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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.C. et al., Persons Coming Under the  
Juvenile Court Law.

B240994, B242621  
(Los Angeles County  
Super. Ct. No. CK58381)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JEFFREY C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## SUMMARY

Jeffrey C., the father (father) of minors K.C. and Z.H., appeals from juvenile court orders denying his Welfare and Institutions Code section 388<sup>1</sup> petition, and from an order terminating parental rights. We affirm.

### PROCEDURAL AND FACTUAL BACKGROUND

#### *The family's prior history with Department of Children and Family Services (DCFS)*

In February 2005, an allegation that father physically abused K.C. was substantiated. In July 2005, K.C. (then seven years old; born October 1998), was made a dependent of the juvenile court based on father's frequent use of marijuana, and mental health problems suffered by K.C.'s mother, S.H. (mother, who is not a party here). (§ 300, subd. (b).) Also in July 2005, newborn Z.H. (born June 2005) was deemed a juvenile court dependent based on mother's mental health issues; father's excessive punishment of Z.H.'s sibling (K.C.), on whom father used a belt to inflict bruises and welts; the parents' history of domestic violence, which included father beating and trying to smother mother; and father's extensive criminal history, which included drug, theft and violence-related offenses, kidnapping, possession of a firearm, making threats with intent to terrorize and a DUI. (§ 300, subds. (a), (b), (j).) The children were placed in the care of C.B. (maternal aunt). They were returned to father's custody and, in 2007, the juvenile court terminated the case after father completed court-ordered anger management, domestic violence, parenting and counseling programs.

#### *Initiation of the current dependency action*

In mid-January 2010, DCFS filed the instant section 300 petition on behalf of then 11-year-old K.C., and four-year-old Z.H. The petition alleged that father had physically abused the children, and that mother had abandoned them. Specifically, it alleged that father physically abused K.C. by forcibly grabbing her and inflicting marks and scratches to her neck and that he had, on numerous occasions, struck K.C. with a belt inflicting

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

marks and bruises to her body. The petition also alleged that father physically abused Z.H. by striking him with a belt, and that he had pushed Z.H.'s head into a table, giving him a fat lip. The petition further alleged that father and his girlfriend engaged in physical violence in front of the children and that, on one occasion, father shoved his girlfriend causing her to strike her head on the ground. The children were placed in foster care. The court ordered monitored visits between father and Z.H., but suspended visits between father and K.C.

The children were soon placed again in the care of their maternal aunt. Father had weekly monitored visits with Z.H., which went well. He was eager to reunite with the children and consistently attended and actively participated in individual and group counseling programs to address issues related to anger management, parenting and substance abuse. Nevertheless, DCFS remained concerned because father had completed similar court-ordered programs during the previous dependency action, and had reunified with but then reabused his children. DCFS was also concerned as mother had abandoned the children. DCFS recommended that no reunification services be provided.

Following a contested adjudication hearing which concluded in mid-May 2010, the court assumed jurisdiction over the children under section 300, subdivisions (a), (b), (g) and (j). It found true the allegations that father physically abused the children, inflicted marks and scratches on them, engaged in acts of domestic violence in front of the children, and that mother failed to provide for the children.

The contested disposition hearing concluded on September 3, 2010. The court declared the children dependents, removed them from parental custody and denied reunification services. Father's visitation orders remained the same. The matter was set for a selection and implementation hearing (§ 366.26) for early January 2011, and DCFS was ordered to initiate an adoptive home study.

