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

In re T.G. et al., Persons Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.G. et al.,

Defendants and Appellants.

B242442

(Los Angeles County  
Super. Ct. No. CK77866)

APPEAL from orders of the Superior Court of Los Angeles County,  
Tim Saito, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for  
Defendant and Appellant D.G.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant  
and Appellant R.J.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,  
and Kimberly A. Roura, Associate County Counsel, for Plaintiff and Respondent.

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R.J. (mother) and D.G., Sr. (father) appeal the termination of their parental rights with respect to T.G. (November 2007) and D.G., Jr., (D.G.) (June 2009). Mother also appeals the summary denial of a petition for modification. (Welf. & Inst. § 388.)<sup>1</sup> We reject the claims raised and affirm the orders under review.

### **FACTS AND PROCEDURAL BACKGROUND**

#### *1. Detention and jurisdiction.*

In June of 2009, the Department of Children and Family Services (the Department) received a referral indicating mother had been agitated after giving birth to D.G. A psychiatrist prescribed mother Haldol before discharging her. Later that day, mother reportedly attacked two individuals while holding the infant and she was placed on a psychiatric hold. (§ 5150.) Mother stated she discontinued her psychiatric medication during pregnancy and this contributed to her erratic behavior. Mother and father agreed to a safety plan pursuant to which the children were permitted to remain in the home. However, mother and father failed to appear for a team decision making meeting and the social worker was unable to locate them at their residence.

Two weeks later, the Department received a second referral which indicated D.G. had suffered a spiral fracture in the middle third of the left humerus (upper bone of arm) with a medial displacement of the distal fragment. Mother initially stated one-year-old T.G. had caused the injury but later admitted mother injured the child while father was asleep. Mother was arrested for child abuse. Father was arrested on an outstanding parole warrant. The children were placed in foster care.

The Department filed a dependency petition. On June 24, 2009, the juvenile court ordered the children detained, granted mother monitored visitation and granted father unmonitored visitation upon his release from custody.

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

When interviewed, the 24-year-old mother indicated she grew up in placement as a dependent child of the juvenile court. She was diagnosed with schizophrenia and bipolar disorder at the age of 12 years. She currently is prescribed Abilify and participates in counseling at Kedren Mental Health Center. Regarding the injury to D.G., mother stated she accidentally grabbed the child's arm while putting him to sleep. Fifty-two-year-old father told the social worker he used crack cocaine from 1985 until June of 2007, maintaining sobriety only when in custody, and he had never completed a drug abuse program.

On July 16, 2009, mother and father appeared in custody and submitted waiver of rights forms. The juvenile court sustained a petition alleging serious physical harm, failure to protect, severe physical abuse, no provision for support and sibling abuse under section 300, subdivisions (a), (b), (e), (g) and (j). The juvenile court ordered the Department to provide family reunification services and to inquire about Regional Center services for mother.

## *2. The reunification period.*

On August 14, 2009, the juvenile court appointed an expert to conduct a mental health evaluation of mother. The evaluation, received in October of 2009, indicated the evaluator interviewed mother twice at the county jail, where she was housed in the acute mental health area due to hostile behavior. Mother had a "significant psychiatric illness of psychotic proportion" and did not "fully appreciate the severity of her illness." Mother had been intermittently homeless after termination of jurisdiction in her dependency case. Mother met father, a security guard at a downtown mission, and began a relationship with him which resulted in their two children. Mother received \$871 per month from SSI and \$398 per month for one child. The report concluded mother was "not capable of adequately parenting her children and would clearly present a high risk" to them. The evaluator indicated visitation "should be closely monitored" and the prognosis for reunification was poor.

Father was released from custody on September 29, 2009, but his whereabouts were unknown until he contacted the social worker on December 14, 2009. Father was residing in a half-way house pending completion of parole. Father was instructed to contact foster mother and, on January 5, 2010, father had an unmonitored visit with the children.

T.G. expressed high levels of anger, aggression and hostility in foster care. She did not chew her food, had a very limited vocabulary and communicated primarily with loud grunts and growls. She spread her feces on the walls and would vomit when upset. She was found eligible for Regional Center services and was receiving weekly speech therapy.

On January 14, 2010, the juvenile court received minute orders from mother's criminal case which indicated mother had been placed on probation after pleading no contest to willful cruelty to a child on October 7, 2009. Mother was referred for a 90-day diagnostic study and, on January 7, 2010, she was granted three years of formal probation and sentenced to time served. Mother's probation required her to complete a 52-week child abuse counseling program and to stay away from baby D.G.<sup>2</sup> Mother contacted the social worker following her release from custody and started monitored visitation with the children. Mother was residing in a half-way house.

