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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re B.N., a Person Coming Under the  
Juvenile Court Law.

B275325  
(Los Angeles County  
Super. Ct. No. DK02905)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Philip L. Soto, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, Kimberly Roura, Deputy County  
Counsel, for Plaintiff and Respondent.

## **INTRODUCTION**

This case previously was before us in October 2014, when T.T. (mother) appealed from the juvenile court's orders declaring her son Justin N. (Justin), now age 18, and her daughter B. Alexandra N. (Alex), now age 12, dependents of the juvenile court pursuant to Welfare and Institutions Code section 300<sup>1</sup> and removing Alex from her care (case number B254868). We affirmed the orders. At the subsequent permanent plan hearing, the juvenile court terminated mother's parental rights over Alex, and mother appeals. On appeal, mother contends the juvenile court erred in failing to find the beneficial parental relationship exception to the termination of parental rights in section 366.26, subdivision (c)(1)(B)(i) (section 366.26(c)(1)(B)(i)). We affirm.

## **BACKGROUND**

### **I. Facts and Proceedings Prior to First Appeal**

The following summary of facts and procedures is taken from our opinion in case number B254868:

"The family consists of mother, Justin and Alex. The family has a child welfare history dating back to 1998, when the Los Angeles County Department of Children and Family Services ('DCFS') received a referral alleging that mother was neglecting and emotionally abusing Justin. The referral was deemed substantiated. On November 11, 2004, DCFS received another

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

referral alleging mother emotionally abused and neglected Alex, which also was deemed substantiated.

“On August 25, 2013, DCFS received a referral alleging that mother was using and had been using methamphetamine for ten years, and that Justin was using methamphetamine and marijuana and was a known drug dealer at his school. The reporting party stated that Alex had stated that Justin made her smoke marijuana, that Alex knew what a ‘bong’ was, and that mother had stayed up for three consecutive days as a result of using methamphetamine, and then ‘crashed’ for one or two days thereafter. Mother had allowed a 23-year-old drug user to move into the family home, and Justin and the drug dealer recently went to the store together to purchase ‘bongs.’ The maternal grandmother (‘grandmother’) moved into the family home to help mother ‘get on her feet.’ The reporting party further stated that Alex had three vaginal infections in 2013, and several rashes due to bedbug infestations.

“On August 26, 2013, grandmother called the investigating social worker at the DCFS to report the following: (a) she had observed Justin’s drug paraphernalia in the family home when she lived there from January to July, 2013; (b) Justin was ‘lost;’ (c) Alex had shown drugs that were located within the house to grandmother; (d) mother allowed a 23-year-old man to live at the home, who was a longtime and current drug user, and who bought ‘bongs’ at garage sales.

“On August 27, 2013, the social worker had an in-person interview with grandmother at DCFS’s office. Grandmother reported that mother used drugs and that she had been a troubled youth. She was in foster care as a minor. Her first foster parents abused drugs and her second were neglectful.

Mother took drugs and was a runaway. She further stated that mother neglected the children, that Justin wore dirty clothes, lied and stole, and there was cat urine all over the family home.

“Later that day, the social worker made an unannounced home visit to the family’s two bedroom apartment and interviewed mother and Alex. Mother laughed throughout the interview. Mother said that she and Alex shared a bedroom and that Justin shared a bedroom with Andrew, a 23-year-old man. When questioned about the drug allegations, mother denied using either methamphetamine or marijuana, and denied that there were ‘bongs’ in the house. Mother claimed that Andrew only occasionally stayed overnight at their home and that when he did he slept in Justin’s room. When questioned about the age disparity between Justin and Andrew, and the fact that a non-relative man was living at the home, mother responded that she did not ‘really know Andrew that well.’ She then said that Andrew was moving out soon.

“The social worker later met with both Alex and Justin, at which time they both denied the drug allegations. They both appeared neatly groomed dressed, healthy and nourished. Alex also denied ever seeing mother staying awake for several days followed by sleeping a lot.

“The social worker also interviewed Andrew, who denied ever seeing mother use drugs, denied that he ever used drugs and denied witnessing any abuse of Alex or Justin.

“On October 3, 2013, the social worker met at school with Alex, the school’s principal Susan Gomez, and Alex’s teacher Jamie Mond. Ms. Gomez was present during Alex’s interview. Alex stated that Andrew had a ‘glass thing’ that spilled, and that ‘There is [an] odor that smell like the glass thing, when they

[Justin and Andrew] open and close the door to their room and the smell comes out into the hallway.’ She also said that a third person, Tyler, a friend of a friend of Justin’s, now sleeps in Justin’s bedroom as well. Alex said having strangers in her home scared her and made her sad because Justin was ‘being a bad person.’ She said that mother and Justin argued about him smoking in the home. She did not know what Justin was smoking, but said it smelled like the ‘glass thing.’

