they "love[] to live in the home" of paternal grandmother and their uncle. DCFS noted A.R. "feels safe" in their home, and D.R. has had nightmares about his parents kidnapping him and his sisters.

DCFS described the caregivers as "very strong advocates for the well-being of the children" and as "loving and nurturing towards the children." DCFS concluded paternal grandmother and her son "have created a safe, loving, nurturing and structured home for the children that has allowed them to thrive." DCFS recommend the children remain with paternal grandmother and their uncle with adoption as their permanent plan.

11. *Section 366.26 hearings*

a. *December 18, 2016 section 366.26 hearing*

Parents did not attend the December 18, 2018 section 366.26 hearing. Mother's counsel asked the court to continue the hearing for a contest on the beneficial relationship exception

to termination of parental rights. Father's attorney joined in the request. The juvenile court continued the hearing to February 19, 2019.

b. *February 19, 2019 section 366.26 hearing*

Neither parent appeared at the contested February 19, 2019 hearing. The juvenile court denied parents' attorneys' requests for a continuance. Parents' counsel argued parents maintained regular visitation with the children, and the children would benefit from continuing their relationship with parents.

The juvenile court questioned if mother had assisted in addressing the children's special needs. Mother's counsel responded that mother had not been invited or asked to participate in any doctor's appointments or activities concerning the children's special needs. Mother's counsel noted the high quality of the visits. Counsel also argued it seemed that paternal grandmother may have engaged in "some sabotage" or "some coaching" with the children. She noted the incongruity of D.R.'s and A.R.'s expressed fear of visiting parents with the visits themselves where the children ran to hug parents and enjoyed themselves. Mother's counsel asked the court to order legal guardianship rather than terminate mother's parental rights. Father's counsel also asked the court to opt for legal guardianship.

The court found "parents have had a number of good visits with the children" but concluded they had not established a beneficial parental bond "such as anticipated for the exception." The court continued, "I do not think their visits are sufficiently regular and frequent as to indicate such a bond." The court noted parents only had 10 visits from October 2018 through January 23, 2019, and the visits remained monitored. The court

explained “[parents’] failure to have unmonitored visits indicates that the quality is not of the type contemplated for the parental bond.” The court did not believe visits always had to be unmonitored for the exception to apply, but “in an unmonitored visit, children would be more able or would have already been establishing a rich bond that might justify the exception.”

In weighing any benefit the children would receive from the parent-child relationship against the benefit of permanency and stability adoption would provide, the court noted D.R. and A.R. had rejected some visits, and D.R. had expressed “almost a fear of spending time with his parents.” The court found both children, in contrast, had shown they wanted to remain with paternal grandmother and their uncle. The court noted D.R. “express[ed] fear of that relationship being interfered with by his parents.” The court also emphasized the lack of evidence that parents had tried to assist with the children’s “special needs.”⁸ The court concluded “it would be a great loss to the children if they didn’t have the permanency that adoption can provide in addressing those special needs.” The court also found, that given the trauma involved, “it is very important that these children have a permanent arrangement . . . so they feel assured of their future of being with this particular caregiver.”

The court concluded “parents have not established the parental bond; that the evidence is to the contrary, and any bond is outweighed by the benefit that the children will obtain with adoption.” The court found the children adoptable by clear and convincing evidence, noting “[t]hey have an excellent relationship

⁸ A.R. receives weekly speech therapy. I.R. receives weekly physical therapy and monthly occupational therapy.

with their caregiver who is very focused on addressing some of the special needs they have [D.R.] and [A.R.] have made very clear that they wish to stay with the adoptive parents[,] and the caregiver has shown that she is very interested and capable of raising all three children.”

Finally, the court found “it would be detrimental to the children to be returned to the parents. They have not completed their programs. The bond is not such that the exception applies. These children have experienced trauma that is still ongoing, and that the parents have not addressed themselves and the children are still working through. I find that no exception to adoption applies in this case.” The court terminated parents’ parental rights to the three children and designated paternal grandmother and uncle as the prospective adoptive parents.

Mother and father filed separate notices of appeal from the orders terminating their parental rights.

DISCUSSION

Mother and father contend the court’s orders terminating their parental rights should be reversed because they maintained regular contact with their children, and the children shared a strong parent-child relationship with them that should be continued.

