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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CESAR S.,

Defendant and Appellant.

B278255

(Los Angeles County  
Super. Ct. No. CK59225)

APPEAL from an order of the Superior Court of Los Angeles County. Stanley Genser, Juvenile Court Referee. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Senior Associate County Counsel, for Plaintiff and Respondent.

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Cesar S. (father) appeals from the juvenile court's September 15, 2016 order terminating parental rights to his minor son, E.S., and selecting adoption as the permanent plan. The court concluded father had not established the applicability of the sibling exception or the beneficial parental relationship exception to adoption. Father contends the juvenile court erred in finding that neither exception applied.

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On September 11, 2013, the Los Angeles County Department of Children and Family Services (Department) detained three-month-old E.S. At the time of detention, father and Ana S. (mother) had an open dependency case regarding their six other children,<sup>1</sup> and were engaged in a voluntary family maintenance contract regarding E.S. The children were placed in separate foster homes. Both parents admitted to long-term substance abuse problems, tested positive for cocaine, and mother admitted breastfeeding E.S. while under the influence of cocaine.

The Department filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b)<sup>2</sup> alleging the parents' substance abuse problems rendered them incapable of caring for three-month-old E.S. The social worker reported that both mother and father indicated a willingness to complete

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<sup>1</sup> Mother and the other children are not parties to this appeal. We will discuss mother and the other siblings only to the extent necessary for context.

<sup>2</sup> All further undesignated section references are to the Welfare and Institutions Code.

additional rehabilitation programs and regretted their “relapse into abusing drugs.”

At the jurisdiction and disposition hearing in November 2013, mother and father executed waiver forms pleading no contest, and the court sustained the petition as to the substance abuse allegations. Mother and father were granted services and weekly monitored visits with E.S.

During 2014, mother and father continued to have difficulties completing their respective case plans. Father had inconsistent results with drug testing, including negative tests, missed tests, diluted tests, and several positive results for cocaine. Father was also inconsistent with his drug program attendance and individual counseling. The social worker reported that both mother and father “continue to lack the commitment and effort to use the knowledge previously learned through their multiple participations in different drug programs that they have attended to maintain their sobriety.” They continued to exhibit “low coping skills.” A domestic violence incident was also reported between mother and father, with both admitting to the social worker they had trouble living together and made the decision to live apart.

In July 2014, the juvenile court terminated reunification services for both mother and father and set a section 366.26 for November 2014. The Department reported that E.S.’s caregivers were interested in adoption and had expressed a willingness to have E.S. maintain contact with his biological family in the event adoption was approved as the permanent plan. Due to problems with notice, the court continued the section 366.26 hearing.

After mother and father filed section 388 petitions, the contested hearing date was once again continued to May 2015. In

May, it was requested that the hearing be continued again to allow additional time in which to provide proof of clean drug testing and compliance with drug abuse programs. The hearing was reset for June.

E.S.'s older male siblings, J.S., A.S. and C.S., filed a section 388 petition requesting permission to participate in the continued section 366.26 hearing in order to assert the sibling exception to adoption. The court granted their petition and continued the hearing to August 2015.

In August 2015, the court granted, in part, the section 388 petitions filed by mother and father. The court took the section 366.26 hearing off-calendar and reinstated reunification services to both parents. The court ordered on-demand drug testing for both parents, and ordered they could have unmonitored visits if they tested clean.

The social worker subsequently reported a conversation with J.S., who was now over the age of 18 and living in his own apartment. J.S. told the social worker about an incident that occurred in December 2015. J.S. had allowed mother and father to use his apartment as the location for having an overnight visit with his three sisters. J.S. discovered his parents in his bathroom with the window open. He suspected they were using drugs and asked them to leave. J.S. took care of his sisters for the remainder of the evening and then took them back to their foster parents the next day. Mother and father failed to contact anyone the next day (Sunday) for the regularly scheduled family visitation time with all of the children. Several days later, on December 29, 2015, both mother and father tested positive for cocaine.

In February 2016, the social worker reported that mother and father continued “to have difficulty maintaining sobriety” despite participation in numerous services and had not completed all of their programs. The social worker recommended that reunification services once again be terminated and that the court set a section 366.26 hearing.

On March 29, 2016, the court terminated reunification services for mother and father and re-set the section 366.26 hearing for July 2016. The hearing was then continued after a section 388 petition filed by C.S. was granted, allowing C.S. to participate in the hearing.

