Filed 12/11/12 In re De'Shawn R. CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| In re DE'SHAWN R., a Person Coming Under the Juvenile Court Law. | B241595<br>(Los Angeles County Super. Ct. No. CK71719) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>WILLIAM R.,<br><br>Defendant and Appellant. | |

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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William R. (father) appeals from the orders of the juvenile court terminating his parental rights to his son De'Shawn R. (now age 12) under Welfare and Institutions Code section 366.26,[1] and denying his section 388 petition. Father contends the juvenile court failed to make a finding of detriment or unfitness prior to terminating his parental rights, abused its discretion by combining the hearing on his section 388 petition with the contested section 366.26 hearing and by denying his section 388 petition, and that the failure of the Los Angeles County Department of Children and Family Services (the Department) to liberalize his visits precluded him from establishing the beneficial-relationship exception to the termination of parental rights. We disagree and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

De'Shawn and his half-brother Bryan J. came to the Department's attention in February 2008, after their mother Sharlene P. (mother) and her newborn son D.W. tested positive for PCP.[2] The boys were detained. De'Shawn and Bryan were placed with their maternal great-grandparents and D.W. was released to his father. On February 22, 2008, the Department filed a section 300 petition on behalf of the boys, alleging they were at risk due to mother's drug use, and that father's whereabouts were unknown and he had failed to provide De'Shawn with the necessities of life. Father was not present at the detention hearing, and mother informed the court that he was incarcerated. The court found father to be De'Shawn's presumed father.

In its April 2008 jurisdiction/disposition report, the Department stated that it had located father in custody, where he had been since December 2007, for "unknown reasons." At the April 21, 2008 jurisdiction/disposition hearing, the court struck the allegation against father in the section 300 petition, ordered that he be provided with family reunification services "to be named later," and gave the Department discretion to

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[1] All statutory references shall be to the Welfare and Institutions Code, unless otherwise noted.

[2] Bryan, D.W. and mother are not parties to this appeal.

liberalize his monitored visits with De'Shawn. The Department later reported that De'Shawn and Bryan were doing well in the home of their maternal great-grandparents, and that father and De'Shawn were having written and monitored telephone contact.

In September 2009, the Department filed a supplemental petition against mother under section 387 alleging that she had tested positive for PCP in the prior month. De'Shawn and Bryan were ordered to remain placed with their maternal great-grandparents. Mother informed the Department that father was no longer incarcerated but lacked stable housing, and the Department reported that his whereabouts were unknown. On December 3, 2009, at the jurisdiction/disposition hearing on the section 387 petition, the juvenile court sustained the petition and set a section 366.26 hearing for April 1, 2010, which was ultimately continued more than two years. The minute order from the December 3, 2009 hearing states: "The Court finds that return of the child(ren) to either of the parents at this time would likely result in either severe emotional or severe physical harm to the children."

By April 2010, father was back in custody and had not been in contact with De'Shawn since December 2009. The maternal great-grandparents could not commit to providing the boys with a permanent home, but a nonrelated extended family member, Mr. H., and his wife expressed an interest in adopting De'Shawn and Bryan. Mr. H.'s sister had sons by father, and she and her boys were living in the house of Mr. and Mrs. H. By May 2010, the H. home was approved for placement of De'Shawn and Bryan, who began living there the following month and continued visiting their maternal great-grandparents.

Father was released from custody on July 29, 2010, and called the social worker on September 1, 2010 with an address and telephone number where he could be reached. The maternal great-grandparents reported that father sometimes stopped by their home and gave De'Shawn and Bryan gifts. Father did not appear at a review hearing on September 27, 2010, despite the social worker specifically instructing him to attend. At this hearing, the court found that adoption was the permanent plan for De'Shawn and Bryan. The September 27, 2010 minute order states: "The Court finds that return of the

child(ren) to either of the parents at this time would likely result in either severe emotional or severe physical harm to the children."

