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

In re JOSEPH A., et al., Persons Coming
Under the Juvenile Court Law.

B257806

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County

Super. Ct. No. CK87088)

Plaintiff and Respondent,

v.

JESSICA C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Philip Soto, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant
and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County
Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Jessica C. (Mother), appeals from the juvenile court's orders denying her petition for modification under Welfare and Institutions Code¹ section 388 and terminating parental rights over her three children, Joseph A., Matthew A. and Destiny A. under section 366.26. She contends that the juvenile court abused its discretion in denying the section 388 petition because she demonstrated that her request for custody or reinstatement of family reunification services and liberalized visits was supported by a change in circumstances and the best interests of the children. Mother also argues that the court's ruling on the section 388 petition led to the "inevitable conclusion" that parental rights should be terminated, notwithstanding that she demonstrated application of the beneficial parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) to the termination of her parental rights. For the reasons articulated below, we reject appellant's arguments and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Family and Prior Contact with the Department of Children and Family Services

The family subject of these proceedings consists of Mother, Edwin A. (Father) and their children Joseph A., Matthew A. and Destiny A. and Mother's son from a prior relationship Joshua C.²

The Department of Children and Family Services (the Department) investigated three separate claims in 2004, 2005, and 2009 respectively, pertaining to Joshua, in which it was alleged that Mother and/or other family members neglected and abused Joshua in various ways. The claims were deemed unfounded. Thereafter, in 2010, Mother admitted abusing marijuana when she was pregnant with Matthew.

¹ Unless otherwise indicated all further code references are to the Welfare and Institutions Code.

² Father is not a party to this appeal. Likewise, Joshua (born in 2003) is not a party to the appeal. Throughout the dependency proceedings, Joshua has been residing with his father, Anthony C.

B. Current Dependency Proceedings

The Initial Section 300 Petition and Detention Proceedings. In 2011, Mother and Father lived together with Matthew and Joseph. Joshua would often visit the family home. In early March 2011, the Department received two referrals alleging Mother and Father had neglected and emotionally abused the three children. Specifically, it was alleged that on March 1, 2011, the parents had a physical altercation at home, which resulted in Father's arrest for domestic violence. The referral indicated that the parents had a history of domestic abuse. Police reports also substantiated that the parents had ongoing domestic violence issues. About two weeks later, Father was arrested and charged with driving under the influence of alcohol – Father was observed driving erratically in and out of traffic while the children were in the car.

The social worker's investigation of the home revealed that the family's apartment was cluttered with trash, dirty dishes and clothing, and that the electricity had been turned off. Mother had also been using marijuana.³ Mother denied, however, that she regularly used drugs or alcohol. Mother told the social worker that she had ended her relationship with Father and that he had moved out. She also minimized the domestic violence issues and Father's alcohol abuse. The social worker ultimately determined the children were at risk. The Department detained Joseph and Matthew in foster care while Joshua remained in the home of his father, Anthony.

Thereafter, on March 21, 2011, the Department filed a section 300 petition under subdivisions (a) and (b), on behalf of the minors alleging the children were at risk because of Mother and Father's violent altercations; the parents' history and current use of substance while the children were in their care; and the filthy and unsanitary home. At the detention hearing, the court detained Joseph and Matthew in shelter care, released Joshua to his father, and ordered monitored visits with the children for the parents.

³ Mother claimed that she had a prescription to use medical marijuana to treat "back problems," but she was unable to produce evidence of the prescription.

Jurisdiction and Disposition Proceedings. The jurisdiction and disposition report revealed that the parents had admitted that they engaged in domestic violence in front of the children, and that the police had intervened in their disputes on a number of occasions. Both parents also admitted that they used marijuana.