In preparation for the section 366.26 hearing, the Department reported that the parents’ monitored twice-weekly visits with E.S. generally went well. However, the Department also reported that E.S. was bonded to his caregivers and prospective adoptive parents, Mr. and Mrs. S., as well as the couple’s three adopted children. They had a previously approved home study that was in the process of being updated. Mrs. S. reported they were supportive of E.S. being able to “maintain monthly contact with his biological family” if adoption is finalized. She also told the social worker that J.S. had maintained frequent contact with E.S. and had been “making a great effort to be a part of his life.” The Department recommended that parental rights be terminated and adoption set as the permanent plan.

In the September 2016 status review report, the Department indicated that E.S. continued to do well in the home of his prospective adoptive parents. Mr. and Mrs. S. provided a “safe and nurturing” home. E.S. appeared happy and enjoyed playing with the couples’ three adopted children. The family

lived in a comfortable suburban home with a large yard. They enjoyed numerous activities together, including going on camping trips and to the beach and Lake Havasu. The Department maintained its recommendation that parental rights be terminated and adoption set as the permanent plan for E.S.

The Department further reported that the updated adoptive home study for E.S.'s caregivers had been approved and they had signed a post-adoption contract allowing continued contact by E.S. with his birthparents and his eldest adult sibling J.S. The caregivers continued to express their support for visitation with E.S.'s other siblings. "The adoptive family remains open and willing for [E.S.] to continue to visit and know his biological family."

The contested section 366.26 hearing was held September 15, 2016. Mother testified the twice-weekly family visits went well. The visits on Sunday lasted for several hours and started with the family attending church. Afterward they would eat a meal together and engaged in other activities they could enjoy together as a family, like going to the park or playing soccer. E.S. is "very happy" when he sees them. He is affectionate with the family and always wants hugs and kisses from everyone before he leaves at the end of a visit.

Father also testified their weekly visits went very well. E.S. runs to him after he gets out of the car and is happy to see the whole family. E.S. calls him "daddy." Father said E.S. has a "special affection" for his siblings, particularly two of his brothers: A.S., who had turned 19, and C.S. The boys love to play soccer together. E.S. always wants A.S. to carry him around on his shoulders. At the end of their visits, E.S. often cries and insists on everyone giving him a hug and kiss before he leaves.

Father sometimes gives E.S. a chocolate to stop him from crying and tells him they will see each other soon. Father said he knows it is his “fault” they are not together, but he wants E.S. to know he has a family. Father said he does not believe the post-adoption contract will allow him and the family to spend sufficient time with E.S. because the caregivers said it would probably involve only three visits a year, and not weekly visits.

C.S. testified he has a good relationship with E.S. They love to play soccer and wrestle together. They have a lot of fun. He admitted they have never lived together, but they have regularly visited every week. C.S. said he does not want his brother to be adopted.

Counsel for E.S. joined in the Department’s recommendation to terminate parental rights and proceed with adoption. After hearing argument from counsel, the juvenile court found that neither the sibling exception nor the beneficial parental relationship exception to adoption had been established. The court terminated parental rights to E.S., freeing him for adoption by his caregivers.

This appeal followed.

## **DISCUSSION**

Where, as here, reunification services have been terminated and the dependency proceedings have reached the section 366.26 hearing, adoption is the preferred permanent plan decreed by the Legislature. (§ 366.26, subd. (b).) The parent’s “interest in the care, custody and companionship of the child [is] no longer paramount.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Instead, the court’s focus, given the stage of the proceedings, is on the dependent child’s need for stability and permanency. (*Ibid.*)

The statutory scheme mandates that parental rights be terminated, unless the parent can establish one of the enumerated exceptions. (§ 366.26, subd. (c)(1).) “[T]he party claiming an exception to adoption has the burden of proof of establishing by a preponderance of evidence that the exception applies.” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) There must be solid, credible evidence in support of a statutory exception to adoption. “The Legislature emphasized the exceptional nature of all the circumstances identified in section 366.26, subdivision (c)(1) by revising the statute in 1998 to require the court to find not only that one of the listed circumstances exists, but also that it provide ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citation.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.)

Father raised two of the enumerated exceptions: (1) the sibling exception (§ 366.26, subd. (c)(1)(B)(v)); and (2) the beneficial parental relationship exception (*id.*, subd. (c)(1)(B)(i)).

