

Filed 4/25/17 In re Maya G. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re MAYA G. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CRYSTAL S. et al.,

Defendants and Appellants.

B276727
(Los Angeles County
Super. Ct. No. CK60824)

APPEALS from an order of the Superior Court of
Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

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

Aida Aslanian, under appointment by the Court of Appeal,
for Defendant and Appellant Lawrence C.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and
Respondent.

Valerie N. Lankford, under appointment by the Court of
Appeal, for Minors.

Crystal S. (mother) appeals from the juvenile court's order terminating her parental rights over three of her children, 13-year-old Maya G. (Maya), 12-year-old Louis G. (Louis), and nine-year-old Cassandra C. (Cassandra).¹ Lawrence C. (father) is the father of Cassandra, and he appeals from the juvenile court's order terminating his parental rights over her. Mother and father contend the beneficial relationship exception to termination of parental rights existed and that the juvenile court denied them due process when it refused to allow the children to

¹ The record discloses that mother has seven children. Her two youngest children, Lawrence C. and Lorraine C., were not part of this dependency case. Two of her sons, 17-year-old Pablo C. (Pablo) and 14-year-old Joseph G. (Joseph) were part of this dependency case. They are not parties to this appeal because the permanent plan selected for them was legal guardianship, per their wishes. Joseph, Maya and Louis have the same father, who is not a party to this appeal. Pablo's father is also not a party to this appeal.

testify at the permanency planning hearing. We disagree and affirm.

FACTUAL AND PROCEEDURAL BACKGROUND

In June 2013, the Los Angeles County Department of Children and Family Services (the Department) received a referral that the children were wandering the streets at midnight. When the social worker arrived, mother walked away and did not return within two hours, at which point the children were taken into custody. The children reported that they lived with mother in Arizona and came to California to visit relatives, but they were all locked out of the house. A family friend told the social worker that mother left Arizona because she had domestic violence issues with father, who also used methamphetamine.

The Petitions

The Department filed an original petition in July 2013, a first amended petition in August 2013, and the operative second amended petition in September 2013, on behalf of five of mother's children (Pablo, Joseph, Maya, Louis & Cassandra) under Welfare and Institutions Code section 300.² The second amended petition alleged under sections b-1 and b-6 that mother and father had a history of substance abuse, had recently used methamphetamine, were under the influence of a controlled substance on August 21, 2013, and that such use placed the children at risk of harm; under section b-2 that mother and father had a history of engaging in physical altercations in the children's presence and that father's hitting and pushing mother in the children's presence and mother's inability to protect the children by allowing father to reside in the home placed the

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

children at risk of harm; and under sections b-5, d-1 and j-2 that the maternal great uncle sexually abused Maya and Cassandra and slapped Maya in the face when she told him to stop touching her vagina, that mother knew or should have known of the sexual abuse, and that mother's failure to take the appropriate steps to protect the girls placed them and their brothers at risk of harm.

When the five children were first detained, they were placed in separate foster homes. On August 9, 2013, the children were placed together with Cassandra's paternal great aunt, Laura F. (Laura), in California.

Following the arrest of mother and father on August 21, 2013, for using methamphetamine, two bench warrants were issued and recalled for mother, who was ordered to complete a substance abuse treatment program and to participate in two Narcotics Anonymous meetings per week.

The juvenile court sustained the second amended petition on January 3, 2014, found father to be the presumed father of Cassandra, and ordered the Department to provide family reunification services. The court ordered mother and father to participate in individual counseling, a parenting program, alcohol and drug counseling, random alcohol and drug testing, and ordered mother to participate in counseling for sexual abuse awareness. The court granted mother monitored visits a minimum of three times a week for three hours each visit. The minute order is silent on the issue of father's visitation.

Six-Month Review Hearing

For the six-month review hearing on July 7, 2014 (at which point the children had been detained from mother and father for nearly one year), the Department reported that the children were doing well living with Laura. She had worked closely with the

children and their teachers and the children had improved in school. The children appeared to be happy and stable in Laura's home, they called Laura "Nana," and they each expressed a desire to continue living with her.