On May 12, 2011, the juvenile dependency court sustained the allegations of domestic violence and substance abuse under section 300, subdivision (b). The court terminated jurisdiction as to Joshua, and ordered his father to have physical and legal custody of the child. During the disposition proceeding, the court declared Joseph and Matthew dependents of the court, and ordered them removed from the parents' custody. The court also ordered family reunification services to the parents, including monitored visitation. To that end, Mother was ordered to participate in individual counseling, domestic abuse counseling, substance abuse counseling, and submit to random drug and alcohol testing.

First Reunification Period and Placement of Joseph and Matthew With Parents. The six-month status review report indicated that Joseph and Matthew were doing well in their foster home placement. The report also disclosed that Mother and Father had remained in a relationship and were living together; they wanted to "save their marriage" and give the children a good home. The parents had completed parenting classes, domestic abuse classes, and drug and alcohol abuse classes. They told the social worker they were attempting to use the conflict management skills they had learned in their classes. In the fall of 2011, they had also both begun individual counseling.

Mother was also pregnant and expecting a child in December 2011, and she appeared to have prepared the family home for the new baby. Because the parents' visits with Joseph and Matthew were consistent and appropriate, the visits were liberalized to include unmonitored and weekends visits.

On December 3, 2011, Mother gave birth to Destiny. A week later, at the six-month review hearing for Joseph and Matthew, the court found the parents were in compliance with their case plans, and ordered the boys placed in the home of the parents under the Department's supervision. The court also ordered the Department to provide the parents with family maintenance services.

New Section 300 Petition and Section 387 Supplemental Petition. In May 2012, the Department received a report that the parents had a confrontation in front of the children. Specifically, the parents had argued and thrown items; during the argument Father broke the car window while Joshua, Joseph, Matthew, and Destiny were inside the car. Joshua and Destiny had glass all over them as a result of the broken car window.

The Department held a Team Decision Making (TDM) meeting with the parents. During the meeting Father said that he and Mother smoked "synthetic weed" on a regular basis. Mother, however, denied smoking any substances. In addition, the parents blamed each other for their domestic violence problems and refused to accept responsibility for their conduct.

In late May 2012, the Department filed a section 300 petition on behalf of Joshua and Destiny alleging, among other allegations, they were at risk because of the parents' ongoing domestic violence. The Department also filed a section 387 supplemental petition on behalf of Joseph and Matthew based on the same allegations.

The juvenile dependency court subsequently detained Joseph, Matthew, and Destiny in shelter care. The court entered a home-of-parent order for Joshua, and Joshua was released to Anthony C.

Because the parents had been unable to resolve their ongoing domestic violence issues notwithstanding their apparent compliance with the prior case plan, the Department recommended that Joshua and Destiny should be declared dependents of the juvenile court under section 300, subdivisions (a) and (b) and that Joseph and Matthew continue as dependents of the juvenile court under section 387.

On June 19, 2012, the court sustained the section 387 petition as to Joseph and Matthew and the section 300 petition as to Joshua and Destiny. With respect to the disposition, the court ordered family maintenance services for Anthony and Joshua, and ordered the Department to provide family reunification services for the parents for Joseph, Matthew, and Destiny. Specifically, the court ordered Mother to participate in individual counseling to address case issues including anger management, conflict resolution and parenting classes. The court ordered Father to participate in individual counseling to address case issues including anger management and conflict resolution, alcohol counseling, random alcohol testing, and drug counseling. The court also terminated the December 2011 home-of-parents order as to Joseph and Matthew, and ordered Joseph, Matthew, and Destiny removed from the parents. The court ordered weekly monitored visitation for the parents.

Second Reunification Period. As of the six-month status review hearing in December 2012, Matthew, Joseph, and Destiny had been placed together with the prospective foster parents, Mr. and Mrs. M.

