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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B296398  
(Super. Ct. Nos. 17JV00245,  
1461205-A)  
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD  
WELFARE SERVICES,

Plaintiff and Respondent,

v.

J.D.,

Defendant and Appellant;

J.D., Minor,

Objector and Appellant.

J.D. (Father) appeals orders by the juvenile court declaring that his minor child J.A. is adoptable, terminating his parental rights, and establishing a legal guardianship regarding minor

child J.D. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)<sup>1</sup>  
Separately, J.D. appeals the limited nature of the court's  
visitation order. We affirm.

*FACTUAL AND PROCEDURAL HISTORY*

Father is the parent of now five-year-old J.A. and his teenage half-brother, J.D. On May 21, 2017, Father was arrested for physically abusing J.D. by repeatedly striking him with a belt causing bruises. Father also abused substances, was involved in criminal activity, and had a long criminal history for substance abuse and violent crimes. The respective mothers of the children were not then involved with their children's care.

On May 23, 2017, Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition pursuant to section 300, subdivisions (a), (b)(1), and (g). CWS later filed an amended dependency petition alleging that Father twice struck J.D. in the head causing him to suffer a headache for two days.

The juvenile court ordered that the children be detained and it placed their custody and care with CWS. The court also ordered Father and J.D.'s mother to commence family reunification services.<sup>2</sup> CWS placed the children in a confidential foster home.

On July 13, 2017, the juvenile court sustained the allegations of the dependency petition, and ordered CWS to provide family reunification services. The services to Father included individual therapy to address anger management issues and substance abuse assessment, testing, and treatment.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> J.A.'s mother was bypassed for reunification services pursuant to section 361.5, subdivisions (b)(10) and (11).

On February 23, 2018, the juvenile court held a contested six-month review hearing. The CWS report prepared for the hearing stated that Father demanded that J.D. inform CWS that the abuse complaints were false. J.D. recanted his complaints of abuse and claimed that he was injured attempting tricks on his bicycle. Following the six-month review hearing, the court continued the children as dependents and continued family reunification services. The court also denied Father's modification petition requesting dismissal of the proceedings and return of the children to his custody and care. We affirmed the order denying the modification petition. (*In re J.D. et al.* (Oct. 3, 2018, B288597) [nonpub. opn.].)

On August 13, 2018, the juvenile court held a contested 12-month review hearing. CWS recommended that the court terminate family reunification services and set a permanent plan hearing.

Following the presentation of evidence and the parties' written arguments, the juvenile court terminated family reunification services to Father and J.D.'s mother. In ruling, the juvenile court judge stated that CWS provided reasonable services to Father but that "[h]e's chosen not to participate, unless it's on his terms and to his liking and . . . that's not the standard." The court also set a permanent plan hearing for J.A. and J.D. CWS recommended that parental rights to J.A. be terminated and that a legal guardianship be established for J.D. Father later filed a notice of intent to file a writ petition but did not file a petition. We dismissed the writ proceeding as abandoned.

### *Permanent Plan Hearing*

On February 20, 2019, the juvenile court held a contested permanent plan hearing during which Father appeared in propria persona.<sup>3</sup> At the hearing, CWS social workers, J.A.'s mother, the prospective adoptive mother and legal guardian, J.D., and Father, among other witnesses, testified. J.D. also spoke with the juvenile court judge privately and informed him that he and J.A. wanted to return home to Father.

Following the presentation of evidence and argument by the parties, the juvenile court terminated Father's parental rights to J.A., and established a legal guardianship regarding J.D. The court also found by clear and convincing evidence that J.A. is adoptable and that the parental benefit exception to adoption did not apply.

The juvenile court continued the dependency regarding J.D. with six-month review hearings. The court also ordered that Father have supervised visitation with J.D. two hours each month, similar to the current visitation schedule. The juvenile court judge stated: "[I]f anyone feels that it should be increased or decreased, they can file a motion, and I'll address it."

Father appeals and contends that the juvenile court erred by: 1) not applying the beneficial parental relationship exception to adoption of J.A.; 2) limiting his supervised visitation with J.D. to two hours monthly; and 3) not considering his evidentiary exhibits at the permanent plan hearing. Separately, minor J.D.

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<sup>3</sup> Father requested that the juvenile court dismiss his counsel and permit him to represent himself. Following a discussion of the pitfalls of self-representation and questioning of Father's experience and abilities, the court granted the request.

appeals the court's visitation order; Father joins J.D.'s arguments. The mothers of J.A. and J.D. do not appeal.