“Ms. Gomez reported that Justin ‘is a mess.’ She said that Justin was an ‘opportunity transfer’ in middle school and was moved out of Walter Reed Middle School due to being a problem child as a result of mother’s neglect. She further stated mother allowed Alex to walk home alone without any adult supervision, and that there had been a problem, over a period of weeks, with Alex not being picked up by anyone. Ms. Gomez stated that Alex was very vulnerable. She could not read, she processed things slowly, and she was on her own a lot. Ms. Gomez believed that Alex and Justin were neglected by mother. She said Alex did better when grandmother was living in the home with them.

“Ms. Mond was also worried about Alex. She had previously written a letter to mother about Alex’s incomplete school work. She said that Alex would come to class appearing disheveled, often times wearing clothes that were too small for her, she did not complete her homework, and did not bring lunch or lunch money to school. She frequently was late in arriving at school.

“On October 9, 2013, the social worker had a follow-up interview with mother, Justin, and Alex, at their home. Mother showed the social worker a yellow slip of paper signed by Pacific Toxicology Laboratory (‘PTL’) personnel, which indicated that

mother submitted to a DCFS-requested drug test on August 27, 2013. The drug test result was positive for methamphetamine. Still, mother denied using any drugs.

“On October 14, 2013, Susan G. (‘Susan’) and Van H. (‘Van’), the parents of a friend of Alex, spoke with the DCFS social worker. Susan expressed concern for Alex because mother was unavailable and could not be reached during the time Alex slept over at their home for two to three days at a time. Susan said that she and Van became increasingly concerned about Alex because the child would go home with them because mother would leave her at school, even though the last pick-up time was 6:00 p.m. She was also concerned that Alex would walk home from school alone, which Susan believed was dangerous. She said that Alex was sent to school without food, her living situation was tenuous and mother had a history of drug use. Van expressed concern regarding his having observed a 23-year-old man living at Alex’s home. Van said he had previously taken Alex home to find this man alone at the home. He was concerned about the children’s well being.

“On October 15, 2013, during a visit by the social worker at the family home, she advised mother that she needed to submit to a drug test and gave her a referral. Mother took the referral and said she would try to get tested. When the social worker recommended that a Team Decision Making meeting (‘TDM’) be held to discuss the family situation, mother said she would not attend.

“On October 16 and 17, 2013, mother failed to submit to drug testing. The social worker called mother and recommended that she submit to drug testing the next day. Mother claimed that the children were well taken care of and that there was

nothing wrong in their home. Mother asked for a guarantee that if she submitted to the drug test she would not be required to attend a TDM. When the social worker said she could not make that guarantee, mother responded that she did not want DCFS in her life and did not want the social worker in her life or her family's life again.

“On October 31, 2013, the social worker visited Justin at his school. He said that his mother would not allow him to speak to the social worker. The social worker then attempted to visit Alex at her school, but Ms. Gomez informed her that she had received a letter from mother instructing her that the social worker was not allowed to speak with Alex.

“On November 18, 2013, DCFS received another referral alleging that mother neglected Alex, that Alex told the reporting party that mother hit and hurt her, and that Alex was frequently late for school, came to school unclean, and had uncombed hair.

“On November 19, 2013, the social worker conducted an unannounced home visit. Mother refused to allow the children to speak with the social worker without her present. She denied that she hit Alex. In mother's presence Alex denied mother hit her. The social worker thought that Alex was too 'scared' to tell the truth in front of mother.

“On December 13, 2013, the social worker spoke with North Hollywood High School counselor Melissa Roberts. She reported that Justin withdrew from school on November 22, 2013. He was at that time failing every class, he was disruptive in class, failed to attend classes, failed to listen when he was in attendance, and there was no parental contact with the school. Ms. Roberts stated that 'she wondered who was raising the child.' Justin

transferred to an 'alternative school,' Options for Youth, which had requested his records on December 2, 2013.

"On December 13, 2013, Alex's school principal Ms. Gomez told the social worker that Alex rode her bicycle to school without a helmet because, she said, Justin had taken it from her.

"On December 19, 2013, DCFS obtained a warrant for Alex's removal. A warrant for Justin's removal was denied, given his age.

"On January 2, 2014, DCFS filed a section 300 petition on Justin and Alex's behalf, based on mother's history of substance abuse and current use of methamphetamines and amphetamines. At the arraignment hearing, the juvenile court found Brian N. to be Justin's presumed father, while the identity of Alex's father was unknown. The court found that there was a prima facie case for detaining Justin and Alex in that they were minors described by section 300, subdivision (b). While Justin was released to mother's custody, the court detained Alex with grandmother. The court ordered monitored visits for mother with Alex. The court ordered DCFS to schedule a TDM with mother by January 9, 2014. Mother was ordered to submit to weekly random drug testing.

