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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.H., a Person Coming  
Under the Juvenile Court Law.

B297139

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

(Los Angeles County  
Super. Ct. No. DK05719A)

Plaintiff and Respondent,

v.

MICHAEL H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robin R. Kesler, Juvenile Court Referee. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Sally Son, Deputy County  
Counsel, for Plaintiff and Respondent.

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Michael H. (father) appeals from the order terminating his  
parental rights to M.H. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> We  
affirm.

## **BACKGROUND**

### **I. Jurisdiction**

Father was present at M.H.'s birth and within two weeks  
began serving a six-year prison term. He has a criminal history  
that includes arrests for assault with a deadly weapon and  
attempted murder.

In 2014, when M.H. was four years old, the Department of  
Children and Family Services (DCFS) filed a petition under  
section 300 because of her mother's physical abuse and neglect.<sup>2</sup>  
M.H. was also "expos[ed] to sexually explicit behavior." The  
juvenile court ordered the child detained.

DCFS placed M.H. with her paternal aunt and referred her  
for an assessment with the Department of Mental Health because  
she displayed severe sexualized behavior with herself, her half  
sibling, and students at school, and she was defiant.

In December 2014, the juvenile court sustained the petition  
and denied father reunification services because he had been

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

<sup>2</sup> Neither the mother nor M.H.'s half sibling is a party to  
this appeal.

convicted of a violent felony. (See § 361.5, subds. (b)(12) & (e).) The court awarded father visitation after his release from prison. Father notified DCFS that he would be released on December 2, 2015 and requested a visitation schedule. Despite making arrangements, father did not visit M.H.

## II. Reunification

The juvenile court granted father's petition seeking reunification services on February 1, 2016 and, among other things, awarded him monitored visits twice weekly for two hours each. He and DCFS arranged for visits to occur for two hours on Wednesdays and three hours on Sundays.

In March 2016, father informed DCFS that he opted not to visit M.H. on Wednesdays. In May 2016, DCFS reported father had "several pauses" in visitation because the monitor was ill but he was able to visit M.H. when his mother supervised.

DCFS's August 2016 status review report stated that M.H. received wraparound services and counseling to address her sexualized and defiant behavior. The social worker attended monthly child family team (CFT) meetings to address the aunt's concerns about a decline in M.H.'s behavior. M.H. was approved for psychotropic medication. However, she was suspended from school because of her behavioral problems.

The report listed the reasons for DCFS's concerns about reunification between father and M.H. Father did not respond to invitations to participate in CFT meetings that would help him understand M.H.'s problems. He was verbally abusive to the aunt when he learned that M.H. would be medicated. Father would have to take special classes to learn about the care M.H. needed and how to keep her safe. Yet, father found it difficult simply balancing employment with his own services and

visitation. Adding classes to his busy schedule could pose a safety risk to M.H. DCFS asked the juvenile court to terminate services and place M.H. in a legal guardianship with her aunt.

Visits between father and M.H. continued to be sporadic. The aunt told DCFS that in June 2016, father yelled at the aunt in the presence of M.H. and a guest. The child feared that father was going to hurt people and the aunt banned father from her house. Father had not seen the child between then and August 1, 2016. Father could not explain his absences and instead claimed he regularly visited.

In September 2016, DCFS reported that father harassed the aunt, interrogated the child about the aunt's care, disrobed M.H. in front of various people, and made referrals to DCFS. In response, DCFS modified the plan so that all visits occurred either at its offices or in a public setting and were monitored by a human services aide.

In October 2016, father, represented by counsel, filed an opposition to the proposed permanent plan. He attached a declaration, signed under penalty of perjury, stating he had *no contact with M.H.* for the first five years of her life.

At the November 3, 2016 contested 18-month hearing held more than two years after M.H. was detained, father testified that his visits occurred *once* a week and that he wanted them to occur more frequently. Father denied he was ever invited to participate in CFT or any other monthly meetings to deal with M.H.'s problems. The juvenile court found that father's criminal conduct took him away from M.H.'s life, that he lacked any understanding of M.H.'s behavior and how it affected her, and in the 11 months since his most recent release from prison, father

had not maintained ongoing and consistent visitation. It terminated reunification services.

### III. Postreunification

Father moved to Nevada in early 2017 and his visits remained infrequent. By May 2017, father's visits occurred only *every other Friday*. DCFS agreed to liberalize visits once father or his chosen monitor produced a copy of a license and insurance, and father participated in at least five monitored, incident-free visits. Father was again invited to participate in CFT meetings but he failed to respond.

Meanwhile, the aunt was reluctant to serve as M.H.'s guardian because of father's conduct. In May 2017, DCFS began assessing other relatives for placement.