“[T]he juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual [one] and a discretionary one.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) Accordingly, our review of such a decision involves two standards of review. (*Ibid.*; accord, *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) The court’s determination as to whether a sibling relationship or beneficial parental relationship exists, within the meaning of the statute, is reviewed for substantial evidence. (*In re K.P.*, at p. 622.) The court’s determination as to whether the statutory relationship constitutes a compelling reason to find that termination of



parental rights would be detrimental to the child is reviewed under the deferential abuse of discretion standard. (*Ibid.*)

With these principles in mind, we address father's contention the juvenile court erred in finding he had failed to establish either of these two statutory exceptions to adoption.

### **1. The Sibling Exception**

Section 366.26, subdivision (c)(1)(B)(v) provides that a juvenile court may decline to terminate parental rights, notwithstanding the statutory preference for adoption, where termination would result in "substantial interference with a child's sibling relationship."

The statute enumerates relevant criteria for the court to consider in determining whether the sibling exception exists: "the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

"The purpose of this exception is to preserve long-standing sibling relationships that serve as 'anchors for dependent children whose lives are in turmoil.' [Citation.] The sibling relationship exception contains 'strong language creating a heavy burden for the party opposing adoption.' [Citation.]" (*In re Isaiah S.* (2016) 5 Cal.App.5th 428, 437.) "The court considers the best interests of the adoptive child, not the best interests of other siblings." (*Id.* at p. 438.)

The evidence established at the hearing was that E.S. was affectionate with C.S. and enjoyed their scheduled visits at the park where they played soccer. However, it is undisputed that E.S. was detained at the age of three months and has not shared a home since that time with C.S. or any of his siblings. The record showed that E.S. was happy and thriving in the home of his prospective adoptive parents and their three adopted children. E.S.'s prospective adoptive parents were fully supportive of E.S. maintaining contact with his biological family and signed a post-adoption contract to that effect. E.S.'s adult sibling J.S. was in regular contact with E.S. and his prospective adoptive parents had supported that relationship. The record appears to indicate that J.S. was helpful in facilitating contact amongst his siblings, including allowing visitation at his apartment.

While the relationship between E.S. and C.S. appears to be positive, father has not demonstrated that the juvenile court abused its discretion in concluding that it did not outweigh the long-term benefit to E.S. in having a stable, loving permanent home through adoption.

## **2. The Beneficial Parental Relationship Exception**

Section 366.26, subdivision (c)(1)(B)(i) provides that a court may decline to terminate parental rights if termination would be detrimental to the child because the "parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

"A parent must show more than frequent and loving contact or pleasant visits." (*In re Mary G.* (2007) 151 Cal.App.4th 184, 207; accord, *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "To overcome the preference for adoption and avoid termination

of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the 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, italics added; accord, *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

Father's reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 is misplaced. There, the minor was detained and placed with the maternal grandparents due to father's substance abuse problems. The mother had been "in and out" of the child's life and not a regular caregiver. (*Id.* at p. 293.) At the section 366.26 hearing, it was reported that the father had completed "'every aspect'" of his case plan. (*In re S.B.*, at p. 298.) The father had been the minor child's primary caregiver for three years prior to the initiation of dependency proceedings. The child displayed a significant attachment to him, and was very unhappy at the end of visits. She would try to leave with him and regularly said, without prompting, that she wanted to live with him and "Mommy and Nana." (*Ibid.*) It was undisputed the father had consistently participated in regular visitation and showed patient, sensitive and loving parental abilities.

In reversing the juvenile court, *In re S.B.* concluded the evidence amply supported a conclusion the child would suffer detriment if the parental relationship with her father was terminated, and found it unreasonable to expect a parent whose child had been detained to show a relationship consistent with that of a “primary” caregiver providing “day-to-day” care. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 299.)

Father acknowledges that courts have construed *In re S.B.* as “confined to its extraordinary facts,” and that it does not stand for “the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 558-559.) Father nonetheless contends that similar “extraordinary facts” are present here. We are not persuaded.

Father has never been E.S.’s primary caregiver. E.S. was detained at the age of three months while living with mother. Father has shown a persistent inability to maintain his sobriety, despite years of services, and has not reunited with any of his children. Father has shown only that he has pleasant, monitored day visits with E.S. He has not produced evidence he has acted in a parental role to E.S. at any time. Further, as we already noted above, the prospective adoptive parents have been fully supportive of E.S. maintaining contact with his biological family and have signed a post-adoption contract to that effect.

We find no fault in the court’s ruling. Father did not demonstrate that he had a significant parental relationship with E.S. that promotes his well-being “to such a degree as to outweigh the well-being [E.S.] would gain in a permanent home

with new, adoptive parents.” (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.)

**DISPOSITION**

The juvenile court’s order of September 15, 2016 terminating parental rights is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.