

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

In re A.K., A Person Coming Under  
the Juvenile Court Law.

B284800  
(Los Angeles County  
Super. Ct. No. CK00502)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles  
County, Emma Castro, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Kim Nemoy, Principal Deputy  
County Counsel, for Plaintiff and Respondent.

R.F. (Mother) appeals from the order terminating her parental rights to her son A.K. (born in October 2010) arguing that the dependency court erred in finding the parent-child relationship exception to termination of parental rights (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i))<sup>1</sup> did not apply to the relationship between her and her son. We affirm.

## **BACKGROUND**

### ***A. Family Background and Pre-Dependency Proceedings***

In addition to A.K., Mother has four older children, now all adults, who received child-protective services in Texas while Mother was serving an 18-year federal prison for a 1989 drug trafficking conviction.<sup>2</sup> Mother met and married S.K. (the father)<sup>3</sup> in 2006, and she gave birth to A.K. in 2010 while serving probation in Texas. In 2011, the family moved from Texas to Arizona which violated Mother's probation. In 2012, Mother was arrested for the probation violation and sentenced to serve time in a halfway house in Arizona, while A.K. resided with the father. In late 2013, after the father lost his job and housing, Mother left the halfway house, in violation of her probation, and Mother, the father, and A.K. moved to California. Until early 2014, the family evaded authorities in California; they stayed at hotels, worked odd jobs and were suspected of committing 10-11 armed robberies.

---

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

<sup>2</sup> Three of the older children were placed with a maternal aunt, L.V., in California.

<sup>3</sup> The father is not a party to this appeal.

### **B. *Dependency Proceedings***

In April 2014, A.K. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) after police arrested Mother on a fugitive arrest warrant for the probation violation; Mother also had a loaded .357 magnum gun in her purse when police arrested her. The father was arrested for the robberies.

On April 16, 2014, DCFS filed a dependency petition on behalf of then three-year-old A.K under section 300, subdivision (b), alleging that Mother's fugitive status and her possession of a loaded firearm within access of A.K. and the father's awareness of the situation and failure to protect the child endangered A.K., and created a risk of harm. The court ordered A.K. detained in foster care and, on July 30, 2014, the juvenile court sustained the petition, declared A.K. a dependent under section 300, subdivision (b), removed him from parental custody and ordered reunification services and monitored visitation for Mother. Mother's case plan required that she participate in parenting classes, drug testing and individual counseling to address case issues, including child endangerment. At the time, Mother was serving a prison sentence for escaping from custody and had minimal telephone contact with A.K.

In 2015, A.K. was placed with his maternal aunt L.V. in El Monte. At the 12-month review hearing in late July 2015, the court ordered DCFS to provide further reunification services to Mother. Mother completed a 16-hour domestic violence course, a six-week emotional awareness course and a six-week parenting class while in custody. Mother was transferred in custody to Orange County to face charges in connection with the robberies committed with the father, and in mid-August 2015, she was released and she moved into a halfway house.

Although Mother contacted DCFS and requested visitation with A.K., DCFS reported that as of the 18-month review hearing on October 9, 2015, that Mother had only two in-person visits with A.K. since her release from custody. The court ordered additional reunification services, permitted Mother to have monitored two-hour visits twice per week, and gave DCFS discretion to liberalize the duration and frequency of visits. Mother moved frequently during this time, living in three different halfway houses and eventually moved in with her adult daughter in Riverside. Because of her frequent relocating, Mother did not establish regular visitation with the child.

As of the 24-month review hearing on April 8, 2016, A.K. was thriving in his aunt's home, referring to her as "tia-mommy." A.K. told the social worker that he enjoyed speaking with his parents over the telephone.<sup>4</sup> L.V. wanted to adopt A.K. In February 2016, Mother was arrested and incarcerated for a week for violating probation after she failed to contact her probation officer. As of late June 2016, Mother had infrequent contact with the child; Mother had two visits at family parties; at one family gathering in May, according to the maternal aunt, Mother appeared disheveled and dirty—she sat on the couch and paid little attention to A.K. Two weeks later, Mother attended another family party with her new boyfriend,<sup>5</sup> who appeared to be under the influence of a substance. Mother began individual therapy; her therapist recommended she receive a psychiatric evaluation, but she failed to do so. She completed the drug

---

<sup>4</sup> The father was serving a 30-year prison term.

<sup>5</sup> Mother's boyfriend had an extensive criminal history, including felony convictions for theft crimes, assault, and weapons and drug possession.

treatment program but was inconsistent with attending weekly aftercare meetings.

On August 1, 2016, the court terminated family reunification services, concluded that Mother had failed to comply with her case plan and scheduled a section 366.26 hearing to select and implement a permanent, out-of-home plan for the child. The court permitted Mother to have weekly, monitored visits.

On November 28, 2016, the court convened the section 366.26 hearing. DCFS reported that in the 12 months between Mother's release from custody and the termination of reunification services Mother's visits and phone contact with the child remained minimal. In August 2016, however, after reunification services were terminated, Mother began monitored weekly visits with A.K. at the DCFS office. She was loving and affectionate during visits, but according to L.V., the child started bed wetting as visits became more frequent.

The court continued the matter for a contested hearing and to complete the adoptive home study of L.V. In the interim, Mother filed two section 388 petitions, requesting custody of the child or renewed services and liberalized visits. The court summarily denied her first section 388 petition, and the second petition was scheduled to be heard at the outset of the section 366.26 proceeding.