"DCFS prepared a combined jurisdiction/disposition report for the February 10, 2014 adjudication/disposition hearing. Mother informed the social worker that Louis K. was Alex's father.

"The dependency investigator interviewed mother, Justin, Alex, and grandmother regarding the substance abuse allegations made against mother. Mother denied having a history of drug abuse and denied that she currently used drugs. Mother denied that there had been any incidents regarding her sleeping for



excessive periods of time as a result of withdrawing from drugs. She claimed that she took prescription pain medications for some mouth surgery, which caused her to sleep. When asked why she testified positive for methamphetamine and amphetamines on August 27, 2013, mother responded, ‘Apparently it came back positive . . . . I don’t know; . . . it baffles me. I can’t even articulate it . . . . I’ve searched for reasons; . . . everything has been blown out of proportion.’

“Justin denied observing mother using drugs, denied that he suspected mother used drugs, and denied observing mother sleeping for excessive periods of time. He said he had not seen her behave out of the ordinary. He said mother attended to all of his needs and that he felt loved and protected. He denied any concerns about himself, mother, or his home environment.

“Alex said she did not know what drugs were, though she admitted that drugs were ‘something you can use . . . a bong . . . .’ She denied seeing mother acting ‘weird’ and denied that mother slept for excessive periods of time. Alex had been diagnosed with dyslexia and had an Individualized Education Plan (‘IEP’).

“Grandmother said that mother had a drug problem and did not take responsibility for her actions. During the time grandmother lived with mother and the children, between January and June of 2013, she observed a methamphetamine pipe in the bathroom and a makeshift marijuana pipe in the cupboard of the home, within access of the children. Grandmother used her cellular telephone to take pictures of the drug pipes that were located in the family home in March of 2013. She stated that after Alex saw those pictures on the cellular phone, she said to her ‘[G]randma, look what my mom and Justin put on your phone.’ She believed that comment by

Alex showed that Alex was aware of the drug paraphernalia in the house. Grandmother also stated that she had previously observed mother ‘cleaning the cabinets all night long’ and then ‘crash . . . go into a deep sleep for a full day . . . . [Mother] would get up, eat something, and then go right back to sleep.’

“Grandmother stated that mother had not entered a drug treatment program, and ‘[mother] had been unable to pull herself out [of using drugs] for the past four years . . . . [Mother] cycles . . . . [She] will clean herself up for a while and then use drugs again . . . .’ Grandmother believed mother lost her job in 2009 due to her drug abuse.

“Grandmother said that in August of 2013, mother burned her right arm, which grandmother suspected was the result of her ‘making meth.’ Mother minimized the injury, but she appeared disoriented from the incident.

“Grandmother found empty prescription drug bottles under Justin’s bed, with labels on them for people unknown to her.

“Grandmother also reported that mother had not made herself available for any monitored visits with Alex since she was detained in December 2013. Grandmother also attempted to leave voice mail messages on mother’s cellular phone to schedule monitored visitation between mother and Alex, but mother reprogrammed her cellular phone so that she could not receive any voice mail messages.

“Meanwhile, Alex was residing with grandmother and receiving IEP services at the ‘Learning Center’ in a variety of subjects at her elementary school in Carlsbad, California. She had good attendance, had not exhibited any behavioral problems at school and had established new friendships.

“On January 24, 2014, DCFS conducted a TDM to address a safety action plan regarding the children. In attendance were mother, grandmother, a facilitator, the social worker, and the dependency investigator. The parties agreed to the following: Alex would remain with grandmother, Justin would remain with mother, mother would continue to have the right to monitored visitation with Alex, mother would comply with all court orders and the DCFS case plan, and mother and Justin would participate in Family Preservation Services. DCFS advised mother that she needed to submit to an on-demand drug test at PTL after the completion of the TDM. Later than [sic] day mother called the social worker and said that by the time she got to PTL it was closed. The social worker advised mother then she needed to go to another PTL location. Mother did so, however, PTL’s drug result for this test stated: ‘unable to perform. [Mother] could not provide a urine sample.’

“Based upon mother’s August 27, 2013 positive drug test, and her failure to complete a test since that date, the DCFS assessed that court intervention and DCFS supervision over Justin was required, and that Alex would be at significant risk of harm if she were released to mother. Therefore the DCFS recommended that the juvenile court (a) sustain the petition, declaring Justin and Alex dependents of the court; (b) release Justin to mother’s custody with Family Maintenance Services for mother; (c) remove Alex from mother’s custody and place her under DCFS supervision; and (d) provide mother with family reunification services, including participation in a drug treatment program, a 12-step Narcotics Anonymous program with a sponsor, a parent education program, and on-demand and

random drug tests through PTL and Family Preservation Services.

“In its February 10, 2014 Addendum Report, DCFS reported that the social worker instructed mother to submit to an on-demand test through PTL on February 2, 2014. However, mother failed to do so, claiming ‘I lost my way;’ she couldn’t find PTL.

