Filed 2/20/13 In re D.R. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.R. et al., Persons Coming Under the Juvenile Court Law.	B240347 (Los Angeles County Super. Ct. No. CK 64535)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.K. et al., Defendants and Appellants.	

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

Roland Koncan, under appointment by the Court of Appeal, for Defendant and Appellant D.R.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant A.K.

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

A.K. (mother) and D.R. (father) appeal from the March 27, 2012 order (Welf. & Inst. Code, § 366.26)[1] terminating their parental rights and selecting adoption as the permanent plan for their twins, D.R.1 and D.R.2. Father also appeals from the February 21, 2012 order denying his section 388[2] petition. Father contends the juvenile court abused its discretion in denying his petition for additional reunification services after he was released from prison, or for continuance of the section 366.26 hearing.

In her notice of appeal, mother specifies the March 27, 2012 order terminating parental rights as the sole order from which she appealed. She did not file an appeal from the February 21, 2012 order denying her section 388 petition seeking to have the twins placed in her custody, or for additional reunification services; nor did she file an appeal from the March 28, 2012 order denying her section 388 petition for reconsideration of the February 21, 2012 denial order. In the absence of a timely appeal, we deem mother's contentions regarding the February 21, 2012 and March 28, 2012 orders to have been abandoned.

Mother and father have another, older child together for whom the permanent plan is legal guardianship. Both parents mention that child in their briefs, and father mentioned that child in his notice of appeal, but neither parent made any argument in the briefs on appeal regarding that child, and we deem the twins to be the only children at issue in these appeals.

Father and mother contend the juvenile court failed to apply the parent-child beneficial relationship exception to the preference for adoption, and for this reason the order terminating their parental rights and placing the twins for adoption must be reversed. Mother also briefly mentions the sibling exception in her brief but

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1 All further section references are to the Welfare and Institutions Code.

2 Section 388, subdivision (a) provides in relevant part: "Any parent . . . having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . ."

acknowledges that was not raised in the trial court. Consequently, mother has waived the issue of the sibling exception.

We affirm the orders. Initially, we conclude the juvenile court did not abuse its discretion in denying father's section 388 petition. The petition was filed on December 29, 2011, eight months after the court had terminated father's reunification services, at which point the focus was on a permanent plan for the minors. He did not seek custody of the twins, nor had he ever lived with them. He had been arrested in August 2011, over four months before he filed the section 388 petition, and was serving a prison sentence from which he expected to be released in April 2012. He had not seen or spoken to either twin since August 2011.

We further conclude the juvenile court did not abuse its discretion in terminating the parental rights of father and mother and selecting adoption as the permanent plan for the twins. Substantial evidence supports the court's determination that the parent-child beneficial relationship exception does not apply as to father (who was incarcerated for almost eight months before the section 366.26 hearing without ever seeing the twins and never having lived with the twins), or as to mother (who never lived with the twins and fails to provide record references to evidence supporting her argument there was a loving, warm, and sustainable relationship between her and the twins).

BACKGROUND

1. Factual and Procedural Background Established in Our Previous Opinion Filed July 28, 2011

We recite the following facts from our unpublished opinion filed July 28, 2011, denying father's petition for an extraordinary writ which sought to vacate the trial court's April 13, 2011 order terminating reunification services for father and setting the section 366.26 hearing.

The Los Angeles County Department of Children and Family Services (the Department) received a referral that on December 31, 2009, father and the mother of his three children got into a heated argument and father "slapped" mother in the face multiple times while she was pregnant. Mother's left eye and cheek were red and swollen. A.R.

was present and frightened by the incident. Father was arrested and incarcerated. Even though he denied to police officers that he had done anything to mother, he could not explain her injuries.

A couple of weeks later, there was a second referral alleging that mother and father's domestic violence resulted in the premature birth of their twins, D.R.1 and D.R.2, born at 27 weeks. The twins were born critically ill. They were at high risk due to premature birth and required extensive physiological monitoring, mechanically assisted ventilation, and intravenous nutrition and medications.