In January 2011, the Department reported that father was a "parolee-at-large." The Department was unable to reach him at the address and telephone number he had provided. Mr. H. reported that father called De'Shawn weekly for five to ten minutes, and had stopped by the house three times, meeting De'Shawn outside to give him gifts and leaving within five minutes. Father sometimes failed to appear for visits he had scheduled with De'Shawn and Bryan, leaving them sad. De'Shawn told the dependency investigator (DI) that he was going to be adopted and that he loved the H. family.

The DI made telephone contact with father on February 1, 2011. Father was living with his wife, their infant daughter, and his wife's two children from a prior relationship. The DI visited father's house on March 25, 2011 and found it to be clean and organized and appropriately furnished. Father reported that he visited De'Shawn and his half-siblings five days a week for an hour per day; he visited De'Shawn every other weekend at his maternal great-grandparents' house; he gave De'Shawn money, clothing and food; and he had a strong bond with De'Shawn. The DI's subsequent attempts to contact father in person and by telephone were unsuccessful.

In a section 366.26 report submitted in January 2012, the Department reported that Mr. and Mrs. H. remained committed to adopting De'Shawn, who stated that he wanted to be adopted. The Department also reported that father visited De'Shawn once a month at the maternal great-grandparents' house for a few hours and called him once a week.

On February 7, 2012, father filed a section 388 petition seeking unmonitored visitation, a bonding study, and to have the section 366.26 hearing taken off calendar. The petition stated that father had never been offered reunification services, but had maintained contact with De'Shawn. Attached to the petition were progress reports showing that father had attended 22 sessions of a domestic violence counseling program and 11 sessions of individual counseling, starting in the summer of 2011, and a certificate of completion of a parenting counseling program. The court set the section 388 petition for hearing.

The Department recommended denial of the petition and termination of parental rights. The Department noted that father had an extensive criminal history, including arrests for the possession and sale of cocaine and marijuana, infliction of injury on a spouse/cohabitant, and kidnapping. The Department was concerned that father was not participating in a drug rehabilitation program, and was unable to verify father's enrollment in individual counseling because the telephone number for the facility was disconnected. The Department also noted that referrals against father's wife involving physical abuse of her son and nephew had been substantiated, and that neither father nor his wife had submitted to live scan tests. The Department reported that while De'Shawn loved father and wished to continue their visits, he wanted to be adopted by the H. family, with whom he had been living nearly two years, and that he referred to Mr. H. as "Daddy."

Per the court's order, the Department investigated father's visitation and whether it should be liberalized. In April 2012, the Department reported that father visited De'Shawn at the maternal great-grandparents' house every other weekend for two to three hours, while the great-grandparents supervised. Mr. H. reported that father did not visit De'Shawn every day, that father was not allowed inside the H. house because father had threatened the family in the past, and that on one visit in February 2012 father arrived at the H. house smelling of marijuana. The Department recommended that father's visits remain monitored and that the court order father to participate in individual therapy with a licensed therapist, have conjoint therapy with De'Shawn, and undergo random drug and alcohol testing before the Department would consider liberalizing visits. The Department subsequently reported that on May 14, 2012 the social worker spoke to De'Shawn and Mr. H., who stated that on May 10 father came by the H. house to visit De'Shawn, who refused to see father. Later that day, father called De'Shawn and told him not to live with "those people" and made him feel bad about not living with father. De'Shawn reported that he no longer felt comfortable talking to or seeing father, that he felt safe with the H. family, and that he wanted to be adopted. Mr. H.'s sister confirmed that a telephone call from father had upset De'Shawn.

The court conducted the hearing on father's section 388 petition and the contested section 366.26 hearing on May 16, 17 and 18, 2012. De'Shawn testified that he had never lived with father, and that father visited him at his great-grandparents' house "for like an hour" less than once a month. He testified that father had made him angry in their last telephone call, and that he would let the social worker or Mr. H. know when he was ready to resume visitation. He wanted to be adopted by Mr. H., who told him he could visit father if the great-grandparents were present, and that it would be his decision whether to visit father.

