Filed 8/22/12 In re K.B. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.B. et al., Persons Coming Under the Juvenile Court Law.	B238882 (Los Angeles County Super. Ct. No. CK78687)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.E., Defendant and Appellant.	

APPEAL from orders of the Superior Court of the County of Los Angeles, Marilyn Mordetzky, Juvenile Court Referee. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

D.B. (mother) appeals from the juvenile court's orders terminating her parental rights under Welfare and Institutions Code section 366.26.[1] Mother contends that the juvenile court erred in failing to find the parental visitation exception to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). The juvenile court did not err.

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2009, the Department of Children and Family Services (Department) filed a petition under section 300, alleging, as amended, that mother inappropriately disciplined Z.V.[2]; the father of K.B. and K.B., Jr.[3] was incarcerated and unable to provide for the basic life necessities of K.B. and K.B., Jr.; Z.V.'s father failed to provide Z.V. with the necessities of life; mother's "live in" male companion, V. E., inappropriately physically disciplined Z.V.; mother and the B.'s father had a history of physical and verbal altercations in the presence of Z.V., K.B., and K.B., Jr.; and mother and Z.V.'s father engaged in violent altercations. The petition alleged that as a result thereof, Z.V., K.B., and K.B., Jr., were placed at risk of physical and emotional harm.

At the September 28, 2009, detention hearing, the juvenile court found a prima facie case for detaining Z.V., K.B., and K.B., Jr., a substantial danger existed to the physical and emotional health of the children, and there was no reasonable means to protect the children without removal from the family home. The juvenile court placed the children in the Department's custody pending further order of the court. The juvenile

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1 All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

2 Mother does not appeal here orders concerning Z.V. In this appeal, mother appeals orders terminating her parental rights to K.B., K.B., Jr., and later born R.E.

3 At the time of the petition, Z.V. was seven years old; K.B. was 3 years old; K.B. Jr. was two years old. The father of K.B and K.B. Jr. is referred to as the B's father.

court ordered the Department to provide mother with family reunification services, and ordered monitored visits for mother and the children for a minimum of three hours per week. On October 9, 2009, the juvenile court ordered that Z.V., K.B., and K.B., Jr., were to be detained in the home of the paternal grandmother.

At a December 1, 2009, hearing, the juvenile court sustained the petition, as amended, and declared Z.V, K.B. and K.B., Jr. to be dependent children of the juvenile court. The Department was ordered to provide mother with reunification services, and mother was ordered to enroll in parenting and individual counseling to address anger management, domestic violence awareness, and appropriate disciplinary methods. The juvenile court monitored visits and telephone contact for mother and the children.

On December 2, 2009, the Department filed a petition under section 300, on behalf of newborn R.E. alleging, as amended, that R.E.'s father, V. E., inappropriately physically disciplined Z.V. and mother should have known of it, and mother inappropriately physically disciplined Z.V. The petition alleged that as a result thereof, R.E. was placed at risk of physical and emotional harm. At the December 2, 2009, detention hearing, the juvenile court found a prima facie case for detaining R.E., and ordered him removed from the family home and detained in shelter care,[4] monitored visits for mother and R.E. for a minimum of three hours per week, and ordered the Department to provide mother with family reunification services.

According to the Department's December 5, 2011, interim review report, in January 2010, mother and V. E. married. According to the Department's July 5, 2011, "366.26 WIC report" [Welfare and Institutions Code report], in April 2010, the adoptions children's social worker (ACSW) completed an initial current planning assessment (CPA) for ZS.V., K.B., and K.B., Jr. with a recommendation that they be adopted. The paternal grandmother expressed that she was having difficulty managing the children's

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[4] According to the Department's December 9, 2009, ex parte application and order report, which was not admitted into evidence at the January 11, 2012, contested permanency planning hearing, on December 3, 2009, R.E.'s paternal cousin said she may pursue a plan to have R.E. permanently placed with her if R.E. is not reunified with his parents.

behavior that included threatening to harm themselves or others, aggressive play and throwing objects. The Department submitted a referral to assist the paternal grandmother with services to address her dealing with the children's behavior.