These incidents were not mother and father's first involvement with the juvenile court. The juvenile court had sustained a petition stating that in July 2006, mother's child, K.U., was found severely injured with a subdural hematoma, cerebral edema, multiple rib fractures, a hemorrhaging knee, and a wound on his right hand. He also had multiple bruises on his cheeks and left side of his abdomen, as well as scratches on his forehead, nose, left ear, and right side of his groin. Mother and father, mother's live-in male companion and K.U.'s caretaker, gave conflicting explanations that were inconsistent with the injuries. But the injuries were consistent with inflicted trauma and would not have occurred except for deliberate, unreasonable, and neglectful acts. Mother failed to reunify with K.U., and her parental rights were terminated in September 2007. The child was adopted.

The social worker interviewed the maternal grandmother (grandmother), who said mother had very poor judgment and was a victim of father's ongoing domestic violence. Grandmother stated father was in and out of jail, had a violent temper, an extensive criminal history, and was addicted to marijuana and possibly other drugs. Also, father had threatened to kill grandmother if she were to try to take the twins from him. Mother was afraid of father. Grandmother begged her to leave father, but she refused.

The maternal aunt (aunt) told the social worker she was concerned about mother's abusive relationship with father and the fact mother refused to leave him. Mother had called the aunt many times complaining about how badly father treated her, yet mother refused to leave father or get a restraining order. The aunt also said mother would text

her, saying things like, "I want to poison him." On another occasion, mother sent a text message saying she was bringing in the new year with a black eye, and explained that father had kicked her in the face. Mother told the aunt that father bad-mouthed and beaten her. Father would even beat mother for contacting the aunt. Mother begged the aunt not to telephone the police or grandmother because father threatened to hurt the grandmother and the aunt, something the aunt believed father was capable of doing.

In January 2010, the Department filed a dependency petition and detained the children. In further interviews with the social worker, mother denied father had slapped her in December 2009 or that he ever hit her. Mother blamed three-year-old A.R. for giving her the black eye. She said father was the most important person in her life and that grandmother and the aunt were lying about her telling them father beat her. Mother also disclosed that she and father used marijuana three to 10 times a day, or "'*all day every day*,'" when home with A.R. Mother did not stop using marijuana until the fifth month of her pregnancy with the twins. Father similarly denied hitting mother. He admitted using marijuana, but said he had a prescription and used it to treat his back and neck pain.

The twins needed special medical care and grandmother was willing to undergo the necessary training to care for them. But the children's physician advised they would require high-risk, follow-up treatment for one and one-half years, and their caretakers had to live close to the medical specialists who would be providing the treatment. Because grandmother lived in Bakersfield, the twins were placed with foster parents who were trained to care for special-needs foster children.

In April 2010, the social worker reported that mother had tested positive for marijuana on February 10 and 22, 2010, and tested positive for opiates and morphine on February 22. Father failed to attend a drug test on February 4, and similarly tested positive for marijuana on February 17 and March 16.

During a visit with the twins in April 2010, the foster family agency supervisor observed mother with bruises on her left cheek bone, back and arm. There were marks and bruises on other parts of mother's body as well. The supervisor reported that mother

was depressed and did not make eye contact that day, and that father was sitting in the car with her before the visit, despite the fact that a restraining order prevented father from having contact with mother. Father was arrested the same month and charged with a felony for carrying a loaded firearm. He was incarcerated.

On April 27, 2010, the juvenile court sustained an amended petition indicating mother and father had engaged in verbal and physical altercations in the presence of A.R., while mother was pregnant with the twins. Mother had failed to protect the children from father's domestic violence and father's violence placed the children at risk of harm. In addition, the sustained petition stated mother and father had a long history of illicit drug abuse and were frequent users of marijuana, rendering them incapable of providing regular care to the children because their use of illicit drugs endangered the children's health and safety and placed them at risk of physical and emotional harm.

