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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re F.J., a Person Coming Under  
the Juvenile Court Law.

B278846

(Los Angeles County  
Super. Ct. No. DK00356)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Emma Castro, Commissioner. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and David Michael Miller, Deputy  
County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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In this dependency appeal, mother argues that the juvenile court erred in terminating her parental rights because there was a beneficial parent-child relationship between her and her minor child. We conclude there was no error, and affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

T.H. (mother) and Ernesto J. (father) have two children: F.J. (born 2011) and A.M.J. (born 2014).<sup>1</sup> F.J. lived with mother and father until she was six months old, lived the next year with her father and paternal grandmother (without any visits from mother), and then lived with mother alone for the next ten months.

In July 2013, the Los Angeles County Department of Children and Family Services (Department) received reports that F.J. was the victim of child abuse. Medical evidence confirmed that F.J. had several past and current injuries. F.J. at that time had an injury to her shoulder that necessitated a cast; X-rays revealed prior fractures to one of her ribs and to her left foot; and medical records catalogued a prior facial laceration necessitating sutures.

In August 2013, the Department filed a petition asking the juvenile court to assert dependency jurisdiction over F.J. F.J.

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<sup>1</sup> A.M.J. is the subject of a separate dependency proceeding and is not part of this appeal. Father has another child (named A.J.) by another woman, who is also the subject of a separate dependency proceeding and not part of this appeal.

was immediately detained from mother and placed with her paternal grandmother.

The Department subsequently filed an amended petition. Mother admitted some of the allegations in that amended petition—namely, that she (1) “failed to obtain timely necessary medical care” for F.J.’s present and prior “trauma[s],” thereby creating a substantial risk that F.J. had suffered or would suffer “serious physical harm” both (i) “inflicted nonaccidentally” (in violation of Welfare and Institutions Code section 300, subdivision (a))<sup>2</sup> and (ii) due to mother’s “failure . . . to adequately supervise or protect” F.J. (in violation of section 300, subdivision (b)); and (2) has a history of substance abuse that places F.J. at substantial risk of serious physical injury due to mother’s “inability . . . to provide regular care” (in violation of section 300, subdivision (b)).<sup>3</sup>

The juvenile court declared F.J. a dependent child and ordered reunification services. The court held hearings at six, twelve, and eighteen months to monitor the reunification process. During this 18-month period, mother attended parenting education classes, completed a court-ordered drug rehabilitation program, and submitted only negative drug tests. However, she sometimes failed to show for the court-ordered drug testing and did not complete all of the prescribed individual counseling sessions.

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

<sup>3</sup> The amended petition alleged further grounds for dependency jurisdiction, but they were dismissed—some with the Department’s assent and others over its objection.

Mother regularly visited with F.J. during this period. The bulk of these visits were monitored. At first, mother visited F.J. two or three times a week for two or three hours per visit. By and large, mother's visits were positive. Mother was attentive, "comfortable and affectionate," "quiet and loving" toward F.J., and usually behaved like "a nurturing and concerned parent." At times, however, mother was "passive," "uninterested," and "lethargic," and quickly lost interest in activities with F.J. Mother was sometimes obstinate with monitors and social workers. After the 12-month mark, the Department nevertheless liberalized mother's visits and allowed her to have unmonitored three-hour visits at mother's home. By the 15-month mark, mother started having unmonitored overnight visits on the weekends.

Just as the Department had started allowing unmonitored overnight visits, it learned that mother had been arrested twice: (1) three months earlier, for driving under the influence with A.M.J. in the car, and (2) a few days earlier, for public intoxication and disorderly conduct. The Department also learned that mother had been concealing that she and father had gotten back together and that she was allowing father access to F.J. in violation of the juvenile court's orders that father's visits be monitored.

At the 18-month review hearing, the juvenile court terminated reunification services with F.J. and set a hearing to terminate mother's parental rights. The juvenile court found by clear and convincing evidence that F.J. was likely to be adopted because her parental grandmother, with whom F.J. had been living for the last three years, was ready and willing to adopt her. The court also rejected mother's attempt to block termination by

invoking the beneficial parent-child relationship exception. Relying on the Department's observation that mother, despite her positive visits with F.J., did not occupy a "parental role" in F.J.'s life, the court ruled that "the benefit derived to [F.J.] from preserving parental rights for mother is not sufficiently compelling . . . to outweigh the benefit achieved by the permanency of adoption." The juvenile court terminated mother's parental rights.

Mother filed a timely notice of appeal.

### DISCUSSION

Once a juvenile court has asserted dependency jurisdiction over a child and terminated (or bypassed) reunification services, the court "shall terminate parental rights" once it finds, by "clear and convincing evidence," "that it is likely the child will be adopted" within a reasonable time. (§ 366.26, subds. (a) & (c)(1); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250.) In accordance with our Legislature's preference for the stability and permanence that comes with adoption, a juvenile court must terminate parental rights and order adoption unless the parent opposing termination proves that one of six statutory exceptions applies. (§ 366.26., subds. (c)(1) & (c)(1)(B); *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527 (*I.W.*.)

The beneficial parent-child relationship exception is one of the six exceptions. It applies when (1) the parent has "maintained regular visitation and contact with the child," and (2) "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Because all of the exceptions require proof that "termination [of parental rights] would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)), the second element of the beneficial parent-child relationship exception requires proof that

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."" [Citations.]” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)) To satisfy this element, it is not enough to show that “the child derives some benefit from the relationship.” (*Ibid.*) Instead, the parent “must show that [she] occup[ies] “a parental role” in the child’s life.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) Whether the parent occupies a parental role turns on (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 [that] parent and child,” and (4) the child’s particular needs. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538.)

We review the question of whether the parent has maintained regular visitation (the first element of the beneficial parent-child relationship exception) for substantial evidence, and review the juvenile court’s determination whether the child would benefit from continuing the relationship (the second element) for an abuse of discretion. (*Breanna S.*, *supra*, 8 Cal.App.5th at pp. 646-647; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) Because the juvenile court found that mother maintained regular visitation with F.J., the only issue on appeal is whether the court abused its discretion in determining the mother did not occupy a parental role in F.J.’s life, such that the benefit to F.J. in continuing that relationship outweighed the benefit F.J. would receive ""in a permanent home with new, adoptive parents.""” (*Breanna S.*, at p. 646.)

The juvenile court did not abuse its discretion because it correctly determined that mother did not occupy a parental role in F.J.'s life. At the time the juvenile court terminated mother's parental rights, F.J. was five and a half years old, but had spent only 16 months in mother's care; in other words, someone else had been F.J.'s caregiver for nearly 75 percent of her young life. Mother was F.J.'s caregiver during only two periods (from birth to six months, and from 18 to 28 months), and both of those periods ended when mother engaged in dangerous or violent behavior—the first, when mother was arrested for committing domestic violence upon father, and the second, when the Department discovered F.J.'s extensive injuries. Mother did begin unmonitored, and even overnight, visits for a short span of months, but even those ended because mother drove drunk with A.M.J. in the car. On these facts, the juvenile court did not abuse its discretion in finding that mother's relationship with F.J. did not “promote” F.J.'s “well-being” “to such a degree as to outweigh” the well-being she would receive by remaining in the custody of her paternal grandmother, with whom she had been living for the preceding three years.

Mother raises three arguments in response. First, she urges us to reject all of the precedent requiring us to examine whether she occupied a parental role. We decline to do so. The beneficial parent-child relationship exception charges a juvenile court with ascertaining whether “termination” of the parental relationship “would be detrimental” or whether the “child would benefit from continuing the relationship.” (§ 366.26., subds. (c)(1)(B) & (c)(1)(B)(i).) Because the court must weigh the well-being the child would gain in a permanent adoptive home against the well-being the child would gain from a continued relationship

with his parent, and because the adoptive home necessarily involves the adoptive parents acting in a parental role, a juvenile court must also assess whether the child's parent currently occupies such a role. (Accord, *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [noting the "significant attachment [that] . . . results from the adult's" "day-to-day" "attention to the child's needs for physical care, nourishment, comfort, affection and stimulation"].)

Second, mother argues that *In re S.B.* (2008) 164 Cal.App.4th 289 is factually indistinguishable and dictates reversal in this case. It does not. The appellate court in *In re S.B.* upheld the application of the beneficial parent-child relationship exception because the parent in that case had been the child's primary caregiver for the years prior to the initiation of dependency proceedings, had actively complied with all dependency court orders, and had "consistently put[] his daughter[]s needs and safety before his own." (*Id.* at pp. 293-298.) None of those facts is true here.

Lastly, mother contends that a guardianship for F.J. is preferable to adoption. Our Legislature sees it differently. The statutes governing the termination of parental rights dictate that adoption is the default option because the permanence and stability that come from adoption are, in the Legislature's view, preferable to more "temporary provisions for care." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038, superseded on another ground by § 366.25; *In re Celine R.* (2003) 31 Cal.4th 45, 53 ["Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker"].) Because it is undisputed that F.J. is likely to be adopted, the juvenile court did not err in following the



statutorily prescribed preference for adoption.

**DISPOSITION**

The orders of the juvenile court are affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
CHAVEZ

\_\_\_\_\_, J.\*  
GOODMAN

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\* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.