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

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

B247771

(Los Angeles County  
Super. Ct. No. CK83582)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent.

v.

CRYSTAL G., et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Albert Garcia, Juvenile Court Referee. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant Crystal G.

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

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel for Plaintiff and Respondent.

Appellants Crystal G. (mother) and Ricardo G. (father) challenge the juvenile court's denial of their respective Welfare and Institutions Code section 388<sup>1</sup> petitions seeking a home of parent order for their children, or alternatively, reinstatement of reunification services and unmonitored visitation. Mother also challenges the order terminating her parental rights. Father joins in mother's arguments, contending if the order terminating mother's parental rights is reversed, the order terminating his parental rights must also be reversed.

The juvenile court did not abuse its discretion by denying mother's and father's respective section 388 petitions and substantial evidence supports the juvenile court's finding that no exception to terminating parental rights existed under section 366.26, subdivision (c)(1)(B). We therefore affirm the juvenile court's orders.

## **BACKGROUND**

### **Detention and section 300 petition**

The subject children in this case are T. J. (born in October 2002), Delilah J. (born in September 2005), and twins David G. and D. G. (both born in October 2009). Mother is the mother of all four children. Father is the presumed father of David and D.<sup>2</sup>

On August 8, 2010, the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging that mother had left the children with an unrelated caretaker without specifying where she was going or when she would return. Both parents' whereabouts were unknown. The social worker was able to contact father on his cellular telephone, but father hung up when he was asked for his address.

Mother's child welfare history included three prior referrals -- a 2009 referral for alleged marijuana use that was deemed "unfounded," a "substantiated" referral in 2008 for marijuana and methamphetamine use, and a 2005 referral for emotional abuse that was closed as "inconclusive." The 2008 referral led to a voluntary family maintenance case in 2009 that was subsequently terminated as the result of mother's noncompliance.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Tiago's and Delilah's father, Luis J., is not a party to this appeal.

In an August 9, 2010 interview, Delilah told the Department's social worker that mother often left the children for extended periods of time with a friend or with the children's grandmother. Delilah said she had seen father hit mother "one time." She reported seeing mother and father smoke "a pipe with green stuff" and a "glass thing with water." T. also reported seeing mother smoke a "green" substance that "looks like a plant" both in cigarettes and from a "glass, long thing" that he thought was a "bong."

Paternal grandmother told the social worker that mother often left the children in her care without any advance notice. On one occasion, mother left T. at grandmother's home and never returned for him. Grandmother eventually located mother at a friend's home four days later. Grandmother further stated that mother was a longtime user of marijuana and methamphetamine and that she had observed mother to be under the influence of drugs when picking up the children from grandmother's home.

Maternal great-aunt told the social worker that there is domestic violence between the parents and that mother disclosed that father hits her. She further stated that mother had been arrested approximately three months ago while attempting to set fire to father's home while D. and David were present in the home.

On August 11, 2010, the Department learned that mother was at an inpatient substance abuse program at the Tarzana Treatment Center. On August 12, 2010, the Department filed a section 300 petition on behalf of the children alleging the children were at substantial risk of harm as the result of mother's drug use, domestic violence between the parents, and mother's failure to provide appropriate care for the children.

Mother appeared at the August 12, 2010 detention hearing at which the juvenile court found a prima facie case for detaining the children. The court ordered the children detained with any appropriate relative and accorded mother and father monitored visits. The juvenile court further ordered the Department to provide mother with referrals for parenting classes, individual counseling, and random drug testing.

### **Jurisdiction/disposition**

In September 2010, the Department reported that T. and Delilah were placed together in a foster home and David and D. were placed together in a different foster

home. T. and Delilah told the social worker that mother and father argue a lot, but both children denied seeing any physical violence between the parents. T. said that he had seen mother smoking something “green” and was able to describe in detail his observations of mother smoking from a “bong.”