“Grandmother reported that she had spoken with mother by telephone on February 2, 2014. Mother had informed her that she did not want Alex seen by a psychologist, a mental health assessor, or a court appointed physician. She also send [sic] grandmother an e-mail message on that date, which stated: ‘I am fighting to get her [Alex] away from you. Yes, I would rather have her in the foster system than with you. I will even go as far as to admit to things that are not true if they will place her in a real foster home.’

“Grandmother then sent the following information to the social worker by e-mail: ‘Something I did not share with you, but you should know that Alex told me that she knew Justin did drugs. She took me to his room and showed me where he kept his drugs. At the time there were zig zag papers and some kind of flavoring that masks the smell of [marijuana] (I think). Alex told me at that time she was afraid that Justin and his friends do drugs in the house. When staying at [mother’s home] last year, I was doing laundry and washed Justin’s pants. He left his meth pipe in the pocket and it broke. I threw it away. Later I confronted [mother] regarding Justin’s drug use and she said she [would] rather have him doing it in the house then out on the street . . . [¶] In May, when both my husband and I confronted

[mother] about her drug use, she denied using drugs and said the meth pipe was not hers that [it] was probably Justin's.'

"At the February 10, 2014, combined jurisdiction and disposition hearing, the juvenile court received into evidence DCFS's reports with attachments. After DCFS rested its case, reserving the right to present rebuttal evidence if necessary, the juvenile court asked mother's counsel whether mother had any evidence to present. Mother's counsel stated that she would like to offer some stipulated testimony from mother. She did not present any additional documents or call any witnesses.

"The stipulated testimony from mother was the following: '[T]hat the court ordered TDM occurred on January 24, 2014, mother was given a document to drug test at 4:15 p.m. that day, mother could not find her way to the testing site, she ended up testing at another site and urinated in a cup . . . [however, the specimen] was insufficient to drug test her, mother made another attempt to drug test in Tarzana, California [but] could not find that testing site, she then went to the original testing site but it was closed. Mother had lived in the same apartment for 15 year [sic], she had been working for the past five months at a law firm and was never arrested for possession of drugs.' All counsel stipulated.

"Counsel for the children submitted on the DCFS recommendation. Mother's counsel requested that the juvenile court dismiss the petition. After hearing counsels' arguments, the juvenile court announced that it found that the allegations in count b-1 of the petition to be true and found the children to be dependents described by section 300, subdivision (b).

"In regard to the issue of disposition, mother's counsel requested that Alex be returned to mother. DCFS's counsel

submitted on the reports and requested that mother be provided with reunification services, including parenting classes, individual counseling, and a DCFS-approved drug rehabilitation program. Alex's counsel joined in DCFS's recommendations.

"After first noting that mother remained in denial in regard to her drug abuse problem, the juvenile court found by clear and convincing evidence, pursuant to section 361, subdivision (c), that as to Alex, there was a substantial risk to her safety, protection, physical and emotional health and well being if she were returned to mother's custody, and that there were no reasonable means to keep Alex safe in mother's home. The court ordered her removed from mother's custody and suitably placed with grandmother.

"Mother filed a motion for reconsideration, which was denied. She then filed a Notice of Appeal, on February 24, 2014."

On October 3, 2014, we affirmed the orders of the juvenile court in case number B254868.

## **II. Facts and Proceedings Subsequent to First Appeal**

The following summary of facts and proceedings concerns facts that developed and proceedings that took place in the juvenile court after the facts and proceedings reflected in our opinion in case number B254868:

### *A. Six-Month Review*

The DCFS's August 11, 2014, Status Review Report for the six-month review hearing stated that Alex remained placed with grandmother. During the summer, Alex had been involved in a number of activities. She stayed at two overnight camps, attended equestrian and gymnastics camps, had been involved in

recycling projects, and had learned about the outdoors and naturalism. Alex also participated in a reading program at the library and won a Wii game as a prize for reading. Each week day while school was not in session, grandmother worked with Alex for 20 minutes on reading, 20 minutes on a language arts program, and 15 minutes on a math program.

According to the status review report, Alex's therapist stated that she and Alex had been working on Alex's adjustment to living with grandmother. The therapist stated, "I think she's been doing well. She's had a real sense of safety and stableness that has been really good for her. She said there have been times she's felt let down when she has seen her mom or hasn't been able to come, but she worked through. I think her grandmother has been a huge support in giving her guidance and security." She was concerned about Alex returning to mother's home, because Alex had become "parentified"—i.e., she "very much takes care of mom's emotions."

Notwithstanding Alex's successful participation in the reading program at the library, the status review report noted that "it [had] long been thought that she [had] Dyslexia," although she had not been officially diagnosed. On her own, grandmother got Alex enrolled in a study at San Diego State's Center for Behavioral Teratology. Alex's participation would begin in November 2014, and would result in a diagnosis and a plan for educators to design an appropriate IEP for Alex.