Mother was partially compliant with the juvenile court's orders and case plan from June 2012 to December 2012. She had participated in one month of individual counseling and attended a parenting course. However, according to the Department, Mother was not particularly cooperative with the agency, claiming that it was too difficult to visit the children given she did not have appropriate transportation. As a result Mother did not regularly visit with the children. In July 2012, Mother terminated her individual counseling stating she did not have funds to pay for it. It was also reported that although Mother and Father were not permitted to visit with the children at the same time, on several occasions the parents arrived at the visits together. The social worker also reported that the parents continued to have contact with each other despite their domestic violence problems. During a meeting with the social worker, Mother confirmed she did not see anything wrong with spending time with Father.

The Department also reported that in October 2012, Father was arrested for engaging in domestic violence with Mother at the paternal grandmother's residence where Father had been living. The paternal grandmother stated that her home had been "destroyed" during the incident – windows were broken, the French door was broken, and Father's torn and bloody clothes were on the floor. The paternal grandmother claimed that Mother had vandalized her home, and complained about the parents' history of domestic violence, Father's alcohol abuse, and Mother's explosive and aggressive behavior.

The Department expressed its concerns regarding the parents' ongoing domestic violence despite having previously completed parenting classes, domestic violence counseling, and substance abuse programs. The Department recommended the juvenile court terminate family reunification services for Mother and Father regarding Joseph, Matthew, and Destiny and set a section 366.26 hearing to select a permanency plan for the children.

Section 366.26 Proceedings. On December 6, 2012, at the status review hearing, the juvenile court found the parents were in partial compliance with their case plans, ordered their family reunification services terminated, and scheduled the matter for a section 366.26 hearing to select and implement a permanent, out-of-home plan for the children.⁴ The court ordered monitored visits with the children for the parents. The section 366.26 hearing was set for April 2013.

The section 366.26 report prepared for the April 2013 hearing indicated that the children remained with Mr. and Mrs. M., who were interested in adopting them. They had completed the home study paperwork. The children appeared to be emotionally bonded to Mr. and Mrs. M., who ensured the children continued to receive services.

Mother's visits with the children remained inconsistent during this period of supervision (from December 2012 through March 2013); she attended fewer than half of

⁴ In November 2012, the juvenile court terminated jurisdiction over the section 300 petition as to Joshua; Anthony C. retained custody of Joshua.

the scheduled visits. When she did visit, she was attentive to their needs and they were happy to see her.

The section 366.26 hearing was continued for a contested hearing. During the period of April through June 2013, Mother attended about half of the allowed visits with the children. In the “Supplemental 366.26 Report” for the continued section 366.26 hearing, the Department indicated that relatives of the children had now come forward to express an interest in adopting the children, but the relatives had not yet been investigated by the Department. As a result, the juvenile court continued the section 366.26 hearing.

In September 2013, the juvenile court continued the section 366.26 hearing again. A November 2013 “Supplemental 366.26 WIC Report” disclosed that the children’s relatives were no longer interested in adopting the children. The children remained placed together in the home of the prospective adoptive parents, Mr. and Mrs. M., where the children were doing well. The home study on Mr. and Mrs. M. remained in progress.⁵

In a report the Department prepared for the December 2013 status hearing, the paternal grandmother told the social worker that Mother had asked the paternal grandmother to lie to the social worker regarding Mother’s continued romantic relationship with Father. The paternal grandmother also reported Mother had violated a restraining order on multiple occasions when she went to Father’s home to see him. According to the paternal grandmother, the parents continued to engage in domestic violence, including physical altercations.

Section 288 Petition. On March 5, 2014, Mother filed a section 388 petition, requesting the court to change its prior orders of suitable placement for the children, termination of her family reunification services, and setting a section 366.26 hearing. Mother claimed that her circumstances had changed because she had filed for dissolution of marriage from Father; obtained a protective order; enrolled herself at an outpatient drug treatment center; drug tested consistently; attended 12-step meetings; enrolled in individual counseling to address case issues; obtained stable housing; was attending

⁵ On March 12, 2014, the home study on Mr. and Mrs. M. was approved.

college; and had started her own business. Mother claimed that a change in the prior orders would serve the children's best interests because she visited the children consistently, took on a parental role during visitation, and "demonstrated tremendous dedication and love for the children." To support the petition she attached documents relating to her classes and programs as well as photographs of her with the children.