At the January 12, 2010, pre-trial resolution conference, the juvenile court sustained the petition, as amended, and declared R.E. to be a dependent child of the juvenile court. The Department was ordered to provide mother with reunification services, and mother was ordered to enroll in individual counseling to address anger management and appropriate disciplinary methods. The juvenile court ordered mother to have unmonitored day visits with R.E.

At the June 28, 2010, six-month review hearing, the juvenile court found that mother was in partial compliance with her case plan, but there was a substantial risk in returning Z.V., K.B. and K.B., Jr. to mother. According to the Department's July 5, 2011, 366.26 WIC report, in June 2010, a CPA was completed for R.E. recommending adoption by the paternal cousin. On July 7, 2010, the paternal cousin wanted to defer proceeding with the adoption home study until the next juvenile court hearing because the paternal cousin was under the impression that R.E. may be returned to V. E.

At the July 29, 2010, six month review hearing, the juvenile court found that there was a substantial risk to RE in returning him to mother. The juvenile court found that mother was in partial compliance with her case plan, V. E. had completed his case plan, and mother and V. E. had consistently and regularly visited R.E. The juvenile court ordered that mother and V. E. were to undergo weekly random drug tests,[5] and R.E. was to be returned to V. E. under family maintenance services provided V. E.'s marijuana levels remained the same or lower than his present levels. The juvenile court ordered that mother could remain in the same home as long as her marijuana levels remained the same or lower than her present levels, have unmonitored visits with R.E. at the family

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[5] According to the Department's July 22, 2010, interim review report, which was not admitted into evidence at the January 11, 2012, contested permanency planning hearing, drug test results dated July 14, 2010, showed that mother's marijuana level was 957 ng.ml, and V. E.'s level was 81 ng/ml. The Department verified that mother and V. E. had a prescription for medical marijuana.

residence if her marijuana levels fell below 200 ng/ml., and have monitored visitation away from the family residence.

According to the Department's December 5, 2011, interim review report, on December 15, 2010, mother was arrested for possession of a controlled substance (ecstasy), possession of marijuana for sale, cultivation of marijuana, maintaining a residence for narcotics sales, and child endangerment. Previously, mother had been arrested for assault with a deadly weapon and driving without a license.

On December 20, 2010, the Department filed a subsequent petition under section 342, on behalf of Z.V., K.B., K.B., Jr., and R.E. alleging that mother and V. E. created a detrimental and endangering home environment for R.E. in that mother and V. E. possessed marijuana, ecstasy, and a marijuana plant in R.E.'s home and within access of R.E., and mother and V. E. were arrested for possession of ecstasy for sale. The petition also alleged that mother and V. E. have a history of illicit drug use, are current users of marijuana, were under the influence of illicit drugs while the children were in their care and supervision, and failed to comply with court ordered random testing. It was further alleged that as a result thereof, the children were placed at risk of physical and emotional harm.

At the December 20, 2010, section 342 detention hearing, the juvenile court found a prima facie case for detaining R.E., ordered him removed from V. E.'s care and detained R.E. in shelter care, and supervised visits for mother and V. E. The juvenile court referred mother and V. E. to drug rehabilitation with random drug testing, and ordered the Department to provide mother and father with family reunification services. According to the Department's July 5, 2011, 366.26 WIC report, in January 2011, R.E. was placed with a paternal cousin.

According to the Department's December 5, 2011, interim review report, on January 13, 2011, pursuant to a plea deal, mother pleaded guilty to possession of marijuana for sale and was given a 30-day sentence. Mother was released from custody on January 23, 2011, and was given three years of probation.

At the March 8, 2011, combined hearing on the section 342 petition and twelve-month review hearing, the juvenile court found that returning the children to their parents would create a substantial risk of detriment, the parents are in partial compliance with their case plan, but there was no substantial probability the children would be returned to their parents within six months. The juvenile court terminated family reunification services as to mother and V. E., and ordered the Department to provide permanent placement services for all four of the children and initiate an adoptive home study.

The Department's July 5, 2011, 366.26 WIC report stated that K.B. and K.B., Jr. were still placed with the paternal grandmother, in June 2011, an updated CPA was completed for K.B. and K.B., Jr. recommending adoption by the paternal grandmother, and one was completed for R.E. recommending adoption by the paternal cousin. The report stated that adoption home studies for K.B., K.B., Jr., and R.E. will proceed. The paternal grandmother was committed to adopting K.B. and K.B., Jr., and the paternal cousin was committed to adopting R.E. Z.V. had been placed with the paternal grandmother from October 2009, to January 1011, but was subsequently placed in foster care.