As of the continued section 366.26 hearing on March 27, 2017, the child, now six years old, had lived with his maternal aunt, L.V. for over two years. A.K. reported to the social worker that he wanted to see Mother, but also wanted to remain in his current placement. A.K.'s therapist stated the child was very attached to the aunt, called her "mommy," and referred to mother by her first name. DCFS confirmed that Mother participated in treatment and completed various programs including parenting. According to the social worker, on more than one occasion the social worker had to

intervene and correct and redirect A.K.'s behavior because Mother failed to do so.

A.K. testified during the proceedings; he told the court that during the monitored visits in the DCFS office, he played games and ate the snacks that Mother brought; he stated that he wanted to live with both Mother and his aunt. Mother also testified; she related her compliance with the case-plan and that she no longer was with her boyfriend. Mother, conceded, however, that she knew nothing about A.K.'s current schooling or development. Mother reported that she and other family members visited A.K. once a week at the DCFS office.<sup>6</sup>

The court, with A.K.'s attorney's concurrence, denied the section 388 petition, concluding that Mother had failed to show changed circumstances. The court then turned to the section 366.26 proceedings. Mother argued that she met the statutory beneficial parent-child relationship exception to termination. The court, disagreed, and observed that Mother's regular visits with the child began only after reunification services ended, even though Mother had been released from custody for over a year before those services were terminated. Further, Mother's visits always remained monitored in the social worker's office and never progressed. The court noted it had to weigh the benefits of maintaining the parental relationship against the benefits of permanency through adoption. The court acknowledged that the child enjoyed the visits with Mother but concluded that the exception to termination did not apply.

Mother timely filed a notice of appeal.<sup>7</sup>

---

<sup>6</sup> Mother always brought others to her visits; she did not have a single visit with A.K. alone.

<sup>7</sup> Although in her notice of appeal Mother referred to the order denying her second section 388 petition, she did not

## DISCUSSION

After the court terminates reunification services, the focus of dependency proceedings shifts to the needs of the child for permanency and stability, and specifically to determining the best interests of the child. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) If the child is adoptable, there is a strong preference for adoption over the alternatives of guardianship or long-term foster care. (*Id.* at p. 528.) Indeed “[b]ecause a parent’s claim to such an exception is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469; see § 366.26, subd. (c)(1)(B) [the court “shall terminate parental rights” if the minor is likely to be adopted unless termination would be detrimental to the child under one or more statutory exceptions].)

“[A] parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B).” (*In re J.C., supra*, 226 Cal.App.4th at p. 528.) “Section 366.26, subdivision (c)(1)(B)(i), provides for one such exception when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’” (*In re J.C., supra*, at p. 528.) The second prong of this exception requires the parent to demonstrate that his or her relationship with the child “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.”

---

challenge the denial of the section 388 petition in her appellate briefs, and thus she has abandoned the issue. (*In re Marriage of Laursen & Fogarty* (1988) 197 Cal.App.3d 1082, 1084, fn. 1 [where the appealing party fails to provide either argument or authority upon a point urged as grounds for reversal of the judgment, the court deems the point abandoned].)

(*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ‘“Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . .”’ [Citation.] For the exception to apply, ‘a parental relationship is necessary.’” (*In re J.C., supra*, 226 Cal.App.4th at p. 529.) The preference for adoption is overcome only 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.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

This court reviews the dependency court’s section 366.26 findings for sufficiency of the evidence.<sup>8</sup> (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

Mother has not met her burden to show the parent-child relationship exception. Regarding her contact with A.K., Mother did not establish consistent visitation with the child until after her reunification services were terminated, more than a year after she was released from custody. And even then, Mother’s visits never progressed; although she was permitted two in-person visits per week, she visited once a week, and always brought other family members to the monitored visits at the DCFS office.

---

<sup>8</sup> Appellate courts have applied different standards of review, reviewing whether a beneficial parental relationship exists for substantial evidence and whether there is a compelling reason to apply the exception for abuse of discretion (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622); reviewing for abuse of discretion while reviewing purely factual findings for substantial evidence (*In re C.B.* (2010) 190 Cal.App.4th 102, 122–123); and reviewing for abuse of discretion (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351). On the record before us, we would affirm under any of these standards.



Even assuming, however, Mother satisfied the visitation prong of the exception, she failed to demonstrate the requisite benefit to A.K. from preserving her parental rights and foregoing an adoptive home. A.K. lived out of Mother's care for nearly half of his life by the time of the section 366.26 hearing. There is little evidence in the record demonstrating Mother occupied a parental role in A.K.'s life at the time. Mother was not involved in or knowledgeable about A.K.'s mental, emotional, physical or educational development. There was no evidence that Mother was familiar with A.K.'s habits or daily routine. And although their interaction at the visits was friendly and loving, the social worker, rather than Mother monitored and redirected A.K.'s behavior during the visits. A.K. was already bonded to his prospective adoptive parent—his maternal aunt—and he had thrived in her home. A.K.'s maternal aunt fulfilled the parental role in his life. Mother occupied the role of a frequent and loving visitor or playmate, not a parent instrumental in meeting his physical or emotional needs. The attachment between Mother and A.K. was not strong enough to warrant having A.K. forego the security of an adoptive family. Mother failed to establish exceptional circumstances that would warrant the court choosing a permanent plan other than adoption. Accordingly, the dependency court did not err in finding the parent-child exception to termination of parental rights did not apply.

**DISPOSITION**

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

JOHNSON, J.

BENDIX, J.