Mother had enrolled in a parenting group according to the status review report. She had attended five of the 20 classes needed to complete the course. Mother had not contacted any of the DCFS's counseling referrals. From the middle of March to the middle of July 2014, mother took seven drugs tests, all with

negative results for all substances. Mother missed a test, however, in early July.

The status review report included grandmother's assessment that mother's weekly visits were going well. Grandmother noted that, at first, mother had been sporadic in keeping appointments and had difficulty in being on time. After grandmother addressed the issue with mother, mother consistently showed up and was on time.

At the six-month review hearing, the juvenile court granted the DCFS discretion to allow mother unmonitored visits with Alex, including overnight visits as long as mother tested negative for drugs and was complying with her case plan.

#### *B. Twelve-Month Review*

The DCFS's February 2, 2015, Status Review Report for the 12-month review hearing stated that Alex had been hospitalized for a month and a half beginning in November 2014 for an appendectomy and other surgeries. The social worker and the DCFS "commended" grandmother "who has done an exemplary job of taking care of her granddaughter. She has been there every step of the way through Alex's hospitalization, sometimes even sleeping at the hospital. Alex's condition at one point was life threatening and it was [grandmother]'s actions that went a long way to ensuring [Alex]'s successful recovery."

The status review report detailed that, after Alex was released from the hospital, grandmother "essentially" home-schooled Alex with lessons Alex's teacher provided. Alex's teacher said, "Grandmother has been amazing. She has been so supportive in the way to [sic] talks to Alex and holds her accountable. I'm really impressed with her."



According to the status review report, mother took four drug tests from the middle of August to the end of December. All tests were negative. In early January 2015, at mother's request, the social worker scheduled a drug test for mother. Mother did not show up for the test. When the social worker asked mother why she missed the test, mother said she forgot. As of January 15, 2015, mother had not finished her parenting course. When the social worker asked mother why she had not completed the course, mother said, "I don't remember what happened."

The status review report also noted that grandmother believed that the visits between mother and Alex "have gotten progressively better. We've had some rough bumps, but the visits have gone well. [Mother] genuinely seems concerned and has done a good job of being on time.[]]" Grandmother "added that when Alex was in the hospital, 'there were some concerns with her sleeping during important times of her surgeries, of not being around, of leaving, but overall in regards to the visits, for me and in regards to Alex's safety, prior to the unmonitored, I would have said I wouldn't have left her alone, but the two unmonitored visits have gone really well.'" The social worker asked grandmother "why she had not been comfortable before," and grandmother responded, "The behavior was erratic. There were times when she would come to a visit and not be in the visit, not really be with Alex. Her frame of mind was not there. She might call one day and say I'm gonna be there and then not come or be late. It was just always something that was out of control."

At the 12-month review hearing, the juvenile court gave the DCFS discretion to allow mother overnight visits with Alex.

*C. Eighteen-Month Review*

The DCFS's June 26, 2015, Status Review Report for the 18-month review hearing stated that Alex continued to do well.

The status review report also revealed that on May 7, 2015, the social worker, Norman Gotwetter, received from grandmother a text message mother sent to Alex that stated, "Thank you alexandria, i love you so much. Alex, you need to call norm everyday and tell him you want to come home. EVERYDAY, EVERYDAY CALL NORM. I am going to meet with Norman." Immediately following that message, mother sent a second text message that stated, "Correction—tell Norm what you want if coming home is what you want, tell him. But you need to communicate exactly what you want to do. I love you always." Alex subsequently denied to the social worker that she had seen the text messages.

According to the status review report, grandmother told the social worker that mother had pressured Alex during unmonitored visits "to call" and that pressure had affected Alex to the point that she had seen the school nurse more frequently than would be expected. On May 12, 2015, one of Alex's teachers called the social worker to report that Alex told the teacher that she felt "really stressed out" about having unsupervised visits with mother. Although Alex was happy about the visits, she also felt "a little bit of pressure because 'her mom keeps pushing her to call you.'" The social worker added that Alex did not feel a lot of pressure from her grandparents.

The status review report further noted that the social worker spoke with Alex, who stated that mother had been pressuring her to call the social worker and tell him that she wanted to go home. Alex stated that on Mother's Day, mother

had pressured her too hard and she had a “breakdown.” Alex further stated that mother told her that mother might put her in foster care with strangers. The social worker explained that Alex already was in foster care and would not be placed with strangers.

As explained in the status review report, Alex’s pediatrician also reported to the social worker that Alex spoke with her about mother pressuring her to call the social worker and ask to be put into foster care. The pediatrician told Alex she would not be taken from her grandparents and put in foster care. Notably, the pediatrician told the social worker that “grandmother is an amazing guardian, very appropriate and good for her. I see [Alex] doing well with her.” The pediatrician viewed any contact with and interference by mother to be detrimental to Alex’s mental health.