#### *Father's section 388 petition*

On May 16, 2011, father filed a section 388 petition requesting custody of the children or, in the alternative, reunification services and unmonitored visits. Father

attached a supporting declaration and evidence showing he had completed year long anger management and parenting programs, and had undergone substance abuse counseling. He informed the court he understood that the road to recovery was difficult and long. He had been wrong to blame others for his plight and now understood what it meant to be patient. He was making amends with his children and showing them how he had changed. Father conceded that, although he had completed similar programs during the previous dependency action, those programs had not been effective because he never underwent any change. He had simply reverted to his “old ways” after the case was closed. He now appreciated his need for an ongoing support system and would continue to attend programs. Father said the requested order would promote the children’s best interest because they “deserve a right to return to their family of origin—[children] emotional well-being and best interest is promoted knowing that their father has worked diligently to address case issues in order to be an appropriate parent to them. . . .” The court scheduled the petition to be heard the same day as and in advance of the section 366.26 hearing.

DCFS opposed the changes requested in father’s petition. In its opposition, DCFS noted that this case involved allegations of domestic violence and physical abuse virtually identical to those at issue in the dependency action opened in 2005 and terminated in 2007 after father reunified with the children. This case was opened after it was alleged that father “whoop[ed]” Z.H. and K.C. with a belt, and had hit Z.H. in the mouth or punched him in the stomach. K.C. told DCFS father had “‘snatched’” her by the neck and forced her into his car one morning. She was tired of being afraid of father, tired of his beatings which left her scratched and bruised, and tired of being awoken by yelling. She had twice seen father and his girlfriend engage in domestic violence, and once saw father cause his girlfriend to hit her head on the ground. K.C. wanted to live with maternal aunt or even in foster care, which she liked better than being afraid all the time. Notably, DCFS reported that K.C.’s “statements were obtained after father completed numerous programs and reunified with his children alleging that he was a changed man.”

DCFS acknowledged that father had completed various programs and his visits had been consistent. However, given his history of abuse, reunification and renewed abuse, DCFS feared father completed the programs solely in order to regain custody, and was uncertain of his ability to implement what he learned. DCFS also observed that the children's placement with maternal aunt was very stable and appropriate. The children were thriving in her care. She had given them a healing, nurturing home and wanted to adopt them.

In August 2011 an adoptive home study for maternal aunt was approved. DCFS reported that maternal aunt, who remained steadfast in her commitment to adopting the children, had bought a larger home to accommodate her growing family. The children were bonded to maternal aunt and flourishing in her care. K.C. had agreed to resume seeing father, who had regular, biweekly monitored visits with the children at McDonalds. The children enjoyed the visits and were comfortable in father's presence.

*Contested hearing on father's section 388 petition*

The hearing on the petition was conducted in January and April 2012. Father testified that, through his parenting classes, he had gained tools to use to talk to, treat and better discipline his children. He no longer used drugs, and was participating in a substance abuse program. He had learned to practice patience through his anger management class. He had changed his life and was a different kind of person, a different parent. Mental health counseling, and the support he received from his men's group changed his life, the way he thought and his attitude and behavior. Father knew the changes he had undergone were permanent, and had enrolled in more classes to help him with life decisions.

Father wanted the children returned to his care because he loved them and was the only parent they had. He visited the children consistently, and the visits were wonderful. He talked to the children about school because it was very important. He spoke to them about how they were treated and how to treat others. He tried to teach K.C. He played dominoes and other games with both children. His monitored visits had been consistent.

DCFS never told him why the visitation schedule was changed from weekly to biweekly visits. He wanted longer and more frequent visits with his kids. During one visit in January 2012, Z.H. asked if he could go home with father.

When the children lived with him, father had been involved in their education, and took them to their medical and dental appointments. Since their removal, he had not been invited to participate in any school function or decision, nor had he been asked to participate in any medical decision or to attend either child's medical appointments.

Father had twice completed a domestic violence program. He completed a 52-week program during the first dependency action. During that action he also completed a 34-hour parenting program and attended individual therapy before the children were returned to his care and the court closed the case.

According to father, the instant action was initiated after an incident involving K.C. It occurred about two years after the first case was closed. He was taking K.C. to school one morning, and she was disobedient and rebellious. Father was constrained for time and had to fight traffic. He grabbed K.C.'s shoulder and told her get in the car. She got a little scratch on her shoulder, but did not tell father about it. She cried on the way to school, and told him he should not have done that. He wiped her eyes, hugged her and said he loved her. He said he would pick her up after school. Later that day father learned DCFS had his children.