On March 2, 2010, the Department reported mother and father were living together. Mother was enrolled in a parenting education program, individual counseling and anger management programs at Children's Institute. Mother and father had sporadic visits with the children in January and February 2010. They agreed to visit at the same time, even though father was permitted unmonitored visitation. T.G. responded well to father but would not interact with mother and refused to talk to mother on the telephone. T.G. continued with Regional Center speech therapy and her

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<sup>2</sup> At the request of the juvenile court, this order subsequently was modified to permit mother to participate in visitation as ordered by the juvenile court.

negative behavior was decreasing. However, foster mother reported T.G. displayed aggressive behavior after visits with mother and father.

A social report filed May 3, 2010, indicated mother visited regularly, was participating in her programs and had been approved for Regional Center Independent Living Services based on a diagnosis of mild mental retardation. Father violated parole by testing positive for cocaine in December of 2009.

Reports filed in July of 2010 indicated mother and father continued to have enjoyable weekly monitored visits. Also, mother agreed to move from the apartment she shared with father in order to allow father to reunify with the children.

On August 16, 2010, the Department reported mother was living with maternal aunt and was receiving services through the Regional Center, including 12 hours of independent living skills training and 10 hours of personal assistant services per month. The visitation monitor indicated mother and father interacted appropriately with the children during visits and the children often do not want to leave at the end of visits. Although father was entitled to unmonitored visitation, he preferred to attend mother's monitored visits to create a "family atmosphere."

Foster mother stated the children exhibit negative emotional behavior after visits. T.G. tended to pull her hair out and regurgitate food; D.G. experienced sleep disruption. T.G. was loving and affectionate with foster mother, but had difficulty interacting with peers. Her speech improved but she continued to have significant delays. Foster mother indicated willingness to provide permanent care if the family did not reunify. Foster mother had an approved home study with respect to other children she was in the process of adopting.

On September 28, 2010, the Department reported that, after the hearing on August 16, 2010, father resumed eight-hour unmonitored visitation with the children on Fridays and Sundays. Mother's visits were monitored by maternal aunt and reportedly had gone well. The juvenile court granted mother and father six additional months of reunification services.

On December 16, 2010, the Department reported mother and father continued to visit without incident and father accompanied mother to many of her monitored visits. However, foster mother reported the children display aggressive behavior after visits. T.G. was receiving speech therapy through the Regional Center and D.G. was on a waiting list for similar services. Mother stated she had moved from maternal aunt's home. The Department scheduled mother's visits with an approved monitor. In unannounced home visits during father's unmonitored visitation, the children were observed to be well dressed and attached to father.

Mother reported she was living with a friend a block from father's apartment. A Regional Center evaluation of mother, undertaken while mother and father lived together, indicated mother relied on father for assistance with everyday skills. Father cooked and cleaned and mother could not go anywhere alone unless father had taken her previously. Mother paid most of the rent and their plan was to have the children placed with father. When this occurred, mother would live nearby with a friend. The evaluator opined mother needed help to develop parenting skills and better bonds with her children and recommended 80 additional hours per month of parenting and living skills training.

An assessment of mother prepared by Options for Independence noted T.G. did not respond to mother during visits but ran to father. D.G. approached mother and enjoyed sitting with her. Mother interacted with both children but T.G. seemed to ignore her at times. The evaluator recommended a visitation monitor who could help mother with parenting skills.

At a visit on November 9, 2010, the children hesitated initially but eventually fought for mother's attention. At a visit on December 7, 2010, T.G. called mother "mommy" and D.G. called her "mom." The children clung to mother and cried at the end of the visit.

On December 16, 2010, the juvenile court granted the Department discretion to liberalize father's visits to overnight and to allow father to monitor mother's visits.

On January 19, 2011, the Department reported mother continued to receive 12 hours of independent living skills training from the Regional Center and was compliant with the case plan. The Department had not liberalized father's visitation because father reportedly had allowed mother access to the children during father's unmonitored visits. The Regional Center declined to fund the recommended 80 additional hours per month of parenting training because mother did not have custody of the children.