## *DISCUSSION*

### *I.*

Father asserts that the beneficial parental relationship exception to adoption precludes termination of his parental rights. (§ 366.26, subd. (c)(1)(B)(i).) He points out that he consistently visited J.A., the visits were affectionate and appropriate, he displayed parental skills in J.A.'s care, and that J.A. was sad when the visits ended. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a “‘primary attachment’” to parent for beneficial parental relationship]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1535 [regular visitation and contact satisfied by consistent visitation].) Father argues that the detriment to J.A. by terminating parental rights outweighs any benefits of adoption.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” due to an enumerated statutory exception. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of “regular visitation and contact” and “benefit” to the child from “continuing the relationship.” (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must

establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota H.*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].)

Only in the “extraordinary case” can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Adoption remains the norm; only in exceptional circumstances may the court choose an option other than adoption. (*In re E.T.* (2018) 31 Cal.App.5th 68, 76 [discussion of general rule].)

The exception requires proof of “a *parental* relationship,” not merely a relationship that is “beneficial to some degree but does not meet the child's need for a parent.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship existed where children in parent's care most of their lives].) “The 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.” (*Grace P.*, at p. 613.) The exception must be examined on a case-by-case basis, considering the many variables

affecting a parent/child bond. (*In re E.T.*, *supra*, 31 Cal.App.5th 68, 76.) Where a parent has not advanced beyond supervised visitation, the burden of establishing a parental role “will be difficult to make.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Father did not meet his evidentiary burden to establish that his relationship with J.A. was sufficiently compelling to outweigh the legal preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].) Although Father and J.A. enjoyed loving and appropriate visits, an adoptive home would provide him with permanence, security, and stability. By the time of the permanent plan hearing, five-year-old J.A. had lived with the prospective adoptive mother for 20 months, a significant portion of his young life. Moreover, despite Father’s positive visits with J.A., Father never progressed beyond supervised visits.

CWS reported that J.A.’s behavior deteriorated after visits with Father, but improved after Father missed visits. School staff and the foster mother reported J.A.’s defiant and rage-filled behaviors. J.A. was expelled from Head Start after striking another child in the face and he had expressed suicide ideation by hanging to his foster mother. J.A.’s suicidal statements subsided following less frequent visits with Father. CWS recommended that J.A. be evaluated for individual education due to his aggressive behavior at school, but Father would not authorize the evaluation. CWS then recommended that the foster mother be granted educational rights for J.A.

Here Father did not meet his evidentiary burden of establishing extraordinary circumstances warranting application of this narrow exception to the legislative preference for adoption. The decision of the juvenile court rests upon sufficient reasonable and credible evidence and all reasonable inferences therefrom. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1351.)

## II.

Father and J.D. challenge the juvenile court's order permitting Father only two hours of monthly visitation. They point out that J.D. informed the juvenile court in chambers and also through his testimony that he wanted to return home to Father. Father and J.D. add that prior to the permanent plan hearing, two hours of monthly visitation was a minimum number and that Father actually visited more hours.

The juvenile court possesses broad discretion in determining matters of visitation. "[D]ependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason." (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558.) Dependency law does not require that visitation be as "frequent as possible" following an order of permanent plan placement. (*Id.* at p. 1558.)

The CWS social worker recommended that Father have no visitation with J.D. following the guardianship to allow J.D. to focus upon himself and not his father's anger. The social worker opined that J.D. was preoccupied with Father's feelings and that it was difficult for J.D. to move forward and form his own identity.



Here the juvenile court properly focused on J.D.'s interest in attaching to his guardian without disruption from Father, who opposed the placement and sometimes acted with hostility to the CWS social workers and the foster mother. The court did not abuse its broad discretion in ordering limited visitation. (*In re S.H.*, *supra*, 197 Cal.App.4th 1542, 1557-1558.) Moreover, the court retained jurisdiction to facilitate visitation and allow for its increase or decrease upon motion by a party. Father and J.D. have not established that the visitation order is unreasonable.

### III.

Father asserts that the juvenile court abused its discretion by not admitting his evidentiary exhibits at the permanent plan hearing. He contends that the evidence concerned the parental benefit exception to adoption, particularly his consistent visitation with J.A.

A month prior to the permanent plan hearing, Father sought to introduce into evidence approximately 120 pages of CWS visitation service logs, emails between Father and CWS, photographs of J.D.'s injuries, and documents attesting to Father's rehabilitation, among other documents. When questioned by the court regarding the relevance of the documents, Father did not explain. At the later permanent plan hearing, Father did not introduce the documents into evidence. The juvenile court judge informed Father at the close of the hearing that the documents were not in evidence and were not considered. Father did not respond.

Father has forfeited this issue because he did not seek to admit the documents into evidence at the contested permanent plan hearing nor did he explain their relevance. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 615 [juvenile court possesses discretion

to limit evidence at hearing to relevant evidence].) Father may not now complain. In any event, the juvenile court decided that Father satisfied the consistent visitation requirement of the parental benefit exception, but that it was not in J.A.'s best interest to continue the relationship with Father.

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

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