Father did not recall having angrily pushed Z.H.'s head into a table after his son failed to recite the alphabet correctly. He did acknowledge that, even after completing a year-long domestic violence program in the 2005 case, he committed domestic violence against his girlfriend in front of his children. But he claimed the incident had been an "accident," a "spur of the moment thing." It was not until he was in an anger management class in 2011 that father realized he had physically abused his children, had used excessive force when spanking them and had taken out his own anger on them.

Father said he had apologized to the children, trying to make amends. He was a single father who loved and missed his children, wanted them back with him and would

never abuse them again. If he needed to discipline K.C. now, he would send her to her room for a timeout, and let her think. There were lots of alternatives to spanking.

Thirteen-year-old K.C. testified in chambers. She felt stable and safe in her aunt's home. K.C. was able to express her feelings to maternal aunt without being scared that she would be hit. Maternal aunt was always patient with both children. She and K.C. had deep conversations about what K.C. did in school, how to behave and maternal aunt helped K.C. better understand ways to handle situations. K.C. felt safe with her aunt who had "always, always, always" been there for her when she needed her. No matter what situation K.C. was going through, maternal aunt was by her side, helping her through it, looking at the better future for her.

K.C. would not feel comfortable talking to father if she was in trouble. She did not want to be hit. In the past, if she told him, "'Oh, dad, I did bad in school,' . . . he just lashe[d] out at [her]." She was concerned he might do so again. For a while she had refused visits with father because she "was scared to be around him, near him, or by him at any point." But now she and her brother saw him during monitored visits every other week for an hour or so. Father gave them money and clothes, and talked to the children about school and such things. He had apologized for hitting, lashing out at, grabbing and having "'whup[ped]'" K.C. in the past. Their visits were okay and K.C. was not afraid of father during visits. K.C. was not sure that father would be a better, more patient parent if she went home. She remembered when father pounded Z.H.'s head into a table because Z.H. did not know his alphabet. She worried that there would be stress if she and Z.H. returned to live with father. Father had apologized for his actions, but she did not know if he was sincere. K.C. had a bond with father, and believed that her little brother did too. She wanted to be able to have good future interactions with father. But K.C. believed she was old enough to decide the best place for her to live, and she believed that place was with maternal aunt.

Six-year-old Z.H. also testified in chambers. He loved father, enjoyed their visits and wanted to see him more often if possible. During visits, Z.H. talked to father about

school and they played rock-paper-scissors. Z.H. did not worry that father would get mad at him during visits. He remembered living with father; father pushed him on his bike and they played basketball. Z.H. thought living with Father again would be a good thing. He thought about playing and flying with father and going away with him. He wanted father to have a chance to have more time with him, and a chance to see if they could live together again. Z.H. also felt good about and loved his aunt. He wanted to continue living with her. She was nice and in charge of making him go to school and making sure he had clothes to wear. His aunt did fun things with Z.H. and she, K.C. or other relatives helped Z.H. with homework.

The court denied father's section 388 petition. It found that father had not shown a significant change of circumstances, and had not demonstrated that the requested change of order would promote the children's best interests.

#### *The section 366.26 hearing*

A contested selection and implementation hearing was conducted on July 2, 2012. In preparation for that hearing DCFS reported that the children were healthy, developing appropriately and appeared to be very stable and comfortable in their environment. They had bonded with their aunt, with whom they enjoyed living. DCFS reported that maternal aunt had done an excellent job caring for the two children, whom she was committed to adopting. Both children had improved tremendously in school. Father visited regularly, and the children enjoyed his visits. Neither child reported feeling unsafe or fearful around father.