On January 28, 2011, the Department received a referral which indicated "an unknown boyfriend allegedly slapped mother in front of the children on a train . . . ." Mother admitted to the social worker she and father argued on the train and mother spit on father. Mother disclosed this information to her therapist who reported it. T.G. was interviewed about the incident and said, "mommy hit daddy and daddy hit mommy back."

On February 14, 2011, the juvenile court ordered father's visits to be monitored and father again began attending mother's monitored visits. The children were excited to see mother and father at a visit on February 22, 2011, and T.G. was upset when mother left. On March 1, 2011, T.G. appeared jealous when mother held D.G. The children were excited to visit mother on March 8, 2011.

On March 9, 2011, the juvenile court commenced a contested review hearing. The children's babysitter testified mother had been present during father's visits on more than four occasions. In November or October of 2010, the babysitter saw mother, father and the children on the train approximately three times. Foster mother testified she saw both parents and the children together at the train station about six times.

During the hearing, father requested a restraining order against mother and the juvenile court issued a mutual stay away order.

Vicky A., the monitor of mother's visits since November 2010, testified the children appeared excited and ran to mother when she arrived and mother was appropriate with the children. Father attended several of mother's visits. T.G. was

closer to father than mother and father would remind T.G. to play with mother. The children sometimes clung to mother, cried when it was time to leave and said “mommy, mommy.”

The social worker testified he saw mother near father’s apartment building on 90 percent of the unannounced visits he made to father’s home. The social worker advised father not to allow mother to be present during his visits and was surprised father had requested a restraining order because the parents appeared to be a couple.

Father testified he never intentionally allowed mother to have access to the children during his visits. He ran into mother at the train station on January 28, 2011, and she got angry because he would not allow her to hold D.G. Mother called him names and spit on him. Father and mother ended their romantic relationship in December 2010.

Mother testified she was with father and the children on father’s unmonitored visitation twice. In January 2011, she yelled at father and spit at him because she was not allowed to join the visit. Mother stopped living with father in November 2010. However, she intended to reunite with father and the children and she visited father almost daily before the juvenile court issued the stay away order.

On March 23, 2011, the juvenile court found mother had visited the children during father’s unmonitored visits, despite court orders prohibiting such contact, and expressed concern regarding father’s ability to set appropriate boundaries for mother. The juvenile court also doubted mother had benefitted from her programs. The juvenile court terminated reunification services and set a section 366.26 hearing on July 20, 2011.

3. *Proceedings in advance of the permanency planning hearing.*

On July 19, 2011, mother filed a section 388 petition requesting additional family reunification services. The petition asserted mother was compliant with her medication and the case plan, was enrolled in a massage therapy license program, had been provided in-home services and was visiting regularly. The juvenile court summarily denied the petition, finding no showing of changed circumstances.



A social report filed July 20, 2011, indicated the adoptions social worker saw no barriers to permanent placement of the children with foster mother, noting foster mother's daughter and sister were able to assist foster mother with special needs children in the home.

On July 20, 2011, the juvenile court confirmed mother and father had separate monitored visits of one and a half hours each on Tuesday mornings. The juvenile court continued the permanency planning hearing for a contest.

On September 21, 2011, the Department reported T.G. continues to react negatively after visits with her parents, especially when they argue. A report from mother's new therapist indicated mother had attended counseling regularly since May 10, 2011, and had shown some insight into her situation. D.G. commenced speech therapy at the Regional Center but missed half the sessions because they conflicted with visitation.

On September 21, 2011, mother filed a second section 388 petition. The petition relied on the report from mother's new therapist and a June 2011 report from Options for Independence which indicated mother told her psychiatrist she was hearing and seeing things, but her medication was not adjusted. Options helped mother switch doctors in May but she either cancelled appointments or failed to appear.

The Department reported mother had met a woman who convinced mother to move into her apartment and pay rent. Mother visited father daily until mother and the woman went to father's home and called father names. Mother also hit father. Father was concerned mother was not taking her medication.

The juvenile court summarily denied mother's second petition.

A social report prepared for October 24, 2011, indicated mother continued to visit regularly and the children appear to enjoy the visits. However, father stopped visiting after August 9, 2011, and has not telephoned to inquire about the children. Because father stopped appearing for his visits, mother's weekly visits were increased to three hours.

In December of 2011, the Department reported father was arrested for possession of a controlled substance and violation of parole on October 20, 2011. Father was released from custody in late November and was residing in an inpatient substance abuse facility. He had monitored visits with the children on November 22, and 29 and December 6, 2011.

