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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re KAYLA G., a Person  
Coming Under the Juvenile Court  
Law.

B288974  
(Los Angeles County  
Super. Ct. No. DK13525b)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADRIANA T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Steff Padilla, Juvenile Court Referee.  
Affirmed.

Julie E. Braden, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Jeanette Cauble, Principal  
Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Adriana T. appeals from a juvenile court order terminating her parental rights over 12-year-old Kayla G. Adriana contends the court abused its discretion and violated her right to family association by failing to enforce a prior visitation order, which Adriana argues in turn precluded her from establishing the parent-child-relationship exception to termination of parental rights under Welfare and Institutions Code section 366.26.<sup>1</sup> Adriana, however, did not argue at the section 366.26 hearing that the juvenile court had failed to enforce the visitation order or that she could have established the parent-child relationship exception had the court enforced its order. Nor did Adriana ever ask the court to enforce or revise the visitation order. Therefore, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Adriana's Visits with Kayla*

On September 25, 2015 the juvenile court detained Kayla and two siblings pursuant to section 300, subdivisions (a) and

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

(b).<sup>2</sup> The court ordered monitored visits for Adriana “at least twice a week for [two] hours” and gave the Los Angeles County Department of Children and Family Services discretion to liberalize visitation. On January 11, 2016 the court sustained a dependency petition alleging Kayla had suffered, or there was a substantial risk she would suffer, serious physical harm as a result of substance abuse by Adriana and domestic violence between Adriana and her boyfriend.

Between Kayla’s detention on September 25, 2015 and the jurisdiction and disposition hearing on January 11, 2016, Adriana did not visit Kayla regularly, in part because Adriana was enrolled in an inpatient substance abuse program. Adriana left the treatment facility on November 24, 2015. There is no indication in the record Adriana visited Kayla between November 24, 2015 and sometime after the jurisdiction and disposition hearing. Kayla stated she was willing to visit with her mother if her mother’s boyfriend was not present. At the jurisdiction and disposition hearing the court left in place its existing visitation order.

At the six-month review hearing on July 11, 2016 the juvenile court found Adriana was in partial compliance with her case plan. The Department’s status review report stated Adriana visited Kayla sporadically between late September 2015 and early March 2016. After enrolling in another drug treatment

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<sup>2</sup> This appeal concerns Kayla only because the juvenile court placed Kayla’s younger half sibling with her father and terminated jurisdiction over her, and Kayla’s older sibling is no longer a minor. Kayla’s father, whose whereabouts are unknown, did not appear in the juvenile court and is not a party to this appeal.

program in March 2016, however, Adriana's visits with Kayla became more regular, except that Adriana had weekly instead of semi-weekly visits and she did not visit Kayla during the week of June 7, 2016 when she "went missing." Adriana stated that during this time her boyfriend held her against her will and that she subsequently obtained a restraining order against him. The juvenile court continued jurisdiction, reunification services, and the visitation order.

In advance of the 12-month review hearing the Department reported Adriana had not had any visits with Kayla from mid-August 2016 to early November 2016. On November 9, 2016 Adriana told a Department social worker she had been with her boyfriend during that time, but "realized she missed her children and want[ed] an opportunity to get them back in her custody." Adriana had an unscheduled visit with Kayla that afternoon. For the next six weeks Adriana's visits with Kayla were "consistent and regular" but still weekly rather than semi-weekly. At the 12-month review hearing, the court found Adriana was in compliance with her case plan, ordered continuing reunification services, and left in place its original visitation order.

Prior to the 18-month review hearing Adriana disappeared again for several weeks. She later informed a social worker she was in the hospital having surgery and then recuperating at her boyfriend's home. She otherwise visited with Kayla weekly until April 2017. On April 5, 2017, during a visit with Kayla, Adriana reportedly received a text message from her boyfriend. Kayla later told a social worker she did not want to have any contact with her mother in the "near future." Adriana denied receiving a

message from her boyfriend during the visit and accused Kayla's caregiver of manipulating Kayla.

On June 8, 2017 a social worker convinced Kayla to visit with her mother. Kayla and her mother argued during the visit. Kayla "stormed off" and ended the visit. The next day Kayla allowed Adriana to attend Kayla's fifth grade graduation, and they went out for a meal after the ceremony.

On July 20, 2017 the court held the 18-month permanency review hearing. The record does not indicate whether Adriana had any visits with Kayla between Kayla's graduation and the 18-month review hearing. The Department recommended the court terminate reunification services for Adriana because she continued to test positive for drugs, failed to appear for several tests, and did not "appear to have insight as to how her drug use has greatly impacted the lives of her children." Adriana also "continue[d] to engage in destructive and detrimental behaviors by maintaining contact with her violent boyfriend [against whom] she currently has a five year permanent restraining order." The court agreed and terminated family reunification services for Adriana, left in place the existing visitation order, and set a hearing pursuant to section 366.26 to consider whether to terminate Adriana's parental rights. Adriana did not seek appellate review of this order.

#### B. *The Section 366.26 Hearing*

The Department's October 12, 2017 report for the permanency planning hearing under section 366.26 stated Kayla told a social worker on September 11, 2017 she did not want to visit her mother. The record does not indicate whether Adriana had any visits with Kayla after Kayla's graduation. The

Department recommended the court terminate Adriana's parental rights and select adoption by Kayla's caregiver as Kayla's permanent plan.

At the section 366.26 hearing on March 21, 2018, counsel for Adriana asked the court to appoint Kayla's caregiver as her legal guardian. Counsel acknowledged there had been a "breakdown" in visitation in the "recent past," but attributed that breakdown to Adriana's ongoing relationship with her boyfriend, who had since been incarcerated. She contended Adriana could mend her relationship with Kayla. Counsel for Adriana did not assert the parent-child-relationship exception to termination of parental rights under section 366.26 or argue Adriana had been denied the opportunity to satisfy the requirements for that exception.

The court terminated Adriana's parental rights, selected adoption as the permanent plan, and found no exception to adoption applied. Adriana timely appealed.

## **DISCUSSION**

### *A. Applicable Law and Standard of Review*

"At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. [Citations.] 'If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans.' [Citations.] In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26,

subdivision (c)(1)(A) or (B) apply. [Citations.] The court, ‘in *exceptional circumstances*,’ may ‘choose an option other than the norm, which remains adoption.’ [Citations.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.)

“When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law.” (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 782; see *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) “When the juvenile court concludes the benefit to the child derived from preserving the sibling relationship is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion.” (*In re Elizabeth M.*, at p. 782; *In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.)

“‘The California Constitution prohibits a court from setting aside a judgment unless the error has resulted in a “miscarriage of justice.” [Citation.] We have interpreted that language as permitting reversal [under the harmless error standard] . . . in juvenile dependency proceedings even where the error is of constitutional dimension.” (*In re J.P.* (2017) 15 Cal.App.5th 789, 798; accord, *In re Brenda M.* (2008) 160 Cal.App.4th 772, 777.) Because the Supreme Court has not yet decided

whether “the appropriate harmless error standard is harmless by clear and convincing evidence [or] harmless beyond a reasonable doubt,” we will apply the higher standard. (*James F.* (2008) 42 Cal.4th 901, 911, fn. 1; see *In re J.P.*, at p. 798, fn. 10 [the “Supreme Court has left [this issue] for another day”].)

B. *Adriana’s Argument Is Both Forfeited and Meritless*

Adriana argues the juvenile court abused its discretion by failing to oversee its original visitation order, which effectively allowed Kayla to determine when visitation would occur. She argues that, as a result, she “lost any chance to establish [the] beneficial relationship exception at the [section 366.26] hearing.” Adriana contends the court’s error infringed her right to “family association” under the Fourteenth Amendment of the United States Constitution. Adriana, however, did not argue in the juvenile court that the court failed to oversee or enforce its visitation order, thus forfeiting that argument on appeal. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [the general rule that “a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court” applies in a dependency proceeding]; accord, *In re Aaron S.* (2015) 235 Cal.App.4th 507, 521.)

Moreover, Adriana would not have prevailed on this argument had she made it. As the court held in *In re Sofia M.* (2018) 24 Cal.App.5th 1038, a juvenile court does not err in failing to enforce a visitation order when a child refuses to comply with an otherwise proper visitation order. (*Id.* at p. 1046.) Instead, “it is the parent’s burden to request a specific type of enforcement, or a specific change to the visitation order.” (*Ibid.*) Adriana did not request any relief from the juvenile court when



Kayla refused to see her. Nor, as Adriana suggests in passing, did the juvenile court's visitation order impermissibly delegate to Kayla the authority to determine whether or how often her mother could visit her.

### **DISPOSITION**

The juvenile court's order terminating parental rights is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.