

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B283409  
(Super. Ct. No. 15JD-00209)  
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF SOCIAL  
SERVICES,

Plaintiff and Respondent,

v.

CHAD F.,

Defendant and Appellant.

Chad F. (father) appeals from an order (1) denying his request for a change of orders based on changed circumstances; (2) terminating his parental rights, and (3) setting adoption as the permanent plan for his four-year-old daughter.

(Welf. & Inst. Code, §§ 388, 366.26.)<sup>1</sup> He contends guardianship, rather than adoption, is the appropriate plan because the beneficial parental relationship exception applies. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

#### BACKGROUND

S.F. was born in June 2013 and lived with her mother and father on her maternal grandparents' property. She saw her grandparents nearly every day.

In May 2015, just before S.F. turned two, mother was arrested for drug related charges. Mother was again arrested a week later, this time for firearm theft and for domestic violence. S.F.'s maternal grandparents took her in. A week after that, father was arrested for possessing methamphetamine and heroin for sale. The San Luis Obispo County Department of Social Services (the Department) detained S.F. and placed her with the grandparents.

At a combined jurisdictional and dispositional hearing, mother and father submitted on the petition. The trial court sustained allegations they failed to protect S.F. or care for and supervise her due to their substance abuse, mother's erratic and violent behavior, and father's criminal activity. (§ 300, subds. (b) & (g).) The court granted father reunification services and weekly supervised visits.

At a three-month review hearing in October, mother was in custody and father was out of custody on bail. Father regularly tested negative for drug use and his visits with S.F. were going well. By January, he had biweekly supervised visits.

---

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

At the six-month review hearing in February 2016, father expected to be sentenced to a five-year term in March. The court terminated his reunification services without objection. The court granted him one-hour monthly supervised visits, reduced to one-hour every three months while in custody. Mother was out of custody and the court granted her six months of continuing reunification services, notwithstanding S.F.'s young age, based on exceptional circumstances.

Father began serving his sentence in March and expected to be released in September 2018. He continued with supervised visits once every three months at the jail. At the 12-month review hearing in July 2016, mother had relapsed but was enrolled in a residential treatment program and the court granted her six more months of services.

At the 18-month hearing, father was still in custody and mother was also in custody. The court terminated mother's reunification services and set the matter for a hearing to select a permanent plan.

In March 2017, father was released from custody on a "split" sentence. He visited S.F. in the grandparents' home. She was excited to see him, he was appropriate, and the visit went well.

Father filed a request for a change in orders based on changed circumstances. He asked for S.F. to be returned to his care. The court heard father's request together with the contested section 366.26 hearing in June 2017.

Father testified that he had a full-time job and was renting a room. All of his drug tests were negative. He served most of his sentence at the "Honor Farm," and he participated in programs on violence, parenting, and relapse prevention while in

custody. Once released, he participated in drug and alcohol classes four times a week. His monthly visits with S.F. were positive, he had telephone contact, and S.F. called him “Dad.” He acknowledged S.F. could not be placed in his current living situation and that he could be returned to custody if he violated the terms of his release. He said he intended to remain married to mother.

A social worker testified that father was appropriate during visits, never missed a visit, complied with his case plan, and consistently tested negative for drugs. S.F. recognized him and was happy to see him, but she did not look to him “in a parental role.” Instead, S.F. looked to the maternal grandparents “as her primary parent[s]” and she “has a great amount of stability” with them. She was happy and thriving with her grandparents.

The social worker opined that S.F. would not suffer a detriment if parental rights were terminated because the grandparents wanted her to maintain a relationship with her parents. But she said that even if contact with the parents ceased, S.F. would not suffer great harm.

The maternal grandparents said they wanted to adopt S.F. to provide her with stability, and they wanted her parents to be in her life “provided everybody is doing what they are supposed to be doing.”

The Department, S.F.’s counsel and mother all supported adoption as the permanent plan. S.F.’s counsel represented that S.F. looks to her maternal grandparents as her parental figures.

Father’s attorney asked the court to resume reunification services based on changed circumstances, or to

choose guardianship as the permanent plan to allow father's parental relationship to continue.

The court found that S.F. is adoptable and that there was not a strong enough parental relationship to justify an exception to adoption as the permanent plan. It denied father's section 388 request, terminated parental rights, and set the matter for a postpermanency hearing in December 2017.