Mr. H.'s sister testified that father saw De'Shawn when he visited her children approximately twice a month. Father's visits took place outside the house with Mr. H. present. Father was not welcome inside the house because he had "harassed" and "threatened" her family.

Mr. H. testified that father "hardly" saw De'Shawn during the two years De'Shawn was in his care. Father acted inappropriately during the visits by discussing the trial. Mr. H. did not discuss the case with De'Shawn or whether he would permit De'Shawn to see father after the case was over. Mr. H. stated that continued visits would depend on how safe he felt De'Shawn would be given father's history and because father was a "member of gangs and selling drugs and things like that." Mr. H. testified that he noticed a change in De'Shawn's demeanor when father visited; De'Shawn's shoulders would sag and he held his head down. There were no goodbye hugs.

Father testified he was present at De'Shawn's birth and lived with him until he was three years old. Father then moved back and forth between mother's household and the household of Mr. H.'s sister. Father testified he was incarcerated between December 2007 and May 2009 for "possession for sales" and in 2010 for two months, and that during his earlier incarceration he called the social worker every day. According to father, the social worker never told him what he needed to do to regain custody of De'Shawn. Father acknowledged that he never asked her to arrange visitation at a location other than Mr. H.'s house. He testified that he enrolled in a parenting class and individual counseling in April 2011 and had completed both programs, and that the social

worker did not ask him to participate in any other programs. Father pled guilty to domestic violence against his wife and was ordered to enroll in domestic violence classes. Father testified that he visited De'Shawn at Mr. H.'s house "every so often, like, say, I go Monday, Wednesday, Thursday, then maybe Sunday." He visited De'Shawn up to seven hours at the great-grandparents' house because he could enter their home and eat, watch television and engage in family activities. Father acknowledged that De'Shawn was upset with him and had cried during their last contact. Father testified that he had explained adoption and told De'Shawn that he might not be able to see him or mother if De'Shawn was adopted. Father acknowledged that he had been ordered by the court not to discuss the case with De'Shawn.

The social worker testified that she did not recall having contact with father during his incarceration. She also testified that she told father what programs she wanted him to complete in order for his visits to be unmonitored. The social worker explained adoption to De'Shawn and that it would be up to Mr. H. to decide if continuing visits with father would be safe after adoption.

The court asked counsel to combine their arguments on sections 388 and 366.26. De'Shawn's attorney joined with the Department's request that the court deny father's section 388 petition and terminate parental rights. The court denied father's section 388 petition, finding no change of circumstances and that granting the petition would not be in De'Shawn's best interest. The court then terminated father's parental rights, finding that father had only monitored contact with De'Shawn, that his contact did not rise "to the level of a parent," and that father's waiting nearly a year to file his section 388 petition after first indicating his intention to file demonstrated "the lack of father's desire to reunite up until the time he was ordered by some court to do a [domestic violence] class." The minutes order states: "The court finds that it will be detrimental for minor(s) to be returned to the parent(s) and parental rights are terminated." This appeal followed.

## DISCUSSION

### I. Detriment Findings.

Father contends the juvenile court violated his due process rights and committed reversible error by terminating his parental rights without making a finding of parental unfitness or detriment to De'Shawn by clear and convincing evidence.[3]

Parents have a fundamental interest in the care, companionship and custody of their children. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758, 747–748.) "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." (*Id*. at pp. 747–748.) "After the State has established parental unfitness at that initial proceeding, the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge." (*Id*. at p. 760.)

California's dependency system comports with these requirements because, "by the time parental rights are terminated at a section 366.26 hearing, the juvenile court *must* have made prior findings that the parent was unfit." (*In re Gladys L., supra*, 141 Cal.App.4th at p. 848.) "The linchpin to the constitutionality of the section 366.26 hearing is that prior determinations ensure 'the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must align itself.' [Citation.]" (*Ibid.; Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.)