At the hearing, Z.H., then nearly seven years old, testified in chambers. He said he thought of father as his dad, not as a friend. Father helped him with his homework. He wanted to see his dad more often, and would feel sad if he was not able to see him at all. The social worker had not talked to Z.H. about being adopted and he did not know what it meant to be adopted. He wanted to stay with his aunt all the time. No one said he could stay with his aunt without being adopted. Z.H. loved his dad and wanted him in his



life. Z.H. also wanted to live with his sister forever. His aunt treated him nice. She liked to take him to fun places and helped with his homework.

K.C. testified that she “[s]ort of” liked visiting with father. But, in contrast with her earlier testimony, K.C. now said she did not want to see father in the future. K.C. had spoken with maternal aunt about being adopted and K.C.’s attorney had explained what legal guardianship meant. She understood that adoption was forever. K.C. liked that idea and was adamant that she wanted to be adopted by her aunt and remain with her brother in her aunt’s home.

Father testified that he loved his children and did not want them to be adopted. He had visited the children and they discussed many things. They talked about right and wrong. He helped them with their homework, taught K.C. to do the “time tables” and told her to help her brother with his. He had apologized to Z.H. for what he had done. He did not like the idea of not being able to visit the children if they were adopted. Recently, he had experienced problems getting visits. He had wanted to see Z.H. on his birthday, but no one had called him and he did not have any phone numbers. Father saw the children whenever he had a chance to do so. His scheduled visits were sometimes changed, but he had agreed to the changes because he wanted to see his children. Father believed that his children were against him. He did not know if maternal aunt was involved.

Maternal aunt testified that she loved and was close to both K.C. and Z.H. and wanted to adopt them. In addition to the time she had cared for them during this case, maternal aunt had cared for the children for two years during the 2005 dependency case. Both children were doing very well in school, and K.C.’s behavior had improved significantly during her time in maternal aunt’s custody. Maternal aunt complied with father’s visitation schedule, and took the children to a social worker for their monitored visits with him. Father did not call to speak to the children. He had never asked maternal aunt for her phone number (even though they saw one another often at court hearings), and exhibited animosity toward maternal aunt because the children lived with her.

Maternal aunt had tried to contact father on Z.H.'s birthday, but the number she had been given by a social worker was incorrect. Maternal aunt never tried to alienate the children from their father. Father did not have more frequent visits because he had never asked for them. She understood that the children loved father. Maternal aunt told the children that, if she adopted them, they could continue to see father, although not for overnight visits.

At the conclusion of the hearing, the court found by clear and convincing evidence that the children were likely to be adopted and that no exception applied. Parental rights were terminated.

### **DISCUSSION**

Father maintains the juvenile court abused its discretion when it denied his section 388 petition, and erred when it terminated parental rights. Neither contention has merit.

1. *The court did not abuse its discretion when it denied father's section 388 petition.*

a. *Controlling law*

Under section 388, a party may petition the court to change, modify or set aside a previous court order. The petitioning party bears the burden to show, by a preponderance of evidence, both that there has been a change of circumstances or that there is new evidence, and that the proposed change or requested modification is in or will promote the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) We review the court's ruling on a section 388 petition for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) The order will not be disturbed unless the juvenile court exceeded the limits of its legal discretion by making an arbitrary, capricious or patently absurd determination. If two or more inferences reasonably can be deduced from the facts, we lack the authority to reweigh the evidence or to substitute our decision for that of the juvenile court. (*Id.* at pp. 318–319.) When ruling on a modification petition, “the court may consider the entire factual and procedural history of the case.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

*b. Changed circumstances*

Father's section 388 petition requested that the children be placed in his care. Alternatively, father requested that the court modify its dispositional order and grant him reunification services and unmonitored visitation.