Mother and father were living in a trailer on the property of father's great grandmother. In the fall and winter of 2013, mother and father reported that they were participating in individual counseling, substance abuse classes, and parenting classes, but they both stopped drug testing in February 2014. Mother and father initially visited the children once a week, and Laura reported the visits went well and the children were happy to see mother and father. Beginning in April 2014, however, mother and father only visited the children once a month, they stopped calling the children every week, and they did not call the children on their birthdays. Mother did not visit the children in June 2014, and father visited them only once that month. Mother was arrested again in June 2014, and released to probation.

Mother appeared at the six-month hearing. The juvenile court found that mother and father had made only minimal progress with the court's orders and continued the case to the 12-month review hearing.

Twelve-Month Review Hearing

For the 12-month review hearing on February 20, 2015, the Department reported that the children continued to do well in Laura's home. Mother and father had started visiting the children again on a weekly basis, usually on the weekends for eight to nine hours, and spent Halloween and Thanksgiving with them. The visits went well and the children enjoyed the visits. In December 2014, mother left a voice message with the social

worker, agreeing to meet with her. Mother's speech was slurred and she said that father had "gone back to his past habits." Mother, however, did not appear for the meeting. The social worker was unable to reach mother again. The Department reported that mother and father did not visit the children regularly after November 2014 or call them. Mother and father continued to miss their required drug testing.

Mother and father did not appear at the 12-month hearing. The juvenile court found that they were only in partial compliance with the case plan, terminated reunification services, and set the matter for a section 366.26 hearing on June 19, 2015.

Additional Reports and Information

Laura informed the adoptions social worker that providing permanency for all five children would be too much for her, but that she was willing to provide a permanent home for Pablo and Louis. Maya and Cassandra informed the adoptions social worker that they wanted to be placed with their paternal aunt, Brittany C. (Brittany), in Arizona, and Pablo stated that he wanted to be placed with his grandmother, who is Brittany's mother. Maya described Brittany as being like her mother "but better." Though Brittany lived in Arizona, she visited the children often, and she was willing to adopt Maya and Cassandra. Brittany's mother was willing to adopt Joseph. Brittany, her mother, and Laura had agreed this was the best plan for the children, as they would continue to see each other. An "Interstate Compact For The Placement of Children" (ICPC) for Brittany and one for her mother were initiated in Arizona.

On July 8, 2015, mother informed the Department that she and father had relocated to Arizona, and were living with the paternal great grandmother. Mother had not seen the children

for about a month, but called them once or twice a week. On October 15, 2015, the Department reported that, based on a review of its records and statements by Laura, the children had 24 visits with mother and father in the past two years. Mother had daily Skype calls with the children, which they enjoyed.

Social workers explained to the children the differences between adoption and legal guardianship. All five children reported that they wanted to be adopted. The children were not concerned about being separated because the family is close and they would be able to maintain ties with each other and with mother and father. The Department concluded: “While it is clear that the children wish to maintain contact with their birthparents, it is also clear that they all believe they would be better cared for by the identified [prospective adoptive parents] whom they have known all their lives. . . . It would not be detrimental to the children to have parental rights terminated, because they would continue to maintain contact with their birthparents and with each other. All the children are aware that their birth parents’ rights and responsibilities to them would be terminated with adoption and so long as they can maintain their connection with the birthparents, they are ok with this.”

In November 2015, the ICPC for Brittany’s home was approved, and Maya and Cassandra were placed with her on November 25, 2015. Mother and father started visiting the girls two times a week for two hours. Brittany arranged the visits and the transportation because otherwise mother and father would not do so. The visits generally went well, but sometimes mother and father would make inappropriate comments in front of the girls and the family had trouble controlling mother. On one occasion, mother talked to Maya about the sexual abuse she had

suffered, and Maya became angry and began to cry. Mother would not stop talking about it even after Brittany told her to stop, and Maya began to wet her bed afterwards. While Maya told the social worker that she wanted to continue living with Brittany, Maya did not know if she wanted adoption or legal guardianship. The social worker reported that Brittany explained that “Maya seemed to be confused and stressed out having to decide between legal guardianship and adoption as she did not want the parents to feel bad.”

In January 2016, the Department reported that Pablo and Joseph had changed their minds and wished to remain placed with their caretakers under the plan of legal guardianship. Louis was living with Laura and still wanted to be adopted by her. He had visits with mother and father in November 2015 and January 2016, when they came to California for court hearings, and once in December 2015, when Laura took him to Arizona.