The social report submitted for the permanency planning hearing indicated foster mother was in the process of adopting three other children and had legal guardianship of another. The adoption social worker reported foster mother had developed a mother/child relationship with T.G. and D.G., loved them and was committed to providing them a permanent home. The children wished to remain with foster mother and appeared very comfortable in her home.

Regarding visitation, the report indicated mother interacted well with the children, brought them food, changed D.G.'s diaper, played with the children and read to them. During an April 2011 visit, T.G. refused to enter the building and did not interact with mother. During a May 2011 visit, T.G. was initially reserved but then displayed affection towards mother. During a visit in February of 2012, T.G. was upset when mother left the visit. The Department reported father interacted well with the children, they were excited to see him and they "often do not want to leave the parents at the end of their visits." The dependency investigator opined the children had developed a bond with mother and father but it was unknown whether continuing contact would be beneficial to T.G.

On March 28, 2012, the Department reported that, according to the Regional Center, mother was residing with a roommate in a one-bedroom apartment at an address mother would not disclose. However, mother told the social worker she was homeless. Mother had completed a parenting program and continued to attend individual counseling.

On March 28, 2012, the juvenile court heard the matter by submission and continued the hearing.

A social report filed May 17, 2012, indicated T.G. was doing better at school and D.G.'s verbal skills had improved. Both children were working with a therapist on "trauma history, setting limits, and maintaining boundaries." Mother visited seven times between January 24 and May 8, 2012. However, father visited only once. Mother remained homeless but stated she was close to obtaining suitable housing. Father continued to reside in a drug program.

A supplemental report indicated foster mother regards the children as members of her family. After visits, T.G. is "angry, shuts down" and refuses to obey foster mother. The Department recommended termination of visitation to avoid additional trauma and confusion for the children. D.G. was indiscriminate about making attachments and was learning to maintain personal boundaries and to avoid anxiety triggers.

On May 17, 2012, mother filed a third section 388 petition requesting additional family reunification and liberalization of visitation. Attachments to the petition indicated mother had completed parenting and anger management classes. Also, mother had been visiting regularly, was receiving 12 hours of independent living skills assistance per month, continued to receive counseling and was looking for stable low income housing. Regarding changed circumstances, mother asserted she had a strong bond with the children and would like to have them returned to her.

The juvenile court summarily denied mother's petition and commenced the section 366.26 hearing.

4. *The permanency planning hearing.*

Over the course of several days, numerous witnesses testified. Mother testified the children call her "mommy" during visits. Also, T.G. and mother cry when visits end. Mother asserted she had a strong bond with the children and considered herself blessed because D.G. called her "mommy" even though he was removed from her at a young age. Mother had a stronger relationship with D.G. Mother made T.G. talk to her in order to "make her have a bond with me."

Social worker Anthony O. testified he believed termination of contact with the parents would benefit the children. Mother visited regularly but father stopped visiting in 2011 and attended some visits in early 2012. Father was entitled to two monitored visits per week but, due to a lack of staff, father was scheduled for one visit per week. Father telephoned twice in 2011 about getting more visits. However, in 2012, father appeared comfortable with the visits he was receiving. Father last visited in April of 2012.

Vicky A., the monitor for mother's visits, testified that, during visits, mother would teach T.G. colors and numbers, read to the children and feed them. If the children were hurt, they would go to mother or Vicky A. for comfort. The children called mother "mom" or "mommy." Mother was affectionate with the children during visits and provided for their needs. Vicky A. could not say the children were affectionate with mother but they played with her and would go to her for things. When the children arrived, they were happy to see mother. Vicky A. would not say the children were "excited" to see mother, but said they recognized her. At the end of visits, the children would kiss mother goodbye but did not cry. When father was present, T.G. would ignore mother and dedicate herself to father. D.G. recently has competed with T.G. for father's attention and father has asked T.G. to go to mother to allow father to play with D.G. At the end of visits, T.G. would run to father but mother would have to reach out to her. After the parents separated, they would have inappropriate conversations about the case in front of the children. In February of 2012, Vicky A. told the parents not to argue in front of the children or the visit would be canceled.

The dependency investigator testified that, based on the visitation notes for the previous six months, it was likely the parents had developed a bond with the children.