In support of his petition father asserted that he was a better man who had worked diligently to address the issues which gave rise to this action in order to be a good father. He stated that he had completed domestic violence, parenting, anger management and counseling programs, and acknowledged that he had also completed most of the same programs—without ultimate success—during the first dependency case. This time, however, father said he had experienced an “epiphany.” He was a changed man who had internalized the information he received and planned to put it to use by virtue of his newfound patience with and new attitude toward his children. He planned to “make amends” to his children and show them they need never fear him again.

The court acknowledged that father clearly loved and had worked diligently to participate in programs in order to facilitate the return of his children. Nevertheless, the court remained unconvinced that father was the changed man he professed to be or that he had sufficiently demonstrated a change in circumstances to justify the requested modification. Father completed the same programs during the prior two-year-long dependency action. He also received intensive in-home services after the children were returned to his care. Despite all this, it wasn't long after the first case was closed before father reverted to his old ways and began again to physically abuse the children and to engage in domestic violence in their presence. These acts of abuse and physical violence were indistinguishable from the ones which gave rise to the first case. In addition, when father testified about and purportedly accepted responsibility for the abuse he perpetrated on his children and girlfriend, he minimized that abuse, made excuses for it and/or failed to recall having committed some violent acts. In sum, the court was unsure whether father had truly changed or whether he was simply reenacting the scene from 2007 when the children were returned to his care, only to be reabused a short while later. The court

did not find that father had demonstrated the requisite changed circumstances by a preponderance of evidence, and was understandably unwilling to risk the children's safety to find out.

*c. Best interests*

Assuming, for the purpose of discussion, that father demonstrated sufficiently changed circumstances, father was also required to show that the change or modification he sought was in the children's best interests. (§ 388; *In re Jasmon O.*, *supra*, 8 Cal.4th at p. 415; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) The concept of a child's best interests "'is an elusive guideline'" that cannot be rigidly defined. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) To decide whether a parent has met his burden, the juvenile court's determination factors in such as the seriousness of the problem that led to the dependency action and the reasons for the problem's continuation; the degree to which the problem may be and has been removed or ameliorated; and the strength of the relative bonds between the dependent child and the children's parent and caretaker. This list is not exhaustive. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1229.)

Father concedes that the problems which led to his losing custody—his physical abuse of the children and domestic violence—were quite serious. Such problems are not easily rectified and—as illustrated by the fact that K.C. and Z.H. have been deemed juvenile court dependents in two separate actions initiated five years apart—often run deep. Here, in both dependency cases, after committing multiple acts of physical violence, father "successfully" completed anger-management, parenting and various counseling programs. After father finished the programs the first time, the children were returned to his care. Unfortunately, even with the programs and the help of in-home services, father was not the changed man he professed to be. He failed to learn better ways to approach and resolve the challenges he faced as a parent and partner and, within a few years, reverted to physical violence against his children and girlfriend.

Although it was clear to the juvenile court that father loves his children, there was scant indication that the problems which gave rise to this matter had "been removed or

ameliorated.” In his testimony, father minimized and made excuses for (or, in at least one instance, denied any memory of) his violent acts against his children and girlfriend. And, although father was continuing to participate in a 12-step program and a support group the likes of which he had not been part of before, those differences were not enough to convince the court that the circumstances warranted the modification father sought. This is particularly true in light of the fact, although both children had some bond with father (Z.H.’s being stronger than K.C.’s), both children were strongly bonded to their aunt who had consistently and lovingly parented them for many years.

K.C. was traumatized by father’s physical abuse. At the hearing, K.C. was adamant that she did not want to return to his care and did not trust that he would not hurt her again. She felt safe and secure in the loving care provided by her aunt, with whom she had lived for a third of her life. Z.H. was less afraid of the idea of returning to father’s care. But he was also younger and had been parented for more than half his lifetime by his aunt. K.C. was unequivocal about her desire to be adopted by maternal aunt and remain safely in her care. Z.H., a newborn when first removed from father’s care, said he loved father but was also strongly bonded to maternal aunt. He was happy living with his aunt, who had parented him and provided him a secure and stable home for most of his life and wanted to stay with her.