The status review report noted that Alex was not meeting grade level expectations in any of her academic subjects in school. Alex’s “main problem” was reading, but grandmother was looking into alternative educational options for Alex.

The social worker highlighted in the status review report that Alex’s therapist was concerned about the time Alex spent with mother. The therapist believed mother gave Alex the message, among others, that she should not like staying with grandmother. The therapist also believed that mother’s unsupervised visits with Alex had been more harmful emotionally to Alex than helpful. The therapist added, “I know Alex has a learning disability. I’m also a school counselor and I don’t think her school issues were being addressed when she was with her mother and the additional support she’s been able to have in the year and a half she’s been with grandmother has

been so critical for her education and her self esteem.” The therapist opined that it would be a “horrible decision” to return Alex to mother’s care.

According to the status review report, mother was working on completing her parenting class. Her substance abuse therapist reported that mother was in good standing with her treatment program, but that she “struggled with relapse during January-February 2015.” Mother had since “stabilized” and had not submitted further positive drug tests. From the end of January to the middle of May 2015, mother took 10 drug tests. Mother tested positive on January 29, 2015, and February 19, 2015. The remaining tests were negative. Mother did not inform the social worker about her positive drug tests until April 7, 2015.

The status review report also noted that mother had unmonitored visits from December 2014, until just after the social worker received mother’s positive drug test results. The visits generally had gone well, but the social worker was concerned about the pressure mother placed on Alex to speak with him about returning home.

At the 18-month review hearing, the juvenile court ordered that mother was to have monitored visits with Alex. It also ordered mother’s family reunification services terminated and set the matter for a section 366.26 hearing.

#### *D. Section 366.26 Proceedings*

The DCFS’s October 21, 2015, section 366.26 report stated that the social worker spoke with Alex about her placement with grandmother and whether it would be appropriate to change the placement. Alex said she did not want to live with grandmother

any longer because grandmother did not tell her when her brother or her friends called her and when grandmother “gets mad, she really gets mad.” Alex said her placement frustrated her and she was pressured about everything. Asked what she was pressured about, Alex replied, “Like doing things wrong. Like doing homework two minutes late.” She could not identify anything else about which she felt pressured and said that she had no concerns for her safety in the placement.

The social worker asked grandmother about Alex’s concerns. Grandmother said that she had not restricted Alex’s use of the telephone—either to make or receive calls. If Alex’s friends called several times while Alex was busy, grandmother would tell Alex of the calls, but not every time. When Alex came to live with grandmother, Alex had no boundaries or structure and had poor hygiene. Grandmother explained, “Everything you have to teach a child, we’ve had to teach her in the last 18 months. This is what we’ve gone through to get her to this point. She’s had to learn everything in a year.” Grandmother acknowledged that she put pressure on Alex to study and do well in school and explained that when Alex stole something from a school classmate, the response was appropriately strict.

With respect to Alex’s placement, the social worker concluded in the section 366.26 report that “[a]lthough Alex did express frustration over some aspects of the placement, she feels safe there, she has a good support system and her grandmother has gone above and beyond in helping her in many areas, which a different caregiver would be hard pressed to duplicate. Therefore, the department determined that a change in placement would not occur.”

According to the section 366.26 report, grandmother monitored mother's visits with Alex since the 12-month review hearing. Mother's calls and texts to Alex had been very limited, as had mother's requests for visits. Alex initiated most of the visits and she was always excited to see mother. After the juvenile court ordered monitored visits, mother no longer pressured Alex to tell the court and the social worker that she wanted to return to mother's care. Mother had five visits with Alex between the end of June 2015, and the end of September 2015. During the visits, mother and Alex interacted and talked with each other. Alex appeared to be comfortable and relaxed with mother. Overall, mother's interaction with Alex was appropriate, although mother sometimes was "overly dramatic," which caused Alex to take on a parental role and calm mother down.

The section 366.26 hearing was continued to January 20, 2016, and the DCFS filed a supplemental section 366.26 report. According to the report, mother had five monitored visits with Alex in October and November 2015.

The DCFS's January 20, 2016, Status Review Report stated that Alex continued to struggle with a permanent separation from mother. Grandmother reported that Alex had begun to lie about "some issues." The DCFS commended grandmother for her care of Alex. It stated that grandmother "has bent over backward to get Alex the help she needs, without any prodding from the department. She has been extremely proactive in helping her, whether it's with school issues, counseling or getting assessed. Nothing has been too difficult for her."

The section 366.26 hearing was continued to April 20, 2016, and the DCFS filed an additional Status Review Report that

stated that Alex appeared to have a strong bond with her grandparents. She appropriately showed them affection by hugging them and laughing with them. She appeared to be fully settled in her grandparents' home and expressed her desire to remain with them. Alex appeared to be thriving in her placement with her grandparents.