Father testified he began visiting the children in December 2009, after he was released from custody. He attended mother's monitored visits because he wanted to visit as a family. He had twice weekly unmonitored visits from August 2010 until February 2011. During unmonitored visits, father acted as a custodial parent. He

would play in the park with the children, redirect their behavior when appropriate and care for them in his home. D.G. slept most of the time as he was a baby. Father also called foster mother twice each week to check on the children and talk to T.G. After February 2011, father joined mother at her monitored visits until May or June 2011. Father had no visits with the children from June to October of 2011. Father testified he was hospitalized with a stroke and then was incarcerated from October 20 to November 16, 2011. Upon his release from custody in November of 2011, father called the Department to schedule visitation but was provided only approximately six visits before the hearing on June 6, 2012. He requested more visits but was told the Department was understaffed. Father did not attend all of mother's visits because he wanted T.G. to spend time with mother. At the end of visits, the parents would tell the children they loved them and the children would reciprocate. On cross-examination, father admitted he never asked the social worker to evaluate a friend or a relative to monitor father's visits.

After hearing argument, the juvenile court found father had failed to visit regularly and had regressed from unmonitored to monitored visitation. Also, the visitation had not resulted in a significant positive emotional attachment. The reports indicated D.G. was indiscriminate about making attachments and the visitation monitor testified D.G. did not exhibit distress before or after visits. The juvenile court found T.G. was more attached to father than mother and was happy to see him but she was not upset when the visits concluded.

Mother had not progressed beyond monitored visitation. Although mother had tried to force T.G. to bond with her, T.G. often did not want to speak to mother. The juvenile court found mother had not demonstrated the children were affectionate towards her, noting the visitation monitor testified the children recognized mother but could not say they were excited to see mother. The juvenile court concluded the parental relationships did not outweigh the benefits of adoption. Also, the children had special needs and were doing well in placement. The juvenile court found the

children adoptable, terminated parental rights and identified adoption by foster mother as the permanent plan for both children.

### CONTENTIONS

Mother and father contend the juvenile court erroneously failed to apply the beneficial parent-child relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) Mother further contends the juvenile court erred in summarily denying her third section 388 petition.

### DISCUSSION

1. *The beneficial parental relationship exception was not applicable.*

a. *Relevant law.*

“ ‘At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child . . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]’ [Citations.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child. [Citation.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

One of the circumstances in which termination of parental rights would be detrimental is when a parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To satisfy this test, the parent has the burden of establishing the benefit to 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th, 567, 575; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1253.) Frequent and loving contact is not sufficient to establish the benefit exception absent a significant, positive emotional attachment between parent and child. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re Autumn H.*, *supra*, 27 Cal.App. at pp. 575-576.)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) A juvenile court’s determination with respect to the beneficial parental relationship exception is reviewed for an abuse of discretion. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

b. *Mother failed to establish that continuation of her parental rights would substantially benefit the children.*

In June of 2009, at the outset of the dependency proceedings, mother was arrested for breaking D.G.’s arm. She was released on probation in January of 2010. Mother thereafter complied with the case plan and visited the children regularly. Thus, mother met the requirement of “regular visitation and contact.” (§ 366.26, subd. (c)(1)(B)(i).) However, mother failed to show the children would be greatly harmed by ending their relationship with mother or that the benefit the children derived from mother’s monitored visitation outweighed the well-being the children would derive in a permanent adoptive home.

In arguing against this conclusion, mother asserts the children will benefit from continuing their relationship with her even though she may never regain custody. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 471-472.) Mother asserts the exception may arise without proof of a primary attachment to a parent or day-to-day contact. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1538; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) She notes the social

reports indicate the children were bonded to mother, the children often were excited to see mother, they appeared to respond to mother with affection and often did not want to leave visits. Mother played with the children and read to them. D.G. was observed to be comforted by mother and, when T.G. engaged mother, the visits went well.

Mother's arguments are unavailing. "Interaction between natural parent and child will always confer some incidental benefit to the child." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) However, "a *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) "[T]he child's relationship [with the parent] must transcend the kind of relationship the child would enjoy with another relative or family friend." (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324 [occupying "a pleasant place" in child's life insufficient]; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [relationship as a " 'friendly visitor' and 'family friend' " insufficient].)

Here, mother never advanced beyond monitored visitation and her visits were more akin to those of a family friend than a parent. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51 [the required showing is difficult to make when the parent has not advanced beyond monitored visitation].) Foster mother, on the other hand, had cared for the children for three years, attending to all their needs. D.G. had lived with foster mother nearly his entire life. T.G. lived with mother for the first 18 months of her life but lived with foster mother for the next three years. Also, T.G. had a strained relationship with mother, often refused to interact with mother during visits and experienced behavioral problems after visits.