The court concluded that none of the relief sought by father—return of the children to his care, or vacating the dispositional order and granting reunification services and additional, unmonitored visitation—was viable. The court reasonably found it would be too risky to return the children to father’s care and found that it would not be in their best interest to do so. Instituting reunification services and more frequent visitation at this late stage would result in a lengthy delay that would unnecessarily postpone permanency and stability for children who have been in limbo far too long already. The law is clear that at this stage in the proceedings, the children’s right to permanency and stability is paramount. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) The juvenile court acted within its discretion when it denied father’s petition.

2. *The juvenile court did not err in terminating parental rights.*

Father also maintains that the juvenile court erred by refusing to apply section 366.26, subdivision (c)(1)(B)(i), commonly known as the beneficial relationship exception to adoption, and should instead have ordered a legal guardianship. We conclude otherwise.

a. *Controlling law*

At a section 366.26 hearing, the juvenile court must order one of three alternatives: adoption, guardianship or long-term foster care. (*In re S.B.* (2008) 164 Cal.App.4th 289, 296–297.) Where possible, adoption is the permanent plan preferred by the Legislature ““because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.”” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.) If the court finds a child cannot be returned to parental care and is likely to be adopted, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under one of several statutory exceptions. (§ 366.26, subd. (c)(1)(B); see *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

One exception is at issue here. The beneficial relationship exception of section 366.26, subdivision (c)(1) provides that if the juvenile court finds the child adoptable, “the court shall terminate parental rights and order the child placed for adoption . . . unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The parent bears the burden to establish that “termination of parental rights would be detrimental to the child under . . . the exception.” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 122.)

To determine the applicability of the beneficial relationship exception the juvenile 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.’ ([*In re Autumn H.* (1999) 27 Cal.App.4th 567, 575].) ‘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.*)” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 124.) Application of the exception is examined case-by-case, taking into account variables which may affect a parent/child bond such as the child’s age, how much of his or her life was spent in the parent’s custody, the positive or negative effects of interactions between parent and child, and the child’s unique needs. (*Ibid.*) To meet the burden of proving that the beneficial relationship exception applies, “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.) Children ordinarily derive an incidental benefit from their interaction with a natural parent. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) A parent may not derail an adoption merely by showing that continuation of the parental relationship may benefit the child to some degree. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The exception applies only if the parent shows that continuing the relationship will promote “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.*, *supra*, 27 Cal.App.4th at p. 575.)

We review the juvenile court’s factual findings for substantial evidence as to whether the beneficial relationship exception applies. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) “We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion.” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

In addition to its factual findings, however, the juvenile court must also balance the benefit children derive from maintaining a parental relationship against the benefit to

be derived from adoption. As noted in *In re Bailey J.* (2010) 189 Cal.App.4th 1308, this portion of the court's order is "a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the [parental] 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. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review [also] applies." (*Id.* at p. 1315.)

*b. Application*

Father insists he presented sufficient evidence to establish the beneficial relationship exception. He argues his visitation was consistent, that the children enjoyed the visits and his interactions with them were appropriate.

The record establishes that father maintained regular visitation with Z.H. and also with K.C., once she agreed to resume seeing him. The fundamental problem lies in the quality of the parent/child relationship. The beneficial relationship exception does not apply if a parent does not occupy a parental role in his or her children's lives. (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1234.) To establish the exception "the parent must show more than "frequent and loving contact, an emotional bond with the child, or pleasant visits. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.)

There is no dispute the children enjoyed their limited visits with father. There is, however, insufficient evidence in the record to support a conclusion that father had a substantial parental relationship with the children to the extent that "severing the natural parent/child relationship would deprive the child[ren] of a substantial, positive emotional attachment such that the child[ren] would be greatly harmed . . . ." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

It is clear that father loves K.C. and Z.H. and wants to be in a position in which he is able to care for them. Father continues to make a concerted and laudable effort to address the issues that gave rise to this and the prior dependency action. He consistently visited his children as often as he was permitted to do so, and told them he loved them.