Mother admitted using marijuana but denied doing so in front of the children. She denied being a current user of methamphetamine. Mother denied any domestic violence with father and denied attempting to set fire to father’s home. Mother said that the latter incident had occurred during an argument outside father’s home when she poured lighter fluid on the yard and threatened to burn the house. Mother explained that she would never have actually set the house on fire.

Father denied engaging in any physical violence with mother. He said mother had used marijuana throughout their relationship but she had never done so in front of the children. Father denied using marijuana or any other drugs; however, he tested positive for methamphetamine after submitting to an on demand drug test on August 26, 2010. Father’s positive drug test prompted the Department to file a first amended petition that included allegations regarding father’s methamphetamine use.

Father appeared and was appointed counsel at the September 20, 2010 pretrial resolution conference. The juvenile court ordered the Department to provide father with referrals for drug testing and rehabilitation, parenting classes, and counseling.

In October 2010, the Department learned that mother had been discharged from her inpatient treatment program at Tarzana Treatment Center because she was not getting along with another program participant. Mother had enrolled in an outpatient treatment program and was attending AA/NA meetings.

Father enrolled in a treatment program at the Substance Abuse Foundation of Long Beach on October 28, 2010. He tested negative for drugs on October 27 and 28, 2010, but failed to appear for testing on November 2, 2010.

On November 5, 2010, the juvenile court modified and sustained the first amended section 300 petition<sup>3</sup> and ordered the children removed from the parents' custody. The court ordered mother to attend a drug rehabilitation program, parenting classes, and individual counseling to address case issues, including drug addiction and relationships with men. The court ordered father to attend a drug rehabilitation program with random drug testing, parenting classes, individual counseling, and AA/NA aftercare with a sponsor. Both parents were accorded monitored visitation.

### **Six-month review proceedings**

In November 2010, mother's counselor at the Tarzana Treatment Center informed the Department that mother had been actively participating in her treatment program and was attending 12-step meetings. Mother produced negative drug tests on October 8 and 28, 2010, but failed to appear for a scheduled drug test on November 2, 2010. Father had attended seven out of eleven group sessions in his substance abuse treatment program, missed both of his individual sessions, and failed to appear for scheduled drug tests on November 15 and 17, 2010.

On December 20, 2010, the Department reported that all four children, who had been placed in two separate foster homes, were now placed with paternal grandparents.<sup>4</sup>

In May 2011, the Department reported that the children were thriving in the grandparents' home. T. and Delilah were receiving weekly therapy focused on reducing anxiety and depressive symptoms that worsened after monitored visits with mother. T. and Delilah both said they wished to remain in their grandparents' care, and the

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<sup>3</sup> The juvenile court found true the allegations that both parents had a history of illicit drug use; mother was a current user and father was a recent user of marijuana and methamphetamine, rendering them periodically incapable of caring for the children; mother had endangered the children when she threatened to set fire to father's home while the children were in the home; and mother had failed to make an appropriate plan for the children's care and supervision.

<sup>4</sup> The grandparents are not biologically related to David and D.

grandparents said they were willing to adopt all four children if reunification services failed.

Both parents' whereabouts were unknown, and neither returned the social worker's telephone calls. Father had submitted to a live scan, which revealed a criminal history dating back to 2000 for offenses including domestic violence, criminal threats, and burglary.

Father was discharged from his substance abuse program on January 12, 2011, for nonattendance. He had attended a total of 25 of 37 group sessions, two of four individual sessions, and was last seen on December 29, 2010. While enrolled in the program, father produced two negative drug tests but had refused to test on November 19, 2010. Father tested negative for drugs on December 7 and 23, 2010, but failed to appear for scheduled testing on January 14 and 24, February 7 and 25, and March 8, 2011. He had failed to enroll in parenting classes or in AA/NA aftercare. Father was inconsistent in his scheduled visits with the children and had appeared at the grandparents' home for several unannounced and unscheduled visits.