The section 366.26 hearing was continued to and held on May 19, 2016. In a Last Minute Information For The Court, the DCFS reported that in April and May 2016, mother had four monitored visits with Alex. Grandmother reported mother's visits in the prior few months had been "very enjoyable." Mother's behavior and conversations with Alex were appropriate. Alex appeared to enjoy and love the time she spent with mother. Alex told the social worker that she enjoyed her visits with mother and expressed a desire to develop a healthy relationship with mother. Mother said the visits had gone very well with grandmother and Alex.

The last minute information informed the juvenile court that during the case, mother had completed a job readiness program, a parenting class, a substance abuse program, and individual counseling. Mother reported that she had steady employment for the prior two months as an accounting associate in a company's payroll department.

At the section 366.26 hearing, mother's counsel indicated that he wanted to call Alex to testify. Alex's counsel stated he "could" stipulate that Alex "absolutely would like a chance to return home to the home of her mother." Counsel stated that Alex "wants her mother to have a chance to be able to get her back. She's worried that terminating parental rights would sever that chance for her mother to get her back. And, frankly, she's

right about that. So she would request that today.” Counsel added, however, that as Alex’s attorney, he did not believe that mother had established the section 366.26(c)(1)(B)(i) exception to the termination of parental rights because she still had monitored visits with Alex and did not have a parental relationship with her daughter.

Mother’s counsel noted mother’s recent visits with Alex and argued there was a significant bond between mother and Alex as shown by Alex’s desire to return to mother. Counsel stated that Alex would suffer a great detriment if mother’s parental rights were terminated and requested the juvenile court to give mother additional time to visit Alex and gain unmonitored visitation.

The juvenile court observed that mother had unmonitored visitation, but went back to monitored visitation when she relapsed. It “accepted” that there had been “a lot” of contact between mother and Alex. It also acknowledged the emotional need that Alex and mother had to keep a relationship with one another, that mother had finished a drug treatment program, and that mother seemed to be gainfully employed and trying to remain clean and sober. Nevertheless, it ruled that mother had failed to establish the beneficial parental relationship exception to the termination of parental rights—i.e., that Alex would be detrimentally affected if mother’s parental rights were terminated—based on its finding that mother was not acting as a parent in her contact with Alex. Instead, it was the maternal grandparents, with whom Alex had stayed throughout this case, who occupied the role of Alex’s parents. Accordingly, the juvenile court terminated mother’s parental rights.



## DISCUSSION

Mother contends the juvenile court erred in finding that the beneficial parental relationship exception to the termination of parental rights in section 366.26(c)(1)(B)(i) did not apply. The juvenile court did not err.

### I. Standard of Review

“Appellate courts have adopted differing standards of review for the parental relationship exception determination. Many courts review for substantial evidence. (*In re G.B.* [(2014)] 227 Cal.App.4th [1147,] 1165; *In re S.B.* (2008) 164 Cal.App.4th 289, 297; *In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333-1334; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Other courts have applied an abuse of discretion standard of review. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) More recently, courts have adopted both the substantial evidence and abuse of discretion standards of review. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re J.C.* (2014) 226 Cal.App.4th 503, 530; *In re K.P.* [(2012)] 203 Cal.App.4th [614,] 621-622; *In re Bailey J.* [(2010)] 189 Cal.App.4th [1308,] 1314-1315.) In evaluating the juvenile court’s determination as to the factual issue of the existence of a beneficial parental relationship, these courts review for substantial evidence. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395; *In re J.C.*, *supra*, 226 Cal.App.4th at p. 530; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395; *In re J.C.*, *supra*,

226 Cal.App.4th at pp. 530–531; *In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1301.) The juvenile court did not err under any of these standards.

## **II. Application of Relevant Principles**

“When [a] child is removed from the home, the court first attempts, for a specified period of time, to reunify the family. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) If the family fails to reunify, “the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. (§ 366.21, subd. (g).)” (*Ibid.*)

“Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ (*In re Marilyn H.* [(1993)] 5 Cal.4th [295,] 309.) ‘A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.’ (*Id.* at p. 304.) It is designed to protect children’s ‘compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ (*Id.* at p. 306.) ‘The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.’ (*Id.* at p. 307.)” (*In re Celine R., supra*, 31 Cal.4th at pp. 52-53.)

When a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, it may terminate parental rights unless it finds a compelling reason for determining that

doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 53.) These “exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Id.* at p. 53; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350 [“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”].) It is the parent’s burden to demonstrate that termination of parental rights would be detrimental to the child. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

The beneficial parental relationship exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if the parent has “maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” Application of the beneficial parental relationship exception consists of 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 the parent and child. (*Id.* at p. 450.) The second is whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from its termination. (*Ibid.*)

Under the second prong, the parent must show that the parent/child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In 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.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

The beneficial parental relationship exception does not apply when a parent fails to occupy a parental role in his or her 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.) To establish the beneficial parental relationship exception, "the 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.) That is, "the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. The section 366.26, subdivision (c)(1)(A)[<sup>2</sup>] exception is not a mechanism for the parent to escape the consequences of having failed to reunify." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.)