1. *Applicable law and standards of review*

“The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) Thus, once the juvenile court terminates reunification services and determines a dependent child is adoptable, it “must order adoption and its

necessary consequence, termination of parental rights, unless one of the specified” exceptions stated in section 366.26, subdivision (c)(1) “provides a compelling reason for finding that termination of parental rights would be detrimental to the child.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) “The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*)

One of those exceptions—the beneficial relationship exception—precludes the juvenile court from terminating parental rights if it finds “termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “The exception requires the parent to prove both that he or she has maintained regular visitation and that his or her 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 Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)). The juvenile court’s decision that the beneficial relationship exception does not apply “may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ ” (*Id.* at pp. 646-647.)

We review the juvenile court’s determination whether a beneficial parent-child relationship exists for substantial evidence. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622 (*K.P.*)).

We “presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App. 4th 567, 576 (*Autumn H.*)). Because the juvenile court’s conclusion that a beneficial relationship does not exist is a finding of a failure of proof, “our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as matter of law.” (*Breanna S., supra*, 8 Cal.App.5th at p. 647.) We review for abuse of discretion whether a compelling reason exists for finding termination of that relationship would be detrimental to the child. (*K.P.*, at p. 622.)⁹

2. *The juvenile court did not err when it denied the beneficial relationship exception*

a. *Prong one: regular visitation*

As father notes, neither section 366.26 nor case law requires “a specific quantitative number of visits” to meet the first prong of the beneficial relationship exception. But as mother acknowledges, courts have found “[r]egular visitation exists where the parents visit consistently and to the extent

⁹ The issue of what standard governs appellate review of the beneficial relationship exception to adoption currently is before our Supreme Court. (*In re Caden C.* (2019) 34 Cal.App.5th 87, review granted July 24, 2019, S255839.) On the record before us, we would affirm under either the substantial evidence or abuse of discretion standards. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [explaining practical differences between substantial evidence and abuse of discretion standards are minor in this context].)

permitted by court orders.” (*In re I.R.* (2014) 226 Cal.App.4th 201, 212.) Both parents contend they consistently visited their children during the dependency, although they acknowledge missing a number of scheduled visits. The record demonstrates that after the initial detention, when parents did not visit the children at all, they began to visit the children on a more regular basis, although they missed more than half of the scheduled visits. At the combined six- and twelve-month review hearing in January 2018, the juvenile court continued mother’s reunification services in part because it found mother had “consistently and regularly contacted and visited” the children.

During the months that followed, parents seemed to make a greater effort to visit their children. For example, in June and July 2018, parents visited the children on seven and ten occasions, respectively, missing three scheduled visits each month, whereas each parent missed seven or more visits in the preceding months. But in early August 2018, parents visited the children together only once and mother alone visited a second time. It appears no visits occurred in September 2018.¹⁰ By that time, DCFS had reduced parents’ visits from three monitored visits per week to one monitored, three-hour visit per week due to the negative impact parents’ failure to appear at visits was having on the children. Even with that reduced schedule, parents visited the children only three times a month—missing one scheduled visit each month—from September 2018 to January 2019, except for December 2018 when they saw the children one time.

¹⁰ Mother attempted to visit on September 19, 2018 after four weeks without visiting, but she arrived too late.

Although we would not describe parents' visits, especially mother's, as "sporadic," as DCFS does, parents certainly did not visit the children to the extent permitted by the court's orders. (Cf. *In re E.T.* (2018) 31 Cal.App.5th 68, 76 [finding no dispute mother maintained regular visitation where she visited children "as often as she was permitted" and had regular phone contact]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537 [affirming application of exception where mother maintained regular contact with her children and visited them as much time as she was allowed, which was weekly].) In the six months before the termination hearing, parents visited the children *less* and went two months without seeing them between early August and early October 2018.

At the termination hearing, the juvenile court found parents' visits were not "sufficiently regular and frequent as to indicate . . . a [parental] bond" of the type required by the beneficial relationship exception. Its minute orders terminating parents' parental rights to the children state, "The court finds that the parent has maintained regular visitation with the child and has not established a bond with the child." It is unclear if the court intended to state "parent has *not* maintained regular visitation." At the hearing, the court noted parents' visits had decreased over time, and they had not taken advantage of the greater number of visits permitted earlier. The court's discussion, however, focused on its conclusion that based on the visits parents had with their children—always monitored and only three times a month in the six months before the hearing—parents had not formed the type of "rich bond that might justify the exception."