Based on the record presented, the juvenile court justifiably concluded mother failed to establish the beneficial parent-child relationship exception.

c. *Father failed to establish either prong of the exception.*

The juvenile court found father failed to maintain regular visitation and contact with the children. This finding is supported by the record.



Father was arrested the same day the children were placed in foster care. Although he was released on September 29, 2009, he did not contact the social worker to arrange visitation until December 14, 2009, and did not visit the children until January 5, 2010. After a few unmonitored visits, father began attending mother's monitored visits until August 2010, when he resumed unmonitored visits twice per week. However, in February of 2011, the juvenile court terminated father's unmonitored visitation because father permitted mother to have access to the children during his visits. Father thereafter returned to weekly monitored visits but stopped visiting in April of 2011. He resumed visits six months later. However, from November 2011 through May 2012, father visited only approximately six times. He claimed he suffered a stroke and was arrested for violation of parole and, upon his release, the Department failed to provide reasonable visitation because it was too understaffed to provide a monitor. Father concludes he visited consistently when the entirety of the dependency case is considered.

We disagree. Although father visited regularly at times, he visited only six times in the final year of the case. Father complains the Department was too understaffed to provide a monitor for his visits. However, visitation times for father previously had been established and, when father stopped attending visits, mother began to use father's time. After release from custody in the fall of 2011, father could have asked to resume his visits, again splitting the allotted time with mother as he previously had. Given that father failed to take advantage of the weekly monitored visitation already in place for father, he cannot be heard to complain the Department should have provided additional monitors for his visits.

In sum, the juvenile court reasonably concluded father failed to establish the first prong of the exception, regular visitation and contact. Moreover, even assuming father visited consistently, he failed to show the benefit from continuing his relationship with the children outweighed the security and the sense of belonging a new family would confer. As noted above, foster mother has addressed the day-to-day and special needs of the children and has provided security and stability for the last

three years. Foster mother wants to provide permanence and considers the children members of her family. Although T.G. enjoyed seeing father, there was no evidence these visits had a positive impact on her life. Rather, it appears visits caused T.G. behavioral problems. Thus, while father's visits may have provided some incidental benefit, it was insufficient to outweigh the benefit of permanence through adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

2. *No abuse of discretion in the summary denial of mother's section 388 petition.*

a. *Applicable law.*

"Under section 388, a parent may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that there is a change of circumstances or new evidence, and the proposed modification is in the minor's best interests. [Citations.]" (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.) "If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . ." (§ 388, subd. (d).) When determining whether the necessary showing has been made, the petition is construed liberally in favor of its sufficiency. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) However, a section 388 petition may be denied without a hearing if "the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order . . . [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

In determining whether the petition makes the necessary showing, the juvenile court may consider the factual and procedural history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) We review the summary denial of a section 388 petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416; *In re Mary G.* (2007) 151 Cal.App.4th 184, 205; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

b. *Mother fails to demonstrate an abuse of discretion in the summary denial of her petition.*

Mother contends the juvenile court abused its discretion in failing to conduct a hearing on the merits of her third section 388 petition. Mother claims she demonstrated a prima facie case of changed circumstances, she had completed every component of her case plan and she had a very strong bond with her children. Also, mother was receiving 12 hours per month of independent living skills training, she continued to receive counseling and was seeking stable low income housing. Mother concludes the juvenile court should have held a hearing to determine the specifics of mother's progress.

Given mother's diagnosis of schizophrenia and bipolar disorder, she is to be commended on her compliance with the case plan. However, she failed to make a showing of changed circumstance or that the children's best interests would be served by delaying permanence to permit mother to pursue additional reunification services. (See *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081; *In re Angel B.* (2002) 97 Cal.App.4th 454, 464-465.)

At the time of mother's third petition under section 388, mother was receiving the same services that were in place at the time her family reunification services were terminated in March of 2011. Continuation of these services did not indicate a change of circumstances. Further, there was no indication mother now was benefitting from the services such that family reunification might be possible in the near future. These same services had proved ineffective in preparing mother to parent the children. Thus, she failed to make a showing of changed circumstances.

Because the liberally construed allegations of mother's petition would not have sustained a favorable decision on the merits, mother was not entitled to an evidentiary hearing. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

**DISPOSITION**

The orders under review are affirmed.

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

KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.