While California's dependency scheme no longer uses the term "parental unfitness," and instead requires a finding that awarding custody of a dependent child to a parent would be detrimental to the child, due process requires that the finding of detriment be made by clear and convincing evidence before parental rights may be terminated. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 66; *In re Frank R., supra*, 192

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[3] We reject the Department's contention that father forfeited this issue by failing to raise the need for a detriment finding during the section 366.26 hearing. (*In re Frank R.* (2011) 192 Cal.App.4th 532, 539 ["we are reluctant to enforce the waiver rule when it conflicts with due process"]; *In re Gladys L.* (2006) 141 Cal.App.4th 845, 849.)

Cal.App.4th at p. 538; *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1211; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1210–1211; *In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848.)

Here, at least three of the juvenile court's minute orders document findings of detriment. Both the December 3, 2009 minute order following the jurisdiction/ disposition hearing on the section 387 petition and the September 27, 2010 minute order following the reviewing hearing state: "The Court finds that return of the child(ren) to either of the parents at this time would likely result in either severe emotional or severe physical harm to the children." The minute order of the May 18, 2012 hearing that is the subject of this appeal states: "The court finds that it will be detrimental for minor(s) to be returned to the parents(s) and parental rights are terminated." Although the minute orders do not reflect that the juvenile court made these findings by clear and convincing evidence and these findings are not noted in the reporter's transcripts, we agree with the Department that we may infer the proper findings from the record before us.

The Department relies on *In re A.S.* (2009) 180 Cal.App.4th 351, in which the father argued that his constitutional rights were violated because the court did not make an adequate finding of detriment before terminating his parental rights. (*Id*. at p. 363.) At a section 387 disposition hearing, the court had found, by clear and convincing evidence, that return of the children to the their father would create a substantial risk of detriment to them and terminated reunification services. The *A.S.* court found that this "previous explicit finding comports with statutory and constitutional requirements." (*In re A.S.*, *supra*, at p. 363.) The *A.S.* court stated: "To the extent the parties agree this finding was problematic, the record clearly indicates Joseph initially refused to participate in dependency proceedings, his whereabouts were unknown for a substantial period and he did not visit the children for more than six months. Although the better practice would have been for the court to have explicitly made these findings at one or more of the previous hearings, there is no doubt these circumstances made the children's placement with, or return to, Joseph's custody detrimental to the children. [¶] This case is similar to [*In re P.A.*, *supra*, 155 Cal.App.4th at pp. 1210–1212], in which the father's persistent avoidance of responsibility, his failure to seek any relief in the juvenile court

and lack of involvement in the child's life for an extended period, constituted substantial evidence of detriment. [Citations.] The record clearly supports the same conclusion here. Joseph's rights to due process were not violated." (*Ibid.*; see also *In re G.S.R., supra,* 159 Cal.App.4th at p. 1214 [agreeing with *P.A.* that "findings of detriment, if supported by substantial clear and convincing evidence, may provide an adequate foundation for an order terminating parental rights even in the absence of a jurisdictional finding related specifically to a parent"].) Father concedes that the current state of the law is that detriment findings can be implied.

The evidence here supports an implied finding that returning De'Shawn to father's custody at any time during the pendency of the case would have been detrimental, despite the fact that father was a nonoffending, noncustodial parent. Father was incarcerated when De'Shawn was initially detained and remained incarcerated at the time of the disposition hearing. The record is devoid of any efforts by father to arrange for De'Shawn's care after his removal from mother's custody or at any time while father was incarcerated. Importantly, father never requested custody of De'Shawn. Even his section 388 petition, which father did not file for nearly a year after indicating his intention to do so, did not seek custody. After father's first release from incarceration during this case, he made no effort to contact the Department and his whereabouts were unknown. Father was again incarcerated by April 1, 2010, the original date for the section 366.26 hearing. Although father contacted the social worker on September 1, 2010 after being released from custody on July 29, 2010, he did not appear at the September 27, 2010 review hearing, despite the social worker specifically instructing him to attend. Thereafter, the Department's numerous efforts to contact father at the address and telephone number he had provided were unsuccessful. It is clear that throughout this case, father did not take seriously his parental role or make any desire to reunify with De'Shawn a priority.