The July 5, 2011, report also stated that mother had not maintained regular or consistent visitation with the children. According to the report, during mother's visit with the children on May 12, 2011, "mother appeared to be a bit overwhelmed by the behaviors of the [children] and did not offer any redirection when the [children] were destructive to property or talking back and being defiant. The mother . . . had not visited with any of the [children] for nearly three months prior to [the May 12, 2011, visit]. [¶] Therefore, the Court is respectfully advised that the mother . . . [is] being provided opportunity to visit, [but she has] not taken advantage of that time."

At the July 5, 2011, permanency planning hearing, the juvenile court ordered the children to have sibling visits twice a month. According to the Department's September 6, 2011, status review report, on August 10, 2011, Z.V. moved to an adoptive placement out of the area. According to the Department's December 5, 2011, interim review report,

on August 29, 2011, over five months after mother's family reunification services had been terminated, mother completed a drug treatment program.

The Department's September 6, 2011, status review report states that K.B., K.B., Jr., and R.E. continue to live with relatives who plan to adopt them, and "[t]he children are all stable in [their] prospective adoptive placements." K.B. and K.B., Jr. continued to have behavior issues at home and at day care; they had angry outbursts and exhibited defiance towards their caregivers; and they were aggressive towards other children.

The Department reported that mother was pregnant. The children's social worker (CSW) had sporadic contact with mother. Mother provided the Department with a temporary residential address, and stated that she would advise the Department when she moved to a permanent address.

The Department's September 6, 2011, status review report states that some of the sibling visits that the juvenile court ordered on July 5, 2011, to occur twice a month have also included mother. Mother visited the children on July 23, 2011, and July 30, 2011. The Department reported that visits between mother and the children were "fraught with problems." Among other things, the paternal cousin, who on occasion had served as a monitor for mother's visits is the past, told the Department that she no longer wanted to monitor them because mother did "not take the visitation time seriously." In addition, scheduling the visits had become difficult. Because Z.V. had moved out of the area, it was not possible to schedule the visits during the week. As a result, the Department arranged for the visits to occur every other Sunday for three hours, and provided a monitor so mother could visit at the same time.

According to the September 6, 2011, report, the children "have begun to have regular visits" with each other and with mother. On August 28, 2011, mother visited Z.V., K.B., and K.B., Jr. R.E. was not at the visit because his caregiver said she had to be out of town at that time. Mother became "stressed" during the visit because she and her husband did not have any money to buy some food for the children. Mother made arrangements to borrow money from a relative, and by the time the relative delivered the

money it was time for the visit to be over. The Department reported that the children's visit with mother was appropriate.

On November 7, 2011, the Department filed an adoption progress report stating that on November 1, 2011, an adoption home study for the paternal grandmother of K.B and K.B., Jr. had been approved, and one was approved for R.E.'s paternal cousin. Also on November 7, 2011, mother filed a section 388 request to change order requesting that the juvenile court return the children to her care and custody on the basis that she completed a court-ordered drug treatment program.

The Department's December 5, 2011, interim review report states that mother twice confirmed her residential address with CSW Gail Yockey. Shortly thereafter mother told CSW Yockey that the address was not her residential address, but merely a mailing address. Mother provided CSW Yockey with another address represented by mother to be her residential address. When CSW Yockey met mother at that new residential address, mother stated that she had lived there for about a month, and she shared the residence with her friend. Mother showed CSW Yockey what mother said was her bedroom, and CSW Yockey observed that there were no personal items in the room and nothing to indicate that mother was living in it. CSW Yockey opened the bedroom closet and saw that mother had no clothing in it, it did not contain any hangers for mother's cloths, and it appeared to be used for storage only. Mother stated that her clothes were dirty and in the trunk of her vehicle. CSW Yockey observed some bags with clothing in the trunk of mother's vehicle.