On June 22, 2010, the juvenile court ordered father to participate in a drug rehabilitation program with random testing for drugs and alcohol, a parenting education program, and individual counseling to address anger management and domestic violence. The court ordered mother's and father's visits to be monitored and that they visit separately.

For the six-month review hearing, the social worker reported the children were thriving in their placements, that mother and father had enrolled in the ordered services, and that they were consistent in their visits. Father had completed domestic violence counseling, and programs for parent education and domestic violence batterers. But on October 25, 2010, he refused to be tested for drugs or alcohol. He felt it was unnecessary to continue with any kind of substance treatment program. Father was no longer participating in his drug rehabilitation program.

Mother and father continued to deny and minimize the severity and inappropriateness of their domestic violence. They arrived for visits at the same time, although the juvenile court had ordered them to visit separately. They had been seen together before and after visits, and father would pick up mother's bus passes so he could deliver them to her. As of the end of November 2010, father was unemployed, living

with mother, and reliant upon her. Grandmother reported father was very aggressive, and she refused to monitor his visits with the children.

The social worker reported that father appeared unconcerned about the twins' impaired immune system and persistent respiratory problems, insisting that D.R.2 be circumcised even though doctors warned against it, advising that the required anesthesia or spinal block could kill the child. Also, father would go for visits, smelling of cigarette smoke, and would kiss the children on the lips, even though he had a cold and the doctor advised against it. The social worker also expressed concern regarding father's inability to control his anger and interact positively with others. The twins' foster mother indicated she was interested in adopting them, and grandmother was willing to adopt A.R., or be her legal guardian.

On January 6, 2011, father enrolled in a substance abuse program, which included individual counseling and random testing. A progress letter stated father was in compliance with the program. Nonetheless, on February 16, 2011, the social worker randomly tested mother and father. They both failed, testing positive for marijuana.

At the six-month review hearing, counsel for the Department and the children argued reunification services should be terminated. The juvenile court found the parents in partial compliance with the case plan and ordered additional services, including weekly random testing.

Father continued to participate in his drug rehabilitation program, and mother continued to attend Narcotics Anonymous and Alcoholics Anonymous meetings. On March 16, 2011, the restraining order against father was modified to "'peaceful contact.'" Nonetheless, a few days later mother was observed at a visit with D.R.1 and D.R.2 with black bruises on her arms and scratches to her neck area. The visitation room smelled of alcohol after mother left, even though mother did not appear drunk. The social worker reported that mother's and father's drug tests for March 17 and 21, 2011, were invalidated because of significant dilution.

At the 12-month contested review hearing on April 12 and 13, 2011, father testified that the only domestic violence incident with mother was the December 31, 2009

"slapping" incident, for which father was convicted and served time in jail. He could not explain the bruises and scratches mother had in March 2011, and he similarly could not explain his last two diluted drug tests. Father testified that the last time he smoked marijuana was New Year's Eve 2010, and the last time he ingested marijuana was February 2011. He said he had a prescription for marijuana, and took it for back and neck pain.

Mother similarly testified the incident on December 31, 2009, was the only time father and mother were involved in domestic violence. She denied that during her visit in March 2011 she had any bruises or scratches, or that she had consumed alcohol. She had no explanation for her diluted tests and said the last time she used marijuana was February 2011. Mother also said she had no explanation for K.U.'s serious injuries and denied he was the victim of child abuse.

Counsel for the Department argued reunification services should be terminated. Counsel asserted the parents had been attending programs but had not learned anything because they continued to minimize their domestic violence and maintained the December 2009 incident was the only episode of violence. Counsel for the children agreed the children should not be returned to mother and father's care at this time. Counsel was concerned father continued to minimize his domestic violence, and did not have an adequate plan for taking care of the children if they were returned to him. Nonetheless, children's counsel indicated he was not opposed to extending services. Father's counsel argued all the children should be returned to him that very