The court recognized that father's early release was a changed circumstance and accepted as true his representation that he had been clean and sober for 10 years. The court recognized that he was an active participant in services but found it would not be in S.F.'s best interests to return her to his care or resume services. The court observed that father had been "unavailable to [S.F.] for half of her life" and that S.F. "lived with a lot of stability in that timeframe." Visits were supervised, father had no overnight visits, he had not been in a position to provide for her daily needs, and he had "more of a visit[ing] role." The court expressed concern about father's continuing commitment to his marriage to mother, who had "shown consistent continuing problems in the two years of this case." The court said the grandparents' home "has provided her with stability and there is an express promise on behalf of the [grandparents] that they will provide [a] parental relationship independently to both the mother and the father as circumstances warrant."

## DISCUSSION

Where reunification does not succeed, the trial court must conduct a hearing to establish a permanent plan for a "stable, permanent home[]" for the child. (§ 366.26, subd. (b).) If the child is adoptable, adoption is the presumptive permanent

plan and parental rights should ordinarily be terminated. (*Id.* at subd. (b)(1).)

Under the beneficial parental relationship exception, the court “shall terminate parental rights” unless it finds a “compelling reason for determining that termination would be detrimental to the child” because the “parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) In other words, “adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of a such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) It is the parent’s burden to show exceptional circumstances exist. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574.) We review the trial court’s determination for substantial evidence. (*In re Xavier G.* (2007) 157 Cal.App.4th 208, 213.)

Substantial evidence supports the trial court’s finding that there is not a strong enough parental relationship to outweigh S.F.’s need for stability. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811 [factors to consider include the child’s age, portion of life spent in parents’ custody, positive and negative interactions, and the child’s particular needs].) Although father demonstrated that he maintained regular visitation and contact with S.F., he did not occupy a parental role. S.F. was only four years old and had spent half of her life out of his care.

Strong parental bonds can exist outside of a caretaking role. (*In re S.B.* (2008) 164 Cal.App.4th 289, 300; *In re*

*Brandon C.* (1999) 71 Cal.App.4th 1530, 1538.) But S.F. needed stability and father's conditional release rendered his situation unstable. Father offered no evidence that S.F. would suffer a detriment if their relationship was terminated and he acknowledged he was currently unable to care for her.

This case is unlike *In re S.B.*, *supra*, 164 Cal.App.4th 289, in which a father established a beneficial relationship even though the child was also attached to the grandmother. In *In re S.B.*, a strong parental bond was evidenced by a bonding study. The child was upset when visits ended and she wanted to leave with her father. (*Id.* at pp. 294-295.) The child derived "comfort, affection, love, stimulation and guidance," from her father and the "only reasonable inference [from the evidence was] that [the child] would be greatly harmed" by loss of the relationship. (*Id.* at p. 301.) The agency acknowledged that termination of S.B.'s relationship with her father would be detrimental to the child but it recommended adoption because the grandmother intended to allow continued visits with the father. (*Id.* at p. 295.)

Similarly, in *In re Brandon C.*, *supra*, 71 Cal.App.4th 1530, there was uncontradicted testimony that the bond between a mother and her boys was close and they would benefit from continuing the relationship. Substantial evidence supported the trial court's decision to apply the beneficial relationship exception, even though the mother was not acting as a caregiver. (*Id.* at pp. 1537-1538.) Here, evidence that S.F. would not suffer a detriment was undisputed and substantial evidence supported the trial court's conclusion that her relationship with father was not strong enough to outweigh her need for stability.

Father argues the court should not have relied on the grandparents' unenforceable promise that they would facilitate

future visits. (*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”].) But the court’s remarks read in context establish that its primary concern was S.F.’s stability. With or without a promise of future visitation, the lack of a strong and beneficial parental relationship rendered the exception inapplicable.

It is not enough to show the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or to show frequent and loving contact. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The showing is especially difficult to make where, as here, the parent has not advanced beyond supervised visitation. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51 [substantial evidence supported a finding there was no beneficial relationship although it was undisputed that the mother was loving and appropriate toward the child during visits].)

#### DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.



Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

---

Daniel G. Rooney, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut,  
Deputy County Counsel, for Plaintiff and Respondent.