Mother had not enrolled in parenting classes, and on April 2, 2011, the Department learned that she had been discharged from the Tarzana Treatment Center. Mother produced negative drug tests on November 15, December 7 and 23, 2010, and January 14, 2011, but failed to appear for scheduled testing on January 24, February 7 and 25, March 8 and March 16, 2011.

The grandparents reported that mother often appeared at their home unannounced for unscheduled visits with the children that lasted no more than 20 minutes. The children were not excited to see mother and they would not acknowledge her. Tiagoe's and Delilah's behavior appeared more anxious and disruptive following mother's visits.

Both parents appeared at the continued six-month review hearing held on May 24, 2011. The juvenile court ordered the children to remain placed with the grandparents and accorded mother and father an additional six months of family reunification services.

## **Twelve-month review proceedings**

In November 2011, the Department reported that despite the social worker's attempts to maintain regular contact with mother and father, both parents' whereabouts remained unknown until October 19, 2011, when the Department was informed by Victory Outreach Church that mother was in the church's Women's Recovery Home. Father was in a Victory Outreach Church men's facility.

Mother was arrested on September 5, 2011, and charged with a felony for acquiring an access card with intent to defraud. She had been enrolled in an outpatient program at Behavioral Health Services from June 21 to August 11, 2011, but was discharged from the program on September 9, 2011, for excessive unexcused absences. Mother then enrolled in an outpatient program at Options From Recovery on November 1, 2011. She tested negative for drugs on June 23 and 30, July 14, and August 1 and 11, 2011. She tested positive for marijuana on July 21 and July 25, 2011, and failed to appear for scheduled drug tests on June 17, July 12 and 22, August 3 and 22, September 13 and 19, October 7 and 27, and November 2 and 14, 2011. Mother had visited the children approximately 10 times, all unannounced, and each visit lasted no longer than 30 minutes. The children did not acknowledge mother during the visits, nor did they appear to be excited to see her.

Father was arrested on September 5, 2011, charged with felony possession of a controlled substance, and placed on probation on September 14, 2011. He had not enrolled in parenting classes or in AA/NA aftercare. Father failed to appear for scheduled drug testing on June 17, July 12 and 22, August 3 and 22, September 13 and 19, October 7 and 27, November 2 and 14, 2011, and tested negative for drugs on December 7, 2011, and January 3, 2012. Father had appeared at the grandparents' home for five or six unannounced visits with the children but stayed no more than 20 minutes per visit. Neither David nor D. acknowledged father during the visits and they did not appear to be excited to see him.

The juvenile court set a contested 12-month review hearing for January 19, 2012. On January 19, 2012, the Department reported that as of December 6, 2011, mother was

no longer residing at Victory Outreach Church's Women's Recovery Home because of "several behavioral infractions." Mother claimed she was now living with her sister, but refused to provide an address. She said she and father planned to marry, despite the fact that T. and Delilah did not wish to have any contact with father. Mother tested negative for drugs on December 7, 2011, and January 3, 2012.

The grandparents reported that mother had appeared unannounced at their home on January 3, 2012, demanding to see the children. When told that it was too late, mother refused to listen, entered the home, and woke the children. The grandfather asked mother to leave, and mother refused and began arguing with him, which frightened Delilah and caused her to cry. The grandparents further reported that father had two 20-minute visits with David and D., but neither child acknowledged him or appeared excited to see him.

The juvenile court continued the 12-month review hearing to June 11, 2012, and ordered the Department to provide a supplemental report on the parents' progress.

In March 2012, the Department reported that the children continued to express their desire to remain in the care of the grandparents. Mother's whereabouts were unknown because she refused to provide the social worker with an address. A March 5, 2012 progress report from Options for Recovery indicated mother's attendance in the program was excellent, and she was expected to complete the one-year program on November 1, 2012. She produced negative drug tests on January 17, February 14 and 27, 2012, and mother's counselor said mother was "making positive progress toward maintaining a drug free lifestyle." Father told the social worker that he met with his counselor from Medi-Cure two times a week. He produced negative drug tests on January 17, and February 14 and 27, 2012.