In November 2017, DCFS reported that father had not visited M.H. since August 2017, when he stopped by to drop off clothing he bought for her. He visited the child once in March 2018. He was jailed in April and May 2018 and did not contact the social worker after his release. By July 2018, M.H. was placed with her maternal grandmother, who was identified as her prospective adoptive parent.

M.H.'s behavior improved with the maternal grandmother although she continued to receive services. DCFS reported the child was bonded with the grandmother where she was very comfortable.

In late fall 2018, the grandmother reported that father made overtures to visit but never followed through. Father saw M.H. *once* in November and *once* in December 2018. Both visits lasted an hour. Father telephoned the child three times between late January and mid-February 2019. The calls lasted between three and 10 minutes. While she did not mind serving as

monitor, the grandmother had difficulty with the inconsistency of father's visits. She reported that father "calls whenever he feels like it, but does not call [M.H.] consistently." He promised to bring her things for Christmas and yet failed to call until December 30th.

#### IV. The permanent planning hearing

In advance of the section 366.26 hearing, father indicated his intention to call M.H. as a witness. M.H.'s attorney, joined by county counsel, wanted an offer of proof. On the date scheduled for the hearing, father had car trouble and did not appear. The juvenile court asked why M.H. needed to testify if father was not visiting. Father's attorney responded that while earlier his visits had been "more sporadic," recently he had been telephoning and visiting when he was in California. Counsel added, "[T]here's *a* visit on December 30th. There was *a* visit on February 20th of this year." (Italics added.) The court interrupted to ask how such a rate of visitation could meet the beneficial parental-relationship exception to adoption. Father's attorney replied that father had made numerous efforts to get closer to M.H. by talking to her on the telephone. Counsel added that distance was a barrier, as was DCFS's failure to "get[ ] visits going." Also, counsel offered that father came to court regularly and made efforts to see M.H. then. The child called father dad and visits were enjoyable. The court continued the hearing and ordered M.H. back to court.

Father did not appear at the continued hearing on April 4, 2019, because of work. The court denied his request for another continuance. When his attorney asked to call M.H. to testify, the court asked for an offer of proof. Father's attorney responded, "parent/child bond." The court then asked to hear from the other

counsel. M.H.'s attorney asked that M.H.'s testimony be given in chambers and stated that mother would be called in rebuttal. The court denied the request to examine the child, given that the hearing under section 366.26 had been pending for two years during which father's visits were occurring approximately once a month and were still monitored, and that he had not completed his case plan. The court found that M.H. was adoptable and father had not demonstrated an exception to adoption. The court found that father had not maintained regular visitation and had not established a bond. Any benefit to M.H. of a relationship with father was outweighed, the court found, by the benefit she would receive through the permanency and stability of adoption. The court terminated father's parental rights and he timely appealed.

## DISCUSSION

Although "a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings 'are not entitled to full confrontation and cross-examination.' [Citation.] Due process requires a balance. [Citation.] The state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of the evidence will 'necessitate undue consumption of time.' [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146–1147.) More specifically, "the juvenile court is not required to take in-court or in-chambers testimony from the child, even when the parents

request that such testimony be taken.” (*In re Juan H.* (1992) 11 Cal.App.4th 169, 172.)

Father contends that the juvenile court abused its discretion in denying his request to call M.H. to testify about “her feelings for father and how she would feel if that relationship ended.” He argues that his offer of proof “made a prima facie case that the testimony would have been relevant and of a significant value” to the exception to adoption that he espoused, namely the beneficial parental-relationship exception in section 366.26, subdivision (c)(1)(B)(i).

Under that exception, father had the burden to prove by a preponderance of the evidence (see *In re Anthony B.* (2015) 239 Cal.App.4th 389, 395) that both (1) he “*maintained regular visitation and contact* with the child *and* [(2)] the child would benefit from continuing the relationship” (§ 366.26, subd. (c)(1)(B)(i), italics added). We conclude that father could not show the first prong of the beneficial parental-relationship exception to avoid adoption. Thus, M.H.’s testimony about her relationship with him, which is pertinent to the second prong, would be irrelevant.

The court awarded father two-hour monitored visitation twice a week. Almost immediately, father *chose* to visit only half of that time. Within three months, he reportedly had several pauses in the visits he did have, and thereafter his visits were sporadic. There were months-long gaps in visitation, both before and after termination of reunification. In 2017, father moved to Nevada, placing a geographical barrier to his contact with M.H. Father saw the child a mere three times in 2018 and his three telephone calls between late January and mid-February 2019 lasted 17 minutes in total. In sum, over the years since his



December 2015 release from prison, father had such infrequent contact with M.H. that he could not meet the first prong of the parental relationship exception (see § 366.26, subd. (c)(1)(B)(i)) no matter what the child testified to. Therefore, the juvenile court did not err or violate father's due process rights in excluding M.H.'s testimony.

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.