Mother contends the evidence shows that she and Alex had a unique, enduring emotional bond. She argues that Alex

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<sup>2</sup> Former section 366.26, subdivision (c)(1)(A) is now section 366.26(c)(1)(B)(i). (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 292, fn. 2.)

repeatedly stated her desire to return to mother. Mother also claims that she was a good parent, asserting she: was appropriate during visits with Alex; attended Alex's sports events, church events, and dental and medical appointments; took Alex shopping; ate lunch and dinner with Alex; and went with Alex to the movies.

Mother failed to meet her burden of demonstrating "exceptional circumstances" that would justify deviating from adoption as the preferred permanent plan for Alex. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Even if, as the juvenile court found, mother met the first prong of the beneficial parental relationship exception, she did not meet the second prong. That is, she failed to show that the benefit Alex received from her relationship with mother outweighed the benefit she would receive from adoption by her grandparents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.)

Grandmother's performance in caring for Alex was extraordinary, and the benefit Alex received from that care was enormous. During the summer, grandmother involved Alex in a number of activities, including a variety of camps. At the same time, grandmother also worked with Alex on her education. Concerned that Alex's educational difficulties might be rooted in dyslexia, grandmother took it upon herself to enroll Alex in a study at San Diego State University that would provide a diagnosis that would allow Alex's educators to design a better IEP for Alex.

More than once in the DCFS's reports, the social worker commended grandmother's actions in caring for Alex. In one report, the social worker praised grandmother for her

“exemplary” care of Alex while Alex was hospitalized, noting that grandmother sometimes slept at the hospital and attributing Alex’s successful recovery in significant part to grandmother. In another report, the social worker commented that grandmother “has bent over backward to get Alex the help she needs, without any prodding from the department. She has been extremely proactive in helping her, whether it’s with school issues, counseling or getting assessed. Nothing has been too difficult for her.” Addressing Alex’s placement with grandmother, the social worker noted that some aspects of the placement frustrated Alex, but concluded that Alex felt safe with grandmother and that “grandmother has gone above and beyond in helping her in many areas, which a different caregiver would be hard pressed to duplicate.”

The DCFS was not alone in its praise for grandmother. After Alex was released from the hospital and grandmother “essentially” home-schooled Alex, Alex’s teacher stated that grandmother had been “amazing” and that she was “really impressed” with grandmother. Alex’s pediatrician similarly described grandmother as an “amazing guardian,” who was “very appropriate and good” for Alex. She predicted Alex would do well in grandmother’s care. Addressing Alex’s learning disability, Alex’s therapist, who was also a school counselor, stated that the support grandmother had given Alex in the year and a half that grandmother cared for Alex had been “critical” for Alex’s education and self-esteem.

For her part, mother did not act in a parental role towards Alex. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M.*, *supra*, 29 Cal.App.4th at pp. 1418-1419.) Just the opposite—Alex’s therapist stated that Alex was “parentified,” i.e.,

she acted as a parent towards mother. When Alex was in the hospital for an appendectomy and other surgeries, mother was not present at all important times. Instead of being a parent to Alex, mother's role was that of someone who visited and shared, for the most part, pleasant time with Alex.

Moreover, the same people who were so impressed with grandmother and her care of Alex had a negative view of mother's interactions with Alex. Alex's teacher reported that Alex felt stress from having unsupervised visits with mother who pressured her to call the social worker and tell him that she wanted to return to mother. Alex's pediatrician viewed any contact with and interference by mother to be detrimental to Alex's mental health. Alex's therapist believed that mother's unsupervised visits with Alex had been more harmful emotionally to Alex than helpful and believed it would be a "horrible decision" to return Alex to mother's care. The therapist also believed that Alex's "school issues" were not addressed when Alex lived with mother. In addition, notwithstanding her desire to return to mother, Alex also described some of her interactions with mother as negative. She told the social worker that mother's pressure to call the social worker and say she wanted to return to mother was so forceful that it caused her to have a "breakdown." Alex also told the social worker that mother said she might put Alex in foster care with strangers.

We recognize the record supports mother's contention that she loved Alex and demonstrates, for the most part, that mother was appropriate during her visits with Alex. Likewise, Alex loved mother and enjoyed most of her visits with mother and wanted to return to mother. To establish the beneficial parental relationship exception, however, mother had to show more than

“frequent and loving contact,” an emotional bond with Alex, or that Alex and she found their visits pleasant. (*In re Andrea R.*, *supra*, 75 Cal.App.4th at p. 1108.) Because mother failed to make that showing, the juvenile court did not err in terminating mother’s parental rights.

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIN, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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