The December 5, 2011, interim review report states CSW Yockey did not believe mother was living in the residence. Furthermore, CSW Yockey was concerned about the safety of the children because mother was still in a committed marital relationship with V. E., who had not rehabilitated himself regarding the events leading to this dependency case. When both K.B. and Z.V. talked about reunifying with mother, they said that they were afraid of V. E. and they did not want to live with him. Mother and V. E. were expecting a child; according to mother, the delivery due date was December 15, 2011.

At the December 12, 2011, hearing on mother's section 388 petition, the juvenile court stated that mother's housing was not stable, and withheld making any findings on the petition pending further report by the Department addressing mother's current housing arrangements. Mother's counsel stated that mother had recently given birth to a new child.

On January 11, 2012, the Department filed an addendum report stating that from November 7, 2011, to January 10, 2012, mother had two visits with the children. The visits are scheduled for every other Sunday. Mother visited the children on November 20, 2011, and according to the Department, it went well. Mother cancelled her December 4, 2011, visit with the children because of the upcoming birth of her child.

The January 11, 2012, addendum report stated that on December 18, 2011, mother visited the children, and it was monitored by CSW Yockey. The visit went badly from the very beginning because the children were disappointed that mother did not bring their new baby sister to the visit. K.B. had been excited to see her new sister, and when mother did not bring her, K.B. began to misbehave. K.B., Jr. and R.E. followed suit by behaving badly. K.B., Jr. repeatedly ran out of the designated play area, hitting his siblings and mother, calling mother the "b" word, biting mother, and generally being out of control. Mother attempted at times to "reign in" K.B., Jr.'s behavior by pulling him onto her lap and playfully telling him that she would bite him back if he bit her again. Mother often ran after K.B., Jr., "making it appear as if she was engaging in a game with him." Mother did not attempt to give K.B, Jr. "any time outs." K.B. hit her siblings with her hands and by swinging her purse at them. K.B. often left the play area as well. R.E. had temper tantrums while lying on the floor. Z.V. "ran around trying to help mother" keep his siblings "in line." According to the Department, throughout the visit, mother appeared overwhelmed with caring for all of the children during the three-hour visit. Z.V. told CSW Yockey that this was the worst visit he had with mother and he did not know why his siblings were misbehaving so badly.

The January 11, 2012, addendum report stated that the Department still did not know the location of mother's housing. On January 3, 2012, CSW Yockey attempted to

contact mother on her cellular telephone, and received a recorded message saying that the telephone number had been disconnected. On January 4, 2010, CSW Yockey visited the residence in which mother previously said she was living, and spoke with mother's cousin who owned the home. Mother's cousin said that he allows mother stay at his house "when she wants to." He said mother "comes and goes and he does not know when she will be around," and he has not seen her since Christmas. Mother's cousin made three telephone calls to relatives while CSW Yockey was there in an attempt to locate mother for CSW Yockey, but none of the persons whom he called had seen or heard from mother. Mother's cousin told CSW Yockey that he would telephone her if he heard from mother.

The addendum report stated that on January 5, 2011, CSW Yockey attempted again to contact mother on her cellular telephone. The telephone had been activated, and CSW Yockey left a voice mail message for mother stating that CSW Yockey needed to meet mother again to visit where she was living and to see the new baby. As of January 11, 2011, mother had not returned CSW Yockey's telephone call.

According to the addendum report, CSW Yockey also visited the address where mother said she collected her mail, but was told by the person who answered the door that mother did not receive mail at that address and the person had not seen mother for three weeks. CSW Yockey visited another address that mother used as a mailing address to obtain welfare money for her newborn child. A woman living at this address did not know mother and stated mother was not living there or receiving mail there.

At the January 11, 2012, contested permanency planning hearing, the juvenile court admitted into evidence the July 5, 2011, 366.26 WIC report, the September 6, 2011, status review report, the November 7, 2011, adoption progress report, the December 5, 2011, interim review report, and the January 11, 2012, addendum report.