Section 388 Petitions

On March 23, 2016, mother filed a section 388 petition requesting reinstatement of family reunification services, unmonitored overnight visits with the children, and cancellation of the section 366.26 hearing. Mother stated that she had regular telephone contact with the children, visited them as often as possible, and that they were happy and comfortable around her. She attached letters and certificates showing that she had attended and graduated from sexual abuse awareness counseling; she completed 12 weeks of parenting classes, an “Early Recovery Group,” a “Relapse Prevention Group,” and individual counseling; and she had negative drug tests from September 2015 until March 3, 2016.

The juvenile court summarily denied mother's petition, finding: "Circumstances are at most changing, not changed. The attached evidence shows the same pattern as throughout the case—periods of compliance mixed with months of noncompliance. For example, mother did not test from 11/9/15 to 2/10/16."

Father also filed a section 388 petition on the same day as mother. Father requested reinstatement of reunification services with unmonitored overnight visits. Father stated that he had participated in a substance abuse program, was getting mental health treatment, and was working hard to maintain a sober and stable life. He stated that he regularly visited Cassandra and that she was strongly bonded to him and mother. He attached letters from the children's caregivers about his progress, and certificates showing completion of a "Relapse Prevention Group" and "Forklift Operators Safety Training."

The juvenile court summarily denied father's petition, checking the boxes indicating that the request did not state new evidence or promote Cassandra's best interest.

Section 366.26 Hearing

The contested section 366.26 hearing was continued numerous times over the course of a year. Mother and father requested that the children be allowed to testify. At one of the hearings on January 12, 2016, that was continued, and at which Pablo, Joseph and Louis were present with Cassandra on call by phone, the juvenile court stated: "The way I am going to proceed with the contest is to take all the other evidence first, everything that the parents wish to introduce apart from testimony from the children. And at that point I will make a determination as to whether the children's testimony would make a difference and

even if—and it might make a difference, and even if it might, [trial counsel for the children and the Department] can still argue against calling the children. I believe it would be traumatic and unnecessary.”

The contested section 366.26 hearing eventually commenced on June 3, 2016. Laura testified first. She reported that when father was in California, he visited Cassandra at least once a month, “sometimes once a week up to three times a month on an average.” If he missed visits, father would call Cassandra or talk with her over Facetime. Father visited less often after he moved back to Arizona, but still talked to Cassandra through Facetime. According to Laura, father and Cassandra had a “loving father/daughter relationship.” They would play, color, and hug each other. Cassandra appeared comfortable with father and enjoyed their visits. Cassandra referred to father as “Daddy.” Laura opined that Cassandra would be “devastated” if she could not see father again.

Laura testified that when mother lived in California, she visited the children two to three times a month, but when transportation was not available mother would call the children over Facetime. After moving to Arizona, mother visited Pablo and Louis once a month, but spoke to them on Facetime “sometimes two or three times a day.” Louis was excited when he saw mother, and would talk about her afterwards. Louis called mother “Mom.” Laura believed that Louis would be “horrified” if he could no longer see mother.

Father testified next. He was visiting Cassandra two times a week for four hours, with Brittany serving as the monitor. During the visits, father played with Cassandra, talked to her about school, helped with homework, and sometimes cooked

dinner for her. Cassandra called him “Daddy.” She looked forward to their visits, and cried when they ended. Cassandra would ask Brittany if father could spend the night.

Mother next testified that she visited Louis in California once a month for three hours and talked to him every day via Facetime. When mother visited Louis, she would take educational books, clothes, and food for him. During the visits, they would talk about school. Mother and Louis texted “good morning” and “good night” to each other every day. Louis acted very happy when he saw mother. At the end of the visits, Louis would ask mother why she could not stay the night. Louis called mother “Mom” or “Mommy.”

Mother testified that she visited Maya and Cassandra once or twice a month in California and three to four times a week after they moved to Arizona. During visits, mother would provide Maya with educational materials, they would talk about school, and eat together. Mother and Maya had an open relationship and a firm bond. Maya would seek mother’s advice. The children told mother that if they were not “around [her], that they were going to die and they were going to get sick.” Mother further testified that Cassandra was very attached to father and felt protected when she was with him. She was “daddy’s little girl.”