The Department opposed the section 388 petition. The Department's June 2014 response indicated the Department could not verify Mother's claims that she had participated in any treatment or programs since she had completed an outpatient program in the summer of 2013. The career college where Mother claims to have been enrolled indicated that Mother never attended or completed any programs at the institution. Mother's individual therapist confirmed that Mother attended only eight counseling sessions in July and August 2013.

The Department further reported that on May 28, 2014, the paternal grandmother disclosed she had forced Father to move out of her home, in part because of Father's ongoing contact with Mother and the parents' "tumultuous interactions." Based on minor injuries Father had sustained and his responses to her questions, the paternal grandmother was convinced that the parents had a violent physical altercation during 2014 Memorial Day weekend. She also reported that Mother had vandalized her home in December 2013, and in January 2014, and paternal grandmother sought a restraining order against Mother in order to prevent her from frequenting her home and causing property damage. A January 3, 2014, police report reflected that Father told the police that Mother drove to the paternal grandmother's residence and broke the glass door with her bare hands after Father refused to let her inside the home.

The Department noted that since the beginning of 2014, Mother had attended eight monitored visits with the children and that the visits were usually held at a McDonald's restaurant. In the Department's view, despite Mother's previous participation in services, she was still unable to accept responsibility for her actions which contributed to the termination of family reunification services. Instead Mother blamed the Department, the paternal grandmother, and Father for her problems.

Section 388 and Section 366.26 Hearings. On July 16, 2014, the court held a contested hearing on Mother's section 388 petition and the section 366.26 hearing. The juvenile court entered into evidence the Department's reports with attachments and Mother's section 388 petition with attachments.

The court began proceedings with the hearing on Mother's section 388 petition. Mother testified she completed classes and programs, including domestic violence classes and an anger management program. Mother said she had also participated in individual counseling. Mother claimed that she had not used substances in three years and had no relationship with Father and would never again have a relationship with him. Mother said she tried to visit the children at least once a week at a McDonald's restaurant. Mother claimed that she sometimes brought toys and books and food that she prepared for the children and played with them.

Mother acknowledged that the children called their current caregivers "mommy Amelia" and "poppy" and that the children saw them as parents. Mother conceded that if the children were returned to her, Mr. and Mrs. M. would be her main support for the children.

Mother's counsel requested that the juvenile court grant Mother's section 388 petition by returning the children to her custody or reinstating family reunification services. Mother's counsel argued Mother's circumstances had changed, and it would be in the best interest of the children to reunify with Mother.

The Department argued that Mother failed to establish changed circumstances or best interest of the children because the record indicated she had a total of eight monitored visits from January through May 2014, she had very limited contact with the children, Mother did not complete her programs, and she had not drug tested in well over a year. The children's counsel joined with the Department in requesting the juvenile court deny Mother's section 388 petition.

The court denied the section 388 petition. The court agreed with the Department that based on all of the evidence before it, Mother had not "significantly changed to demonstrate there's been a change in circumstances" The court observed the

children had been cared for by their caregivers, and as Mother acknowledged, the children saw them as parents. The court found that it would not be in the children's best interest to remove them from a stable family setting and return them to the unstable environment with Mother. The court found, notwithstanding Mother's claims to the contrary, that Mother continued to have a relationship with Father.

The juvenile court then turned to the section 366.26 hearing. Mother's counsel objected to termination of parental rights and argued Mother met the parental-child relationship exception to adoption in section 366.26, subdivision (c)(1)(B)(i). The juvenile court found, by clear and convincing evidence, that the children were adoptable, and there was no exception to adoption. The court terminated parental rights.

Mother filed a timely notice of appeal.