At the January 11, 2012, hearing, CSW Yockey testified that she has been the social worker on this case since 2009. She estimated that mother had visited with the children approximately six to eight times in the previous six months. The visitation schedule was for mother to visit the children every other weekend, and it was established

when Z.V. was placed out of the county. The visits were monitored by human services aide (HSA) Tammy Davidson, (Department employee) and occurred in a shopping mall. There were occasions when mother was unable to attend a scheduled visit with the children, but she would call to notify the Department that she could not attend. CSW Yockey testified that she had no knowledge that mother ever made a request of HSA Davidson for more frequent visits with the children. The Department "set[s] up" the visits; HSA Davidson contacts the care givers and the parents to arrange for them. CSW Yockey testified that she was in contact with mother, but at the time of the hearing she did not have any recent contact with mother. According to CSW Yockey, mother is "not really around and available," and CSW Yockey had unsuccessfully attempted to contact mother by telephone and leaving voice mail messages. She did not know where mother was currently residing, although mother notified her of two different residential addresses in Palmdale, California.

CSW Yockey testified that she monitored mother's last visit with the children—that occurred on December 18, 2011. According to the CSW Yockey, the children's behavior "was very out of control," and they misbehaved most of the time. K.B. and K.B., Jr. often ran out of the designated play area, and when mother would try to contain K.B., Jr.'s behavior by placing K.B., Jr.'s on her lap, K.B., Jr. bit her on several occasions. Mother did not give any of the children a "time out" or otherwise punish the children for their behavior.

Mother testified that she visited the children 10 to 15 times during the past six months, and the visits are with all four of the children simultaneously in a shopping mall. She believed she was scheduled to visit the children every other week because Z.V. was out of the area and in order for him to get to visit, the visits had to be every other week.

Mother testified that in approximately September or October 2011, she requested more frequent visits with the children from H.S.A. Davidson, but not from the CSW. According to mother, H.S.A. Davidson responded that "[r]ight now. . . [H.S.A. Davidson] didn't have no more open slots as far as . . . getting [mother] more visits . . . ." Mother believes that CSW Yockey has been the social worker on this case since its inception.

Mother made the request of H.S.A. Davidson and not CSW Yockey because H.S.A. Davidson monitored all of mother's visits with the children and CSW Yockey monitored only one of the visits. Mother said she did not know why she did not make the request for more frequent visits with the children of CSW Yockey, and explained that the visitation schedule was convenient for Z.V. because he was residing out of the county. Mother did not ask CSW Yockey for more frequent visits with the other three children—K.B., K.B., Jr., and R.E.—because "I was just happy to get some visits."

Mother testified that the children's behavior recently had been out of control because they were angry, and the children constantly told her that they "want[ed] to go home." Mother lived in Palmdale and had moved twice in Palmdale, but she had notified the Department of her change of address.

At the hearing, the Department requested that the juvenile court terminate parental rights as to K.B., K.B., Jr., and R.E., and argued that those children were adoptable and mother failed to prove that an exception to adoption existed. The counsel for K.B., K.B., Jr., and R.E. agreed with the Department. Mother's counsel argued that the parental visitation exception to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(i) applied. The juvenile court terminated mother's parental rights as to K.B., K.B., Jr., and R.E., stating, "[I]n this case there is absolutely no evidence that establishes that there is a parent-child relationship. Unfortunately that's what the court has to look for. [¶] And what I see is occasional visitation between the mother and the children but absolutely devoid of any evidence that there is a parent-child relationship that would promote the well being of these children; therefore, the court concurs with the Department as well as minors' counsel and finds that continued jurisdiction is necessary because conditions continue to exist which justify the court taking jurisdiction and finds by clear and convincing evidence that the three children are adoptable and finds that . . . it would be detriment [*sic*] to the children to be returned to parents."

DISCUSSION

Mother contends that the juvenile court erred in failing to find the parental visitation exception to the termination of parent rights under section 366.26(c)(1)(B)(i). The juvenile court did not err.

A. Standard of Review

Some courts have held that challenges on appeal to a juvenile court's determination under section 366.26(c)(1)(B)(i) are governed by a substantial evidence standard of review. (See, e.g., *In re Mary G.* (2007) 151 Cal.App.4th 184, 207; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53, fn. 4.) Under a substantial evidence standard of review "'"the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.' [Citation.]" (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053; accord, *In re Mary G.*, *supra*, 151 Cal.App.4th at p. 206.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D., supra,* 70 Cal.App.4th at pp. 52-53.) If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Other courts have applied an abuse of discretion standard of review. (See, e.g., *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) Under an abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1351.) In this case, we need not decide whether a juvenile

court's ruling on the section 366.26(c)(1)(B)(i) exception is reviewed for substantial evidence or abuse of discretion, because, under either standard[6] we affirm the juvenile court's decision.