Although the record contains little evidence of displays of physical affection between father and the children, we have no reason to doubt the children also love father.

Unfortunately, father did not and could not provide evidence that his relationship with the children was significantly beneficial to them to outweigh the benefits of adoption. Even frequent and loving contact with a child in these circumstances is insufficient to meet the requirements of the exception. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) By the time of the section 366.26 hearing, father was still only seeing his children during bimonthly, monitored hour-long visits. Both children shared a bond with father, but both were also quite content living with their aunt and wanted to remain in her care. Indeed, K.C. was adamant that she wanted to be adopted by maternal aunt. K.C. feared things would be no different if father were given yet another chance to prove his parenting skills.

The record does not reflect that the strength of father's relationship with the children outweighs the sense of belonging they would receive and had derived from the stable home maternal aunt had long provided them. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.)

As discussed above, even frequent and loving contact between a parent and child, while necessary to establish the continuing beneficial relationship exception, is not itself sufficient to establish the exception. For example, in *Bailey J.*, *supra*, 189 Cal.App.4th at page 1316, the court found no error in the court's decision to terminate parental rights despite a mother's positive, consistent visitation, during which she took "responsibility for changing Bailey's diapers and feeding him," and the child "looked to her for 'comfort' and in 'times of stress' during the visits." Notwithstanding the fact that there was a positive parent/child relationship, the juvenile court did not abuse its discretion when it found "the relationship between the mother and Bailey did not constitute a 'compelling reason' for finding that adoption would be detrimental to" the child, because the mother and child's "frequent and loving contact was insufficient to show the requisite beneficial parental relationship." (*Id.* at pp. 1316–1317; see also in *In re Jasmine D.*,

*supra*, 78 Cal.App.4th at pp. 1351–1352 [upholding order terminating parental rights where “benefit of a stable, permanent adoptive home for [child] clearly outweighed the benefit of a continued [positive and special] relationship with” parent].)

Here, the record bears out a loving relationship, at least as between Z.H. and father. But it does not establish that either child would suffer significant harm if that relationship ceased, or that such harm is likely to outweigh the benefit to Z.H. or K.C. of a secure, permanent placement with maternal aunt. (See, e.g., *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1316–1317.)

Father also argues the juvenile court should have ordered guardianship rather than adoption, because it would give him a better chance of ensuring a continuing relationship with his children. We cannot agree. Nothing in the record suggests that maternal aunt was interested in the less permanent alternative of becoming the children’s legal guardian. She was ready and committed to become their adoptive parent, and to provide them a stable, permanent home. Adoption is the Legislature’s preferred permanent plan. Even father does not advocate that the children be removed from maternal aunt’s care and placed in another unnamed prospective guardian’s home.

We reject father’s assertion that in deciding whether to terminate parental rights, the juvenile court improperly relied on maternal aunt’s assurance that she would facilitate his postadoption visitation with the children. (See *In re S.B.*, *supra*, 164 Cal.App.4th at p. 300 [“We do not believe a parent should be deprived of a legal relationship with his or her child on the basis of an unenforceable promise of future visitation by the child’s prospective adoptive parents”].) The record does not support a conclusion that the court based its decision to terminate parental rights on maternal aunt’s promise to continue parental visits. The court was properly focused on the issue of whether father demonstrated that he occupied a parental role in their lives, and whether severing the parent-child relationship would deprive the children of a substantial, positive emotional attachment such that they would be greatly harmed. We find no error. The court struck the proper balance when it found that the benefit to the children from maintaining their

relationship with father was outweighed by the benefits they would obtain from having a permanent adoptive home. Its order terminating parental rights was not an abuse of discretion.

**DISPOSITION**

The orders denying Jeffrey C.'s Welfare and Institutions Code section 388 petition and terminating parental rights are affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.