In June 2012, the Department learned that mother was homeless after being discharged from her sober living program as the result of chronic tardiness and conflicts with other residents. Mother continued to participate in treatment, counseling, and parenting education at Options for Recovery and was expected to complete the program on November 1, 2012. She tested negative for drugs and alcohol on March 27, April 12 and 27, and May 10, 2012.



Father was participating in a drug and alcohol outpatient treatment program at Medi-Cure that included random drug testing, two to three weekly group sessions, drug education, relapse prevention, and a 12-week parenting class. All of father's random drug tests at Medi-Cure had been negative. Father's case manager reported that father had been an active participant and "demonstrated willingness to take responsibility for his actions and recognition of the impact his actions have on his family." Father produced negative drug tests on March 27, April 12 and 27, 2012, but failed to appear for testing on May 10, 2012.

At the continued 12-month review hearing held on June 11, 2012, the juvenile court found mother and father to be in partial compliance with their case plans and that returning the children to the parents would create a substantial risk of harm to their well-being. The court further found the parents had not consistently and regularly visited with the children, had not made significant progress in resolving the problems that led to the children's removal from their care, and had not demonstrated the ability to complete the objectives of their treatment plans and to provide for the children. The juvenile court terminated family reunification services for both parents and set the matter for a section 366.26 hearing.

### **Section 366.26 proceedings and section 388 petitions**

In October 2012, the Department reported that the children had been living with the grandparents since December 20, 2010, and that an adoptive home study was pending.

Mother had been residing at the New Life Beginnings homeless shelter, but she was discharged from the shelter on September 12, 2012, for failing to obey the curfew and house rules. Mother had been telephoning the children daily since August 16, 2012, and was visiting twice a week. The children enjoyed visiting with mother and were excited to see her. Delilah told the social worker that she enjoyed the visits and wanted to live with mother, but if that was not possible, she wanted to be adopted by the grandparents. T. said he also enjoyed the visits with mother and would be willing to live with her so long as she was not with father.

Father was incarcerated in July 2012. Before his incarceration, he had visited David and D. on a weekly basis.

***Mother's section 388 petition***

Mother filed a section 388 petition on November 29, 2012, requesting return of the children to her custody, or alternatively, unmonitored visits.<sup>5</sup> In support of her petition, mother provided a letter from her case worker at Options for Recovery stating that mother had “made a stellar improvement” during the past five months, was “a role model to her peers,” and fought “everyday to remain sober and to be involved in her children’s lives.” Mother had been enrolled in Options for Recovery’s in-home parenting education program since March 19, 2012, and was scheduled to complete that program in February 2013. She had successfully completed a program for chemically dependent women and provided 49 consecutive negative drug tests from November 4, 2011 to October 3, 2012. The juvenile court granted mother a hearing on her section 388 petition.

The Department learned in December 2012 that father had been released from jail but his whereabouts were unknown. The grandmother reported that both parents were residing with mother’s sister, but grandmother did not know the address.

The grandmother further reported that mother was visiting the children two to three times per week. Both the grandmother and the social worker had observed behavioral changes in the children during mother’s visits. The children tended to “act up” during the visits and after the visits they became defiant and disobeyed house rules. The children continued to thrive in the grandparents’ home, and T. and Delilah said they wanted the grandparents to adopt them.

At a December 10, 2012 permanency planning hearing, the juvenile court found that a permanent plan of adoption was appropriate and ordered adoption as the permanent plan.

***Father's section 388 petition***

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<sup>5</sup> Mother had filed a previous section 388 petition on August 7, 2012, but withdrew that petition on September 20, 2012.