We are satisfied that the circumstances presented here support the implied finding by clear and convincing evidence that returning De'Shawn to father would be detrimental to De'Shawn.

## II. Combined Hearings.

Father contends the juvenile court abused its discretion when it combined the section 388 and section 366.26 hearings.

While father acknowledges that a juvenile court retains broad discretion over the conduct of its proceedings (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1385), he argues "the issue here is the right to procedural due process to permit a full and fair hearing on the merits," and "the hearing that took place May 16-18, 2012, only confused the separate and distinct issues required to be addressed by a section 388 petition and a section 366.26 hearing."

Assuming this issue is not waived by the failure of father's attorney to object to the manner of the proceedings, the record supports the finding that father received fair and full hearings. Father called several witnesses to testify, including De'Shawn, Mr. H., Mr. H.'s sister, the social worker and himself. His attorney examined and cross-examined the witnesses at length. Father points to no place in the record indicating that he wanted to have the witnesses testify separately on the two issues, that he wanted to call additional witnesses, that he wanted to introduce additional evidence, that he wanted to make additional arguments or that he would have done anything differently had the hearings been held separately. That the juvenile court understood the need to rule first on the merits of father's section 388 petition is demonstrated by the fact that the court rendered its ruling on father's petition prior to making its findings and orders with respect to the section 366.26 hearing.

We are satisfied that the juvenile court did not abuse its discretion or deny father due process by combining the section 388 and section 366.26 hearings.

## III. Section 388 Petition.

Father contends the juvenile court abused its discretion by denying his section 388 petition, in which he sought unmonitored visitation, a bonding study, and to have the section 366.26 hearing taken off calendar.

Under section 388, a parent may petition the court to change, modify or set aside a previous court order. The parent has the burden of showing, by a preponderance of the evidence, there is a change of circumstances or new evidence and the proposed modification is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) "The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O., supra,* at p. 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.'" (*In re Stephanie M., supra,* at pp. 318–319.) "The denial of a section 388 motion rarely merits reversal as an abuse of discretion." (*In re Amber M., supra,* at pp. 685–686; *In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

We agree with the juvenile court that father did not demonstrate a change of circumstances, only changes that were "still ongoing." Father points out that at the time he filed his section 388 petition he was a nonoffending parent yet he was still participating in domestic violence and individual counseling programs and had completed a parenting class. He takes credit for taking these actions "without the help of the juvenile court or respondent," but ignores that he was ordered by another court to take a domestic violence course after pleading guilty to a charge of domestic violence against his wife. He also ignores that after asking the juvenile court in March 2011 to continue the case and the section 366.26 hearing so that he could file a section 388 petition, he delayed the case by waiting nearly a year to file his petition. Father also exaggerates the frequency and duration of his visits with De'Shawn, as evidenced by the sharply contrasting testimony of the witnesses he called to testify.

Nor did father demonstrate that granting his petition would be in De'Shawn's best interest. Father admitted that his last contact with De'Shawn left his son upset and crying. De'Shawn testified that he was not willing to have contact with father at that

point. Father acknowledged that the court ordered him not to discuss the case with De'Shawn, but he did so anyway. We agree with the Department that under these circumstances, liberalizing father's contact would not have promoted De'Shawn's best interest.