We need not decide whether parents' visits with the children were "regular" as contemplated by the statute. Assuming they were, substantial evidence supports the juvenile court's finding parents failed to demonstrate their visits "have continued or developed a significant, positive, emotional attachment from child to parent" sufficiently beneficial so as to outweigh the well-being the children would gain from adoption. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

b. *Prong two: beneficial parent-child relationship*

i. *Required relationship*

"To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] 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.)

Thus, the "benefit" prong of the beneficial parent exception has been interpreted to mean 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 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“Interaction between natural parent and child will always confer some incidental benefit to the child.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) But “[n]o matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) “The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences.” (*Autumn H.*, at p. 575.) “‘Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’” (*K.P.*, at p. 621.)

In analyzing whether the parent-child relationship is important and beneficial, a court must examine factors, such as: “(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and child, and (4) the child’s particular needs.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.)

ii. *No parent-child relationship sufficiently strong to outweigh benefits of adoption*

Both mother and father describe their visits with the children in detail to support their contention they occupied a parental role in the children's lives, and the children had a significant attachment to parents. We recognize that during parents' supervised visits with their children they showed affection for them and cared for their needs. DCFS also described mother and father acting as parents during visits: they used appropriate discipline, gave positive reinforcement, redirected the children and comforted them, taught the children new skills and life lessons, and engaged the children in stimulating activities.

We also do not doubt that the children had an emotional attachment with parents and benefitted from their relationship with them to some degree. They clearly enjoyed being with parents during their visits together, were happy to see parents, and they expressed they loved and missed parents. But substantial evidence supports the juvenile court's implicit finding parents had yet to commit themselves fully to promoting their children's well-being.

Many times parents did not show up for visits—or were too late—while the children waited for parents' arrival. Parents downplay the missed visits, but as DCFS reported, parents negatively affected their children when parents failed to show up for them. The juvenile court reasonably could infer that given D.R.'s and A.R.'s PTSD diagnosis and anxiety, parents' continued inability to make it to scheduled visits—despite the many positive visits they did have—adversely affected the children's development of a strong, positive parent-child bond.

The children also may have been happy to play with parents during their visits, but the older children, especially D.R., continued to decline visits with parents. As late as January 2019—the month before the termination hearing—D.R. and A.R. refused to visit parents. D.R. also continued to express a fear of parents, a sign D.R. had not developed a strong, positive emotional attachment to them.

Parents believed grandmother attempted to sabotage the visits, and there was some evidence from which that conclusion could be drawn. But we can infer the juvenile court weighed that evidence and did not draw the same conclusion. We will not reweigh the evidence and substitute our judgment for that of the juvenile court. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 [reviewing court has “no power to judge the effect or value of the evidence” and must reject evidence unfavorable to the order “as not having sufficient verity to be accepted by the trier of fact”].)

Moreover, as the juvenile court noted, mother’s and father’s “parenting” of their children extended only to weekly, monitored visits. There is no indication in the record parents attempted to attend to the children’s special needs outside of those visits, or even within them. Mother’s counsel argued no evidence showed mother had been invited to participate in any appointments or meetings about her children’s special needs. But there also was no evidence parents asked to be included. The court could infer someone who occupied a parental role in their children’s lives at least would have inquired about their special needs. The record did not demonstrate, for example, that parents asked what they could do during their visits to help A.R. with her speech therapy

or help I.R. with her physical and occupational therapy.¹¹ Nor did parents appear at the contested section 366.26 hearing to contradict the absence of this evidence or to testify to the harm the children allegedly would suffer if their parental rights were terminated.

The evidence before us does not compel a finding the parent-child relationship here was so “sufficiently strong” that the children “would suffer detriment from its termination.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 (*Beatrice M.*); *Breanna S.*, *supra*, 8 Cal.App.5th at p. 648.)

Whatever emotional attachment the children had to parents, however, the juvenile court also properly concluded the benefit of its preservation did not outweigh the benefit to the children’s well-being that the stability and permanence of adoption would provide. Even when a child loves his or her parents, the court may nonetheless terminate parental rights if doing so is in the child’s best interests. (§ 366.26, subd. (h)(1); *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 955.)