DISCUSSION

On appeal, Mother argues that the juvenile court abused its discretion in denying her section 388 petition and thereafter ordering the termination of her parental rights over Matthew, Joseph, and Destiny. We conclude Mother's contentions lack merit.

I. Denial of the Section 388 Petition

Section 388 permits the juvenile court, "upon grounds of change of circumstance or new evidence . . . to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) The statute allows the modification of a prior order only when the petitioner establishes by a preponderance of the evidence that (1) changed circumstances or new evidence exists; and (2) the proposed modification would promote the best interests of the child. (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1193.)

A parent seeking relief under section 388 "must show *changed*, not changing, circumstances. [Citation.] The change of circumstances or new evidence 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.' [Citation.]" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; original italics.) Moreover, "[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order

would be in the best interests of the child. [Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 960; original italics.) A parent requesting an order for reunification services after they have been terminated has the burden of proving that the benefit to the child of reinstating services outweighs the benefit the child would derive from the stability of a permanent placement. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

It is rare that the denial of a petition under section 388 merits reversal. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.) A section 388 petition is committed to the juvenile court’s discretion; the court’s ruling will not be disturbed on appeal unless an abuse of discretion is clearly established. A reviewing court will not reweigh the evidence or second guess the lower court unless the court has exceeded all bounds of reason by making a patently arbitrary, capricious or absurd determination. When two or more inferences can be reasonably deduced from the facts, we must affirm. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

In this case, the juvenile court did not abuse its discretion in denying Mother’s section 388 petition. She demonstrated neither a change of circumstances nor that the modification of the order would serve the best interests of the children.

Specifically with respect to the change of circumstances, although in Mother’s March 2014 petition she claims her circumstances had changed in various respects – she had ended her relationship with Father; had enrolled in a drug treatment program; had drug tested negatively consistently; enrolled in individual counseling to address case issues; obtained stable housing; and was attending college – the evidence in the record reflects that these changes were not long lasting, reflecting only a brief period in the summer of 2013. The evidence that she had “changed” her circumstances could not be substantiated in June of 2014. Indeed, the Department’s investigation revealed that Mother participated in an outpatient drug program, but did not continue to drug test afterwards, that she only attended a handful of individual counseling sessions in July and August 2013, and that she never actually completed college course work. Likewise, notwithstanding Mother’s claim to have severed her relationship with Father, according to the paternal grandmother the parents continued to have contact in 2014. A police

report from January 2014, confirms that Mother had come to the paternal grandmother's home and had damaged property when Father refused to allow her inside. In short, Mother did not demonstrate that she derived any sustaining benefit from the programs and counselling she participated in the summer of 2013.

Mother's short-lived efforts to change her circumstances and address the issues which led to the detention of her children are consistent with her pattern of behavior throughout the proceedings. She made prior efforts to address the issues which led to the dependency proceedings. Such was the situation in the fall of 2012, when Mother (and Father) appeared to be committed to addressing and resolving their domestic violence issues, and therefore were allowed to reunify with the children in December 2012. However, the parents were unable to maintain a stable relationship and safe home environment, notwithstanding their completing of programs and counseling, and by May 2013 they had resorted to domestic violence and drug abuse. They refused to accept responsibility for their conduct and blamed each other for the ongoing abuse. Furthermore, Mother's visitation never progressed beyond weekly two-hour monitored visits at McDonald's, and from January through May 2014 she attended only eight such visits.

In view of all of the foregoing, we conclude that Mother did not demonstrate a substantial change of circumstances to satisfy the first prong of section 388.