After mother’s testimony, the court stated: “So I do understand that both parents wish to call the children to testify, and what I indicated earlier was that I would hear the other witnesses first and then hear argument and make a determination as to whether the testimony from the children might change the outcome. So I will hear argument next if there

are no other witnesses.”³ After counsel argued, with both the Department’s counsel and the children’s counsel urging the court to terminate parental rights, the court stated that it had reviewed its notes of the arguments and the testimony, and that “given the issues at stake, given that I knew the case was heading toward the recommendation of termination of parental rights, I did just go back and read the whole file from detention onward.”

The court continued, “When you look at the life of the case—and, again, it’s been 3 years that these children have been placed out of the parents’ care and custody. The visitation—the pattern of visitation is actually irregular, inconsistent, and sporadic.” The court found that the beneficial relationship

³ Father complains that the juvenile court requested his and mother’s counsel to argue before the Department’s counsel argued. But father points to nowhere in the record showing that any objection was made to this procedure nor does he explain how he was prejudiced.

Father also argues that the juvenile court deprived him and mother of due process at the section 366.26 hearing by sua sponte readjudicating their section 388 petitions without giving them prior notice. While the court did initially state that it was denying the petitions, it also later stated, “But the reason that I denied the 388’s is because even the recent compliance and the visitation cannot seem to me to be a change of circumstances. It seemed to be the same situation that has been going on through the length of the case. They comply with visits for a while, and then they don’t, and they start again, and then they stop.” Father points out the court made no mention of visitation in its earlier summary denial of the petitions. It is unclear why the court felt the need to readdress the section 388 petitions. But we do not find a constitutional violation because there was no error in the court’s original summary denials.

exception to termination of parental rights did not apply. The court then stated, “So partly for that reason, because I think that the visitation—regular visitation [or] contact element has not been proven. That is why I am again finally going to deny the request to have the children testify because . . . that is a dispositive issue, and testimony from the children would not impact that. So I don’t see how the testimony from the children can change the outcome.”

The court found by clear and convincing evidence that the children were likely to be adopted and terminated mother’s parental rights over Maya, Louis, and Cassandra, and terminated father’s parental rights over Cassandra.

Mother and father separately appealed. The Department and the children filed separate respondent’s briefs.

DISCUSSION

I. Termination of Parental Rights

Under section 366.26, subdivision (c)(1), if the court finds by clear and convincing evidence that it is likely the dependent child will be adopted, “the court shall terminate parental rights and order the child placed for adoption.” An exception exists when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

It is well established that a parent bears the burden of proving these statutory elements. (Cal. Rules of Court, rule 5.725(d)(4); *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826–827; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343–1344.) This is not

an easy burden to meet. “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, at p. 1350.)

Reviewing courts have been applying a mixed standard of review to an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. In *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315 (*Bailey J.*), the appellate court applied the substantial evidence test to the factual determination of the *existence* of a beneficial relationship, and applied the abuse of discretion standard to the “quintessentially” discretionary decision of “the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption.” (See also *In re K.P.* (2012) 203 Cal.App.4th 614, 622 [“We find the *Bailey J.* approach persuasive and apply its composite standard of review here”].)

A. Visitation and Contact

In their appeals, both mother and father challenge the juvenile court’s finding that they did not have regular visitation and contact with the children. They argue that the court relied on an “outdated” report of October 15, 2015, which was eight months before the section 366.26 hearing, and which stated that mother and father had 24 visits over the prior two years. They argue that the court did not take into account their current and more frequent visits with Maya and Cassandra after the girls had moved to Arizona in November 2015. Additionally, father argues that the Department’s reports regarding his visits with

Cassandra were inconsistent and incomplete, as demonstrated by his and Laura's testimony.

Contrary to mother's and father's arguments, the juvenile court did not solely rely on the October 15, 2015, report in finding that mother and father did not maintain regular visitation and contact. After hearing argument, the court specifically stated that it had reviewed all the testimony by witnesses, the arguments by counsel, and had "read the whole file from detention onward." The court noted that after the girls moved to Arizona in November 2015, "the parents again started complying and visiting again at least with the girls. And then there has been some visitation with Louis as well, . . . the parents have submitted visitation logs indicating that for the last few months they have been visiting very regularly with Maya and Cassandra. [¶] . . . They comply with visits for a while, and then they don't, and they start again, and then they stop." The court again noted that "[r]ecently [visitation] has been good with Maya and Cassandra."

Additionally, father admits in his opening brief that there were months when he did not visit Cassandra, stating "He did not miss many visits and recalled that there was a period of maybe two or three months total, in the beginning of the case and when he was incarcerated, when he was unable to see his daughter, and another month recently when he relocated to Arizona." Father argues that missing a few visits over a period of years is not significant. But we note that while the juvenile court allowed mother, and presumably father, to visit the children a minimum of three times a week, neither mother nor father ever visited the children more than once a week in California. Mother and father did visit Maya and Cassandra more frequently after

the girls moved to Arizona in November 2015. But Brittany reported that she arranged all the visits and transported the girls because, otherwise, mother and father would not take any action. After the girls moved to Arizona in November 2015, mother only visited Louis once in November 2015 and once January 2016, when she and father came to California for court hearings, and once in December 2015, when Laura took him to Arizona. In this case, the children’s prospective adoptive parents made more efforts to ensure the children had visits with mother and father than did mother and father.

Father and the children agree that there appears to be no case law defining precisely what is required to establish “regular visitation” or the frequency of contact required. Mother cites to *In re I.R.* (2014) 226 Cal.App.4th 201, 212, which stated that “[r]egular visitation exists where the parents visit consistently and to the extent permitted by court orders.” Indeed, as the children note, cases tend to focus on the *consistency* of the visitation. (See e.g., *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1303 [“father maintained regular, consistent and appropriate visitation”]; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 230 [mother “maintained regular and consistent visitation”]; *In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548–1549 [neither parent maintained “regular and consistent visitation”].)

Recently, in *In re Breanna S.* (2017) 8 Cal.App.5th 636, 647, Division Seven of this court stated: “While [the mother’s] visits apparently became more regular during the final six months before the section 366.26 hearing, even then they occurred only once a week for two hours per visit. [The mother’s] testimony did not compel a finding, as a matter of law, that she had maintained regular visitation and contact with the children,

as required for the parent-child relationship exception to termination of parental rights to apply.”

Mother’s reliance on *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 for the proposition that a juvenile court must base its order on the current circumstances at the time of the dependency hearing is unavailing. That case dealt with the adjudication of a section 300 petition, and not with whether parental rights should be terminated after a span of three years.

We find no error in the trial court’s focus on the entirety of this three-year case to conclude that mother and father failed to meet their initial burden of showing that they maintained regular and consistent visitation.

B. Detriment

Even if the parents had met the first prong of the beneficial relationship exception to the termination of parental rights, they did not meet the second prong.

The “benefit from continuing the [parent/child] relationship” exception in section 366.26, subd. (c)(1)(B)(i) has been defined to mean that “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “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.” (*Ibid.*)

Mother and father argue that they have strong, positive attachments to Louis, Maya and Cassandra. They point to evidence showing that the children enjoyed their visits with mother and father. Mother and father also rely on the children's statements that they wanted to continue seeing mother and father, and Laura's testimony that the children would be devastated if they could no longer see mother and father. Mother also argues that it would be confusing to the children if Louis, Maya and Cassandra were adopted while Pablo and Joseph were not.

It is undisputed that the children have strong connections to mother and father, that they expressed their desires to continue seeing mother and father, and that their visits with mother and father generally were positive.⁴ But it is well established that even frequent and loving contact between a parent and child is not sufficient by itself to establish the second prong. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) Interaction between a natural parent and child will always confer some incidental benefit to the child. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "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

⁴ Mother acknowledges the visit in which she upset Maya, but points out that Maya still wanted to see mother after this visit.

not meet the child's need for a parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) “[F]or the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt.” (*Id.* at p. 468; see also *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350 [“We do agree . . . that a *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one”].)

Mother and father never progressed to unmonitored visits. Thus, mother and father never occupied parental roles after the children were removed from their custody. Mother relies on *In re Monica C.* (1995) 31 Cal.App.4th 296, 309–310 to support her position that “the purpose of juvenile dependency law is to preserve and strengthen the minor’s family ties whenever possible.” While *In re Monica C.* had reached the permanency planning stage, the case is distinguishable because the issue was whether the juvenile court had erred at a 12-month review hearing in holding that reasonable services had been offered where the reunification plan did not provide for any visitation between an incarcerated mother and her child. The instant case does not involve a challenge to reunification services. The section 366.26, subdivision (c)(1)(B)(i) exception “is not a mechanism for the parent to escape the consequences of having failed to reunify.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) “By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.” (*In re Jasmine D.*, *supra*, at p. 1348.) “Once reunification services are ordered terminated, the focus shifts to the needs of the child for

permanency and stability.” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.)

For the three years of this dependency case, mother and father had not offered Louis, Maya and Cassandra a stable and permanent home. Indeed, despite their obvious affection for mother and father, the children expressed not only their desires to continue living with their prospective adoptive parents, but their beliefs that these relatives were better able to care for them than mother and father.

If mother’s and father’s parental rights were not terminated, the children would be denied the stable and permanent homes they were enjoying with responsible and committed caretakers, “something that the Legislature *has* determined to be detrimental, as shown by its ranking of adoption as more desirable than long-term foster care or legal guardianship,” (*In re Angel B., supra*, 97 Cal.App.4th at p. 468.) “Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ . . . ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ [Citation.]” (*In re Celine R., supra*, 31 Cal.4th at p. 53.) “The Legislature has decreed that a permanent plan other than adoption ‘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 re Christopher L.* (2006) 143 Cal.App.4th 1326, 1336.)

We conclude that the juvenile court did not err by refusing to find that the exception provided in section 366.26, subdivision (c)(1)(B)(i) was not applicable to the facts here.

II. Children's Testimony

Mother and father contend the juvenile court denied them due process by denying their request to have the children testify at the section 366.26 hearing. There is no merit to this contention.

“While a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings “are not entitled to full confrontation and cross-examination.” [Citation.] *Due process requires a balance.* [Citation.]” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) “[D]ue process is not synonymous with full-fledged cross-examination rights. [Citation.] Due process is a flexible concept that depends upon the circumstances and a balancing of various factors.” (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.) Due process does not require the juvenile court to permit the parents to introduce irrelevant or cumulative evidence. (See *In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1122.)

Section 366.26, subdivision (h) provides that “[a]t all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.” Contrary to father’s argument and as mother acknowledges, this section does not require live testimony. (See *In re Christopher L.*, *supra*, 143 Cal.App.4th at p. 1334 [“Evidence of a child’s wishes may, but need not, be in the form of direct testimony at the parental rights termination hearing; such evidence may also appear in the Agency’s reports”]; *In re Amber M.* (2002)

103 Cal.App.4th 681, 687 [“it is clear that a direct statement from the child is not required where this is contrary to the child’s best interest”]; *In re Amanda D.* (1997) 55 Cal.App.4th 813, 820 [evidence of child’s wishes “need not be in the form of direct testimony in court or chambers; it can be found in court reports prepared for the hearing”]; *In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592 [“we believe the decision in a termination action whether to require a direct statement from the minor regarding his/her thoughts is one that is best left to the sound discretion of the trial judge”].)

Mother cites the recent case of *In re Grace P.* (2017) 8 Cal.App.5th 605, in which Division Three of this court found the juvenile court abused its discretion in denying the father a contested section 366.26 hearing where there had been consistent and regular visitation. The father had sought to present his and his daughter’s testimony on the nature of their relationship. But that case is distinguishable because, here, the juvenile court held a contested section 366.26 hearing.

The juvenile court properly found that mother and father did not meet the first prong of the beneficial relationship exception to termination of parental rights. The children’s testimony would not have shed any light on the frequency or consistency of visits, which were already part of the record. Nor would the children’s testimony have shed any new light on the second prong of the exception. The children’s wishes to remain living with and cared for by their prospective adoptive parents, their affection for mother and father, and their enjoyment of visits, were also well documented in the record and undisputed. Accordingly, the juvenile court did not err in denying mother’s and father’s request for the children’s live testimony.

DISPOSITION

The order terminating mother's parental rights over Louis, Maya and Cassandra and terminating father's parental rights over Cassandra is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
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