Father also failed to demonstrate that it would be in De'Shawn's best interest to grant his request for a bonding study under Evidence Code section 730[4] and further delay the section 366.26 hearing. De'Shawn's testimony was clear that he wanted to be adopted and live with the H. family. Father failed to identify what information a bonding study would provide that was not already before the court. De'Shawn was 11 years old when he testified. This was not a situation in which the minor was nonverbal or developmentally delayed. A bonding study at the permanency planning stage would delay the dependency proceedings "in contravention of the Legislature's mandate for the expeditious handling of juvenile matters." (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1168.) At such a late stage in the proceedings, father's right to develop further evidence regarding his bond with De'Shawn "was approaching the vanishing point." (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) "[T]he denial of a belated request for such a [bonding] study is fully consistent with the scheme of the dependency statutes, and with due process." (*Id*. at p. 1197.)

We are satisfied that the juvenile court did not abuse its discretion in denying father's section 388 petition.

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[4] Evidence Code section 730 states in relevant part that "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required."

## IV. Section 366.26, Subdivision (c)(1)(B)(i) Exception.

Father contends the Department's failure to liberalize his visits with De'Shawn and permit unmonitored visits prevented him from establishing the beneficial-relationship exception to the termination of parental rights.

Under section 366.26, subdivision (c)(1), if the court finds by clear and convincing evidence that it is likely the dependent child will be adopted, "the court shall terminate parental rights and order the child placed for adoption." An exception exists when "the court finds a compelling reason for determining that termination would be detrimental to the child" because "[t]he 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).)

It is well established that a parent bears the burden of proving that termination would be detrimental to the child under section 366.26, subdivision (c)(1)(B)(i). (Cal. Rules of Court, rule 5.725(e)(3); *In re Jasmine D*. (2000) 78 Cal.App.4th 1339, 1350; *In re Derek W*. (1999) 73 Cal.App.4th 823, 826–827; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343–1344.) This is not an easy burden to meet. "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., supra,* at p. 1350.)

Reviewing courts have recently begun applying a mixed standard of review to an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. In *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315, the appellate court applied the substantial evidence test to the factual determination of the *existence* of a beneficial relationship, and applied the abuse of discretion standard to the "'quintessentially'" discretionary decision of "the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption." (See also *In re K.P.* (2012) 203 Cal.App.4th 614,

622 ["We find the *Bailey J.* approach persuasive and apply its composite standard of review here"].)

As the Department notes, father does not argue that his bond with De'Shawn was so significant that it outweighed the Legislature's preference for adoption or De'Shawn's own desire to be adopted. Rather, father argues that the Department's failure to liberalize his visitation "for no apparent reason" and "without explanation" was the reason he was unable to establish the beneficial-relationship exception to adoption. Putting aside the fact that the Department explained what steps it wanted father to take before it would consider liberalizing his visits to unmonitored, father's strategy of blaming the Department falls far short of meeting his burden of showing an exception to adoption. By blaming the Department, father fails to take responsibility for his own detrimental effects on De'Shawn. For example, father spent nearly two years of De'Shawn's life incarcerated and unable to visit De'Shawn; he failed to maintain consistent contact with the Department; he delayed the case by waiting a year to file a section 388 petition seeking unmonitored visits; and he upset De'Shawn by acting inappropriately during visits and thus splintered the father-son bond.

Furthermore, contrary to father's position, the juvenile court did not terminate parental rights based only on father's failure to obtain unmonitored visits. Rather, the juvenile court correctly found that father's visits and contact with De'Shawn did not rise "to the level of a parent." "A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) "[F]or the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt." (*Id.* at p. 468; see also *In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350 ["We do agree . . . that a *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one"]; *In re K.P., supra,* 203 Cal.App.4th 614, 621 [citing cases finding parent must occupy a parental role].)

We are satisfied that this is not "the extraordinary case" where preservation of a parent's rights should prevail over the Legislature's preference for adoptive placement.

**DISPOSITION**

The orders denying father's section 388 petition and terminating his parental rights to De'Shawn are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST