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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.L., et al., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAVIER L.,

Defendant and Appellant.

B271836

(Los Angeles County  
Super. Ct. No. CK91374)

APPEAL from orders of the Superior Court of Los Angeles County. Veronica McBeth, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

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Father Javier L. appeals from the juvenile court's orders denying his motion to reinstate reunification services with his son, S.L., and terminating his parental rights with the child. We affirm as to the first because substantial evidence shows no change in circumstances to warrant a new round of reunification services, and affirm as to the second because the evidence does not show a sufficiently beneficial parent-child relationship.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

On April 1, 2014, the juvenile court sustained the allegations of a petition brought by respondent Los Angeles County Department of Children and Family Services (DCFS) alleging that then 14-month-old S.L. was at risk of serious physical harm because father Javier L. and mother Blanca R. failed to protect the child from their mutual acts of domestic violence. (Welf. & Inst. Code, § 300, subd. (b).)<sup>2</sup> The parents waived their right to a contested proceeding and submitted based on social worker reports where mother stated she and father had a long-standing history of domestic violence, including incidents where father had grabbed her arms and struck her legs with enough force to leave bruises, screamed insults, and recently stabbed a mattress with a knife.<sup>3</sup>

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<sup>1</sup> As with most dependency cases, the procedural history is lengthy and complex. We have tailored the facts to fit the issues on appeal.

<sup>2</sup> All further section references are to the Welfare and Institutions Code.

<sup>3</sup> DCFS's petition included other allegations of harm based on the same conduct, as well as one for harm to a sibling based on

The family had a history of contacts with DCFS, including abuse allegations that were determined to be unfounded. However, in 2011, the juvenile court took jurisdiction of S.L.'s older brother, J.R., after finding true allegations that mother's drug use and father's acts of domestic violence placed that child at risk of harm.<sup>4</sup> Early in 2014, DCFS began an investigation into reports of emotional abuse and general neglect by father against S.L.'s half-brother, N.L. That child returned to his mother in Virginia, but the investigation remained open. Throughout the pendency of these proceedings S.L. was placed in the same home as brother J.R. That caregiver adopted J.R. and wanted to adopt S.L. By all accounts S.L. was thriving with the caregiver, had bonded with her, and called her "mommy."

DCFS submitted an interim review report in October 2015 that recommended terminating father's reunification services because he delayed enrolling in a court-ordered domestic violence program, had completed just six sessions, and continued to deny responsibility for the domestic violence that led to the assumption of jurisdiction over the minor. The trial court terminated reunification services on October 14, 2015. The

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mother's history of drug use and the parents' ongoing domestic violence. Those were dismissed.

<sup>4</sup> In the case involving J.L., father also appealed on virtually identical grounds: that the juvenile court should have granted his modification petition to restore reunification services, and that his parental rights should not have been terminated under the beneficial relationship exception. We affirmed those orders in *In re J.R.* (Feb. 25, 2015, B256787) [nonpub. opn.].

matter was set for a February 2016 hearing on the termination of father's parental rights. (§ 366.26.)

In advance of that hearing, father filed a petition seeking to modify the order terminating reunification services by reinstating those services. (§ 388.) The basis for this request was father's contention that he had continued to attend his required counseling programs even though reunification services had been terminated, now recognized his role in the minor's detention, and that his strong relationship with the minor militated against terminating parental rights and placing the minor up for adoption.

In connection with that petition, father also argued against terminating his parental rights, asking instead that the minor's caretaker serve as legal guardian. The basis for this request was father's contention that termination was not in S.L.'s best interests given the strong, beneficial parent-child relationship that existed.<sup>5</sup>

The trial court denied the section 388 petition, finding no changed circumstances because father continued to deny his role in the domestic violence that led to the child's removal. The court found that the beneficial parent-child relationship exception did not apply because even though father had a positive and loving relationship with the boy, it did not rise to the level of a true parent-child relationship.

## **DISCUSSION**

### **1. *The Court Properly Denied the Section 388 Petition***

Section 388, subdivision (a) provides that any parent having an interest in a child who is a dependent of the juvenile

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<sup>5</sup> We examine this statutory exception in more detail in section 2 of our discussion.

court may, upon grounds of change of circumstance or new evidence, petition the court to change, modify, or set aside a previous court order. The burden is on the petitioner to demonstrate by a preponderance of the evidence that circumstances have changed to the extent that modifying the previous order would be in the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) We review the denial of a section 388 petition for abuse of discretion. (*Id.*, at p. 318.)

Father contends there was sufficient evidence of changed circumstances because he had been an active and willing participant in domestic violence courses since reunification services had been terminated, was no longer in a relationship with mother, had not engaged in domestic violence for two years, and acknowledged his role in that violence. However, when questioned about his understanding of the sustained allegations that led the court to take jurisdiction of S.L., father testified that those allegations were not true, that he never struck mother, did not throw her against a wall, and only pushed mother away to defend himself from her attacks.

It was this testimony that appears to have concerned the court and led it to find that father had yet to take responsibility for his actions. Although father points to testimony that he understood pushing mother was physical, he continued to deny striking her. We conclude that his continued denial of his role as a perpetrator of physical violence against mother provided sufficient evidence to deny the section 388 petition.<sup>6</sup>

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<sup>6</sup> This is consistent with our earlier decision involving sibling J.L., where father described the February 2014 incident with mother that was at the heart of this case as “a situation that

2. *The Beneficial Relationship Exception Did Not Apply*

If there is clear and convincing evidence that a dependent child is likely to be adopted and a previous determination that reunification services should be terminated, there is a presumption favoring adoption as the permanent plan. (§ 366.26; *In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) Guardianship or long-term foster care may be selected only if exceptional circumstances exist, as defined in section 366.26, subdivision (c)(1)(B)(i)-(vi). (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574 (*Autumn H.*).

Father contends the order terminating his parental rights was improper under the beneficial relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) The beneficial relationship exception must be considered in light of the Legislature's preference for adoption when reunification efforts have failed. The exception does not allow a parent who has failed to reunify with an adoptable child to stymie an adoption simply because there is evidence that the child would derive some benefit from continuing a relationship with the parent. The exception "is not a mechanism for the parent to escape the consequences of having failed to reunify." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) In order for the exception to apply, the parent must have visited the child regularly and have maintained such a strong

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came up," and denied being a domestic batterer. (*In re J.R.* (Feb. 25, 2015, B256787) [nonpub. opn.], slip opn. at p. 4.)

and beneficial parent-child relationship that terminating parental rights would be to the minor's detriment. (*Id.* at pp. 1348-1349.) Although daily interaction is not necessarily required, the relationship must be that of parent and child. A relationship that is merely friendly or familiar is not enough. (*Id.* at pp. 1349-1350.) A parent bears the burden of proving that the beneficial relationship exception applies. (*Id.* at p. 1350.) We will affirm the dependency court's order finding the exception inapplicable if the order is supported by substantial evidence. (*Autumn H., supra*, 27 Cal.App.4th at pp. 576-577.)<sup>7</sup>

The trial court found that the exception did not apply because: father continued to deny that he committed acts of domestic violence; the minor's parental bond was with his current caretaker (and prospective adoptive parent); he had spent most of his young life with the caretaker; and he was also bonded with brother J.R., whom the caretaker had adopted.

Father contends the trial court erred because the record showed that he regularly visited the child throughout the proceedings and because he occupied a true parental relationship with the minor as evidenced by the following: their visits were

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<sup>7</sup> We recognize that some appellate courts use the abuse of discretion standard (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449) and others a combination of both. (*In re J.C.* (2014) 226 Cal.App.4th 503, 530-531.) Our analysis employs the substantial evidence test, but the result would be the same if we used any of the standards of review.

positive; the minor called father “daddy” and sometimes said he wanted to go home with him; father engaged in active play with the minor and brought him snacks and toys, while sometimes correcting or protecting him as necessary; and he was participating in his domestic violence programs, had completed all other required programs, and had worked through his domestic violence issues.

We believe father has failed to establish a sufficiently beneficial parent-child relationship. First, as the trial court observed, father continued to deny his role in the domestic violence that led to the minor’s detention, making it questionable whether severing father’s parental rights was in fact detrimental to the minor. Second, father had engaged in only monitored weekly visits with the minor, while the child had lived with his brother at the caregiver’s home for two-thirds of his life – from the age of one to beyond his third birthday. Third, engaging in positive play and bringing snacks does not by itself manifest a true parent-child relationship. Fourth, although the child was attached to father, DCFS distinguished between the bond with father and the bond with the caregiver in an April 2016 report. According to that report, the minor had “some bond” with father, but was “very bonded” with the caregiver. Based on this, we conclude that father failed to meet his burden of proof that the beneficial relationship exception applied.



### **DISPOSITION**

The juvenile court orders denying father's section 388 petition and terminating his parental rights are affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.