B. Applicable Law

The parental visitation exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." Application of the parental visitation exception requires a two-prong analysis. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at pp. 449-450.) The first is whether there has been regular visitation and contact between parent and child. (*Id*. at p. 450.) The second is whether there is a sufficiently strong bond between parent and child that the child would suffer detriment from its termination. (*Ibid*.) The parent/child relationship must 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 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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) The visitation exception does not apply when a parent fails to occupy a parental role in his child's life. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M*. (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

Parents bear the burden of establishing that the visitation exception to termination of parental rights applies. (*In re Zachary G*. (1999) 77 Cal.App.4th 799, 809.) A

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6 "The practical differences between the two standards of review are not significant." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

relationship sufficient to support the visitation exception "aris[es] from day-to-day interaction, companionship and shared experiences." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) "[T]o establish the exception in section 366.26, subdivision (c)(1)(A), parents must do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]" (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A parent must show that a benefit to the child from continuing the relationship would result. (*In re Mary G.*, *supra*, 151 Cal.App.4th at p. 207; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826-827.) "The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.]" (*In re Mary G.*, *supra*, 151 Cal.App.4th at p. 207; see *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81; *In re Beatrice M.*, *supra*, 29 Cal.App.4th at pp. 1416-1418.)

Whether the exception applies is determined "on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

C. Analysis

There is substantial evidence[7] to support the juvenile court's conclusion that mother failed to meet her burden of establishing that the parental visitation exception to the termination of her parental rights applies. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.) Regarding the first prong of the exception—maintenance of regular contact and visitation—mother was absent from the life of K.B. and K.B., Jr. for over 27 months, and almost all of R.E.'s life—over 25 months.

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[7] Although referenced by both mother and the Department in their appellate briefs, we do not consider the reports by the Department not admitted into evidence at the January 11, 2012, contested permanency planning hearing.

There is substantial evidence that mother did not regularly visit the children. Mother was scheduled to visit the children every two weeks. CSW Yockey testified that mother only visited the children about six to eight times during the six months prior to January 11, 2012. In addition, the Department reported that mother did not visit the children for three months prior to May 12, 2011.

There is evidence that mother also did not diligently pursue more frequent visits with her children. Mother testified that in approximately September or October 2011, she told the visitation monitor that she wanted more visitations with the children, but she did not pursue more visitations because she knew the schedule was convenient for Z.V., who lived out of the county. Mother said that she did she did not ask for more frequent visits with the other three children—K.B., K.B., Jr., and R.E.—because "I was just happy to get some visits." Mother failed to meet her burden of establishing the first prong of the exception.

Regarding the second prong—that the children would benefit from continuing the relationship—substantial evidence establishes that mother's relationship with them did not promote their well-being "to such a degree as to outweigh the well-being the child would gain in a permanent home with [a] new, adoptive parent[]." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.*, *supra*,132 Cal.App.4th at p. 229.)

During mother's visits with the children approximately eight months and one month before the January 11, 2012, hearing terminating her parental rights, there is evidence that mother failed appropriately to discipline the children and appeared to be in control. The Department specifically noted that during mother's May 12, 2011, visit, she "appeared to be a bit overwhelmed by the behaviors of the [children] and did not offer any redirection when the [children] were destructive to property or talking back and being defiant." In September 2011, the Department reported that the paternal cousin no longer wanted to monitor mother's visits because she "did not take visitation time seriously."

There is evidence that mother's December 18, 2011, visit with the children also went poorly, and mother appeared to be bewildered in caring for them. The children

misbehaved— K.B. and K.B., Jr. repeatedly ran out of the designated play area and hit their siblings, K.B. Jr. hit and bit mother and called her the "b" word, and R.E. had temper tantrums while lying on the floor. Mother attempted to respond to the children's poor conduct by pulling K.B., Jr. onto her lap and playfully telling him that she would bite him back if he bit her again, and running after him and "making it appear as if she was engaging in a game with him." Mother did not attempt to give K.B, Jr. "any time outs" during the three-hour visit, or otherwise punish the children for their poor behavior. There is substantial evidence that mother lacks parenting skills and is not taking on a parental role in this case.

Mother did not establish the quality of her visits with the children. Mother did not show at the January 11, 2012, hearing, for example, that she inquired about the children's school, helped them with their homework, or read to them.

There is evidence that mother was not responsible in connection with being available to the Department. CSW Yockey testified that mother was "not really around and available," and CSW Yockey had unsuccessfully attempted to contact mother by telephone and leaving voice mail messages. CSW Yockey asserted she did not know where mother was currently residing.

In December 5, 2011, CSW Yockey met mother at that what mother purported to be her residential address, but CSW Yockey observed that there was nothing to indicate that mother was living in it. Mother's "bedroom" did not contain any personal items, and mother's bedroom closet had no clothing in it. The closet did not contain any hangers for mother's clothes, and it appeared to be used for storage only. CSW Yockey concluded that mother was not living in the residence.

In addition, there is evidence that mother's relationship with V. E. puts the children's safety at risk. In March 2011, the juvenile court found that V. E. was only in partial compliance with his case plan, and terminated his family reunification services. In December 2011, CSW Yockey was concerned about the safety of the children because mother was still in a committed marital relationship with V. E., who had not rehabilitated himself regarding the events leading to this dependency case. When both K.B. and Z.V.

talked about reunifying with mother, they said that they were afraid of V. E. and they did not want to live with him.

Mother relies upon *In re Scott B.* (2010) 188 Cal.App.4th 452 in support of mother's contention that the juvenile court erred in failing to find the parental visitation exception to the termination of parent rights. In that case, the court reversed the juvenile court's order terminating the mother's parental rights, holding that compelling reasons existed to apply the parental visitation exception to termination of parental rights. (*Id*. at pp. 471-473.) The court remanded the matter to the juvenile court suggesting that the juvenile court order legal guardianship as the appropriate permanent plan for Scott B. (*Id*. at pp. 471-473.)

In re Scott B., supra, 188 Cal.App.4th 452, is distinguishable. There, the minor child suffered from attention deficit hyperactivity disorder and autism, needed special education services, had behavior problems at school, had problems interacting with his peers, and had bladder control issues. (*Id*. at pp. 455.) He lived with his mother for nearly nine years. (*Id*. at p. 471.) The mother visited consistently after the child was removed from her care, and the child was always clear in his desire to live with the mother. (*Id*. at pp. 456-457.) When the child learned he might be adopted, his behavior regressed to growling and biting. (*Id*. at p. 458.) He was adamant at the section 366.26 hearing that he no longer wished to be adopted. (*Id*. at p. 464.)

The parent in *In re Scott B., supra,* 188 Cal.App.4th 452 met the standard that to overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) There was substantial evidence that Scott was at risk of suffering a serious emotional and developmental setback if he were no longer able to see his mother. As the father's counsel stated in *In re Scott B., supra,* 188 Cal.App.4th 452, that case was "'one of those rare cases' where a parent [had] overcome the Legislature's preference for adoption and demonstrated a

statutory exception to termination of parental rights . . . ." (*Id.* at p. 467.) The same cannot be said here.

Here, the juvenile court reasonably determined, and substantial evidence showed, that terminating parental rights and discontinuing mother's relationship with the children would not be detrimental to them. Unlike the child in *In re Scott B., supra,* 188 Cal.4th 452, the evidence does not establish that the children here are emotionally fragile with developmental special needs, and there is no indication that the children will suffer an emotional or developmental setback if parental rights are terminated.

Mother failed to establish that she had a parental relationship with the children that would benefit them significantly enough to outweigh the strong preference for adoption. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) The children are entitled to permanency by terminating mother's parental rights and allowing the children to be adopted. There is sufficient evidence that the children's adoption by the paternal grandparents and the paternal uncle was appropriate. There is no evidence that the children are not adoptable. They have been cared for by their caretakers for a significant amount of time—K.B. and K.B., Jr. have been in the custody and care of the paternal grandmother for over 27 months, and R.E. has been in the custody and care of the paternal cousin for approximately 12 months. The children are doing well with their caretakers, and the caretakers want to adopt the children. The Department reported that on November 1, 2011, adoption home studies for the caretakers had been approved. There is substantial evidence that no compelling reason exists to conclude termination of parental rights would be detrimental. Moreover, terminating mother's parental rights is not an abuse of discretion.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.