On January 4, 2013, father filed a section 388 petition requesting placement of David and Delilah with him, or in the alternative, reinstatement of reunification services and unmonitored visitation. In support of his petition, father stated he had successfully completed an outpatient substance abuse program through Medi-Cure Health Services that included individual counseling and parenting classes and that he had obtained full-time employment and stable housing. An April 24, 2012 letter from Medi-Cure Health Services confirming father's completion of the program was attached to father's petition. A hearing on father's petition was set for February 21, 2013.

In January 2013, the Department reported that the grandparents remained committed to adopting all four children and that an adoptive home study had been approved. All four children appeared to be bonded with the grandparents, and T. and Delilah continued to express their desire to be adopted by them.

Mother still had not provided her contact information to the Department and her visits with the children had decreased in frequency since father's release from jail.

In February 2013, the Department reported that father had failed to reunify with two older children, Juan and Beatriz, in an unrelated case. The Department also noted that approximately 10 months had elapsed since father had last attended his substance abuse program and submitted to a drug test. Father had not provided his contact information to the social worker, was not employed, and did not have appropriate housing for the children.

#### **Combined section 388/section 366.26 hearing**

On February 21, 2013, a hearing was held on mother's and father's respective section 388 petitions, to be followed by a section 366.26 hearing. At the hearing on her petition, mother testified that she had graduated from the Options for Recovery program on November 7, 2012, and was participating in an aftercare program that included AA/NA meetings five days a week. She had a temporary sponsor and was looking for a permanent sponsor. Mother admitted that she had not drug tested since completing her treatment program on November 7, 2012.

Mother denied living with father and said she had spent the last month living with a family member, but she said she and father planned to get back together. Mother said that the grandmother had cut her visitation time with the children to one and a half to two hours on the weekend since early January 2013, but for the three months prior to this, she was visiting nearly every day. Before that, she had visited approximately three times a week for one month.

Mother's case manager, Sarah Hicks, also testified on mother's behalf, confirming mother's completion of her drug program on November 7, 2012. She said mother was near the end of her six-month aftercare program and was a role model for other women starting in the program.

Father testified that he had participated in 11 months of an inpatient drug treatment program but had been unable to complete the program because of his incarceration. He was not in an aftercare program but attended AA/NA meetings four days a week. Father said he had been incarcerated as a result of his immigration status, and after his release, he resumed having twice weekly visits with his children. He said he was employed by a company that made pools. Father admitted he had no stable housing but said he could obtain housing if the court ordered him to do so. He denied living with mother but said he planned to get back together with her.

The children's attorney opposed the parents' respective section 388 petitions, arguing that it was not in the children's best interests to be returned to their parents' care.

The juvenile court denied both parents' section 388 petitions, stating that neither parent had met the burden of showing a change of circumstances or that the proposed change would be in the children's best interests.

At the ensuing section 366.26 hearing, following arguments by counsel, the juvenile court found by clear and convincing evidence that it would be detrimental to return the children to their parents, and that it was likely the children would be adopted. The court then terminated mother's and father's parental rights.

This appeal followed.

## **DISCUSSION**

## **I. Section 388 petitions**

### ***A. Adequacy of the parents' notices of appeal***

The Department argues that we lack jurisdiction to review the order denying the section 388 petitions because the parents' notices of appeal identified only the order terminating parental rights and not the order denying the section 388 petitions. A notice of appeal must identify the order and/or judgment from which the appellant seeks review. (Cal. Rules of Court, rule 8.100(a).) The notice of appeal, which "must be liberally construed," "is sufficient if it identifies the particular judgment or order being appealed." (Rule 8.100(a)(2).)

Although the parents' respective notices of appeal did not refer to the order denying their section 388 petitions, we conclude they were sufficient to permit our review of that order, which was entered on the same day as the order terminating parental rights. A court may "liberally construe a parent's notice of appeal from an order terminating parental rights to encompass" other issues, so long as review of those issues is not foreclosed as untimely. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451 [considering nearly concurrent denial of parent's 388 petition, even though notice of appeal identified only the order terminating parental rights].) We construe mother's and father's notices of appeal from the order terminating parental rights as encompassing the denial of their section 388 petitions.