I.R. has never lived with parents or had an unsupervised visit with parents; she has spent her entire life with paternal grandmother. Although D.R. and A.R. have spent significant portions of their lives in parents’ (or at least mother’s) care, they have spent the majority of their lives in paternal grandmother’s

¹¹ Nor did parents truly engage with the children’s other care providers. When A.R. needed a medical procedure, mother asked to speak to A.R.’s doctor, but she never showed up for the appointment. The court had to give paternal grandmother the authority to consent to the procedure. Similarly, there is evidence mother attended some sessions with the children’s therapists before her reunification services were terminated, but she also missed sessions.

home. By the time parents' rights were terminated, D.R. had spent less than three of his more than seven years in mother's care, and A.R. had spent just over two of her six years in mother's care.

Paternal grandmother—with uncle's help—has been the children's primary caregiver. She takes the older children to and picks them up from school, takes them to their weekly counseling and service appointments, makes A.R. available for her weekly speech therapy and I.R. available for her physical and occupational therapy, and brought the children to their visits with parents. Paternal grandmother and uncle have created "a safe, loving, nurturing and structured home for the children that has allowed them to thrive." DCFS also observed paternal grandmother and uncle to be "very loving and nurturing," "attentive and affectionate" toward the children. They understood they were making a lifetime commitment to provide the children with a permanent home.

The children also "appear to be very bonded" to paternal grandmother and uncle. Both D.R. and A.R. have said they "love[] to live" in paternal grandmother's and uncle's home.

In contrast, D.R. told his father once, in March 2018, that he hoped they could move back in with parents, but nothing in the record indicates D.R. repeated that desire. Although D.R. and A.R. have run to parents and expressed love for them at visits, the record does not show they asked about parents outside of their monitored visits or were upset to return to paternal grandmother's home at the end of visits. The record shows the children separated easily from parents when it was time to go. Moreover, during the first year of the dependency D.R. and A.R.

exhibited extreme anxiety about visiting parents, and as we discussed, both children continued to refuse to visit parents.

This substantial evidence supports the juvenile court's finding that the children's attachment to parents is not so significant and positive as to promote their well-being " "to such a degree as to outweigh the well-being the child[ren] would gain" " in a permanent home with paternal grandmother and uncle. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.)

c. *Legal guardianship is disfavored*

Parents do not seek—at this point, anyway—return of the children to their custody. They contend a permanent plan of legal guardianship with paternal grandmother both would provide the children with the stability they need and allow them to maintain a significant relationship with parents.

"The Legislature has decreed, however, that guardianship is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most permanent and secure alternative that can be afforded them. In decreeing adoption to be the preferred permanent plan, the Legislature recognized that, 'Although guardianship may be a more stable solution than foster care, it is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.' " (*Beatrice M., supra*, 29 Cal.App.4th at p. 1419.)

D.R. and A.R. already have suffered trauma and anxiety from having been removed from parents' care *twice*. They have been diagnosed with PTSD and continued to receive weekly counseling at the time of the section 366.26 hearing. During D.R.'s and A.R.'s MAT assessment in February 2017, D.R. said

in a clinical interview that he was afraid of “‘being left.’” The evaluator noted D.R. “was restless and agitated when talking about his fears of abandonment and exposure to sexualized material.” The evaluator explained, “Children who are left alone, have been unattended to, or who have changes in primary caregiver can be stressed about their ability to be safe.” The evaluator recommended D.R.’s and A.R.’s caregivers provide them with “a consistent, safe, and secure base.”

We can infer the juvenile court concluded adoption by paternal grandmother and uncle would ensure the children’s primary caregivers remain the same and provide the children with the feeling of safety and consistency they need to help them overcome the effects of their earlier trauma. The evidence supports the juvenile court’s implicit finding that the uncertainty guardianship would create as to the permanency of their home would be more detrimental to the children than continuing their natural parent-child relationship.

We thus do not find the juvenile court abused its discretion when it did not order legal guardianship as the children’s permanent plan instead of adoption. Moreover, because we already have determined parents’ relationship with the children does not satisfy the beneficial relationship exception, “it necessarily follows that the juvenile court correctly determined that adoption was the appropriate permanent plan for them.” (*Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1420; §366.26, subd. (c)(1).)

DISPOSITION

The orders terminating mother's and father's parental rights to D.R., A.R., and I.R. are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.