Mother also failed to establish that the relief she requested in the section 388 petition was in the best interests of the children. The children were placed with their caregivers and prospective adoptive parents, Mr. and Mrs. M. in October of 2012. Mother conceded that the children identified Mr. and Mrs. M. as their parents. The Department reported that the children were healthy, and thriving in their caregivers' home, and that the caregivers were providing them with a stable and nurturing environment. Although Mother's visits with the children had been positive and appropriate, the visits had not progressed to unmonitored visitation or visitation at Mother's home. The visitation did not demonstrate that Mother's bond with the children was stronger than the one they had developed with their long-term caregivers. In view of

the history of these proceedings, Mother failed to show that the benefit to the children of reinstating reunification services or modifying the placement order outweighed the benefit they would derive from the stability and security of a permanent home. Under these circumstances, the juvenile court did not abuse its discretion in denying the section 388 petition.

II. Termination of Parental Rights

At a hearing under section 366.26, the juvenile court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the child is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that a relative guardianship should be considered (§ 366.26, subd. (c)(1)(A)) or that termination of parental rights would be detrimental to the child under one of six statutorily-specified exceptions (§ 366.26, subd. (c)(1)(B)(i)-(vi)), the juvenile court “shall terminate parental rights.” (§ 366.26, subd. (c)(1).)

On appeal, Mother argues the denial of the section 388 petition led to the “inevitable conclusion” to terminate her parental rights. She claims, however, that the section 366.26, subdivision (c)(1)(B)(i) exception based on the beneficial parent-child relationship precluded termination of her parental rights over the children.

Section 366.26, subdivision (c)(1)(B)(i) provides that the juvenile court may decline to terminate parental rights if it “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.” A beneficial parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(B)(i) is one that “‘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 K.P.*, *supra*, 203 Cal.App.4th at p. 621.) To establish the exception, “the parents must do more than demonstrate ‘frequent and loving contact’

[citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.] Rather, the parents must show that they occupy ‘a parental role’ in the child’s life. [Citation.]” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108-1109.) Furthermore, “[b]ecause 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.” [Citation.]” (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

The parent has the burden of proving the statutory exception applies. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The court’s decision a parent has not satisfied this burden may be based on either or both of two component determinations – whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1528.) When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.)

Here, the juvenile court observed the children had been cared for by their caregivers. Mother acknowledged the children saw them as parents. The court found that it would not be in the children’s best interests to remove them from a stable family setting and return them to the unstable environment with Mother. The court’s conclusion was proper.

Mother did not establish that it would be in the best interests of the children to remove them from their caregiver's home. Mother failed to demonstrate that she played a parental role in the children's lives even though she was loving and caring during her visits with them. Because a child normally will derive some incidental benefit from interaction with a natural parent, "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for this [section 366.26, subdivision (c)(1)(B)(i)] exception." (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; see also *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 ["Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent."].) Although a beneficial parent-child relationship can exist even without day-to-day contact, the parent still must occupy a parental role in the child's life. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) To be simply a "friendly visitor" is not sufficient. (*Id.* at p. 52.) The evidence did not show that Mother had the kind of parental relationship that section 366.26, subdivision (c)(1)(B)(i) was designed to preserve.

In addition, as discussed elsewhere here, the evidence before the juvenile court showed the children thrived in the home of their caregivers, the caregivers met their needs and the children were bonded to them. As the Court of Appeal observed in *In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1350, "a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." Considering the totality of the record, Mother failed to establish that the parental relationship "promote[d] 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.*, *supra*, 27 Cal.App.4th at p. 575.) The juvenile court

accordingly did not err in finding that the section 366.26, subdivision (c)(1)(B)(i) exception did not apply, and did not err in terminating Mother's parental rights.⁶

DISPOSITION

The orders of the juvenile court are affirmed.

IWASAKI, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

⁶ Mother's implicit suggestion in her appellate brief that the dependency court should have considered legal guardianship for the children rather than termination of parental rights is not well taken. Given the circumstances of this case, including the Mother's prior unsuccessful efforts to reunify, notwithstanding her participation in programs and classes, we conclude that guardianship would not have been the best plan for these children. (See *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 251 ["Although guardianship may be a more stable solution than foster care, it is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature."].)

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