### ***B. Applicable law and standard of review***

Section 388 provides in relevant part: "Any parent . . . [of] a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . to change, modify, or set aside any order of court previously made." To obtain the requested modification, the parent must demonstrate both a change of circumstances or new evidence, and that the proposed change is in the best interests of the child. (§ 388; Cal. Rules of Court, rule 5.570(a), (e); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "[T]he 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." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

The parent bears the burden of proving the requested modification should be granted. (Cal. Rules of Court, rule 5.570(i); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) A juvenile court's determination on a petition brought under section 388 is reviewed under the abuse of discretion standard. (*Stephanie M.*, *supra*, at p. 318.)

***C. Father's section 388 petition***

Substantial evidence supports the juvenile court's determination that father failed to establish a change in circumstances. Before family reunification services were terminated, father tested positive for methamphetamine, was discharged from his substance abuse program for lack of attendance, was arrested and charged with felony possession of a controlled substance, and refused to provide an address or maintain communication with the social worker.

After reunification services were terminated, father's whereabouts were unknown and at the time of the hearing on his section 388 petition, he had yet to provide the social worker with his contact information. Father had not submitted to a drug test for 10 months and had failed to enroll in an aftercare program as ordered by the court. Father's partial compliance with his case plan by completing a parenting class and 11 months of a substance abuse program before his reunification services were terminated in June 2012 was neither new evidence nor evidence of changed circumstances. (*In re H.S.* (2010) 188 Cal.App.4th 103, 105 ["the term 'new evidence' in section 388 means material evidence that, with due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered".])

Substantial evidence also supports the juvenile court's determination that further reunification services were not in the children's best interests. Father's visits throughout the case were sporadic. Neither David nor D. acknowledged him during the visits or appeared excited to see him. Father did not visit at all during his incarceration between July and December 2012. At the time of the section 388 hearing, David and D. had lived with the grandparents for more than two years -- most of their young lives -- and were bonded with them. The grandparents were willing to adopt David and D., together with their older half-siblings.

The juvenile court's denial of father's section 388 petition was not an abuse of discretion.

***D. Mother's section 388 petition***

Substantial evidence supports the juvenile court's conclusion that mother did not meet her burden of establishing either a change in circumstance or that her request for custody of the children or further reunification services were in the children's best interests. During the reunification period, mother was discharged from five different substance abuse programs for reasons ranging from excessive absences and tardiness to conflicts with other program participants. She tested positive for marijuana twice and failed to appear for 17 scheduled drug tests. She was also arrested and charged with a felony for acquiring an access card with intent to defraud, lacked stable housing, and failed to maintain contact with the social worker. After her reunification services were terminated, mother was discharged from the homeless shelter in which she had been living for failing to obey the curfew and house rules. She lacked stable housing and continued to withhold her contact information from the Department's social worker. Although she had completed a substance abuse program in November 2012, mother had not been tested for drugs since then and had not yet found a permanent AA/NA sponsor. She admitted she could not provide for the children if they were returned to her unless she had father's assistance.

Substantial evidence also supports the juvenile court's conclusion that granting mother's petition was not in the children's best interests. Factors to be considered in determining what is in the best interests of a child under section 388 include "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

Mother's drug use was one of the problems that led to the children's removal from her care. The problem is not one that is easily overcome, as evidenced by appellant's

failure, throughout the reunification period, to appear for drug testing or complete a drug rehabilitation program. Although at the time of her petition, mother had completed a drug program and a 12-month period of sobriety, that time period is short in comparison to her history of substance abuse.

Mother's troubled relationship with father was another reason the children were removed from her care. She had threatened to set fire to father's home while the children were present in the home but had not undergone court ordered individual counseling to address her relationship issues. Despite the fact that T. and Delilah did not want any contact with father, mother intended to reunite with father and to marry him.

There was evidence of a bond between mother and the children, but the bond the children shared with the grandparents appeared to be stronger. Throughout the case, both T. and Delilah consistently and repeatedly expressed their desire to remain in their grandparents' care and to be adopted by them. David and D., who were less than a year old when they were detained, had spent more time in the grandparents' care than they had with mother. All four children were bonded with the grandparents and were thriving in their home. There is ample support for the juvenile court's conclusion that resuming reunification was not in the children's best interests because it would undermine their need for stability and permanence. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 ["Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability"]; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252 [parent with long history of drug addiction failed to sustain burden of showing it was in children's best interest to continue reunification and to remove children from comfortable and secure placement].) The denial of mother's petition was not an abuse of discretion.

## **II. Termination of parental rights**

Section 366.26, subdivision (c)(1), provides for the termination of parental rights if family reunification services have been terminated and the juvenile court finds by clear and convincing evidence that the child is likely to be adopted. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern



. . . the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citations.]” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) “Adoption, where possible, is the permanent plan preferred by the Legislature. [Citations.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)). Although the statutory preference is in favor of adoption, section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

The juvenile court’s ruling on whether an exception applies to terminating parental rights pursuant to section 366.26 is reviewed under the substantial evidence standard. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Under this standard, an appellate court must affirm the juvenile court’s order if there is evidence that is reasonable, credible, and of solid value to support the order (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080), and the evidence must be considered “in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*Autumn H.*, at p. 576.)

Mother contends the exception to terminating parental rights set forth in section 366.26, subdivision (c)(1)(B)(i) applies. That exception provides as follows: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

The parent bears the burden of proving that this exception applies. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-954.) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to 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 Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

For the exception to apply, the parent must have maintained regular visitation with the child, and the juvenile court must determine that the parent/child relationship

“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 other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent must establish more than merely some benefit to the child by continuing the parent/child relationship. That relationship must be “a substantial, positive emotional attachment such that the child would be greatly harmed” if the relationship were severed. (*Ibid.*) To overcome the benefits associated with a stable, adoptive family, the parent seeking to continue a relationship with the child must prove that severing the relationship will cause not merely some harm, but *great harm* to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Factors that the juvenile court should consider when determining the applicability of the exception include “[t]he 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 . . . .” (*Autumn H.*, *supra*, at p. 576.)

There is ample support in the record for the juvenile court’s determination that the parental exception to terminating parental rights did not apply. Mother’s visits with the children throughout most of the case were sporadic and the quality of those visits was poor. The children would not acknowledge mother and were not excited to see her. Mother’s unannounced appearance at the grandparents’ home late one night in January 2012, her demand to see the children and an ensuing argument with the grandfather, distressed Delilah and caused her cry. By the time mother began visiting the children more regularly in August 2012, two years had elapsed since their removal from her care, family reunification services had been terminated, and the focus had shifted to the children’s need for stability and permanence. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) Although the children enjoyed seeing mother once she became more consistent in visiting, and Delilah stated in August 2012 that she wanted to return to mother, she readily accepted that if that was not possible, she wanted to be adopted by the grandparents. By December 2012, both the Department’s social worker and the

grandmother observed behavioral changes in the children during and after mother's visits. All four children "acted up" during the visits and became defiant and refused to listen after the visits with mother were over. Also in December 2012, T. and Delilah said they wanted to remain in their grandparents' care and reiterated their desire to be adopted by the grandparents.

At the time of the section 366.26 hearing, the children had been living with the grandparents for more than two years and were thriving under the grandparents' care. They were bonded with the grandparents, who were willing to adopt and care for all four children. Substantial evidence supports the juvenile court's determination that the children's need for stability outweighed any benefit they would derive from continuing a parent/child relationship with mother.

#### **DISPOSITION**

The order denying mother's and father's respective section 388 petitions is affirmed, as is the order terminating their parental rights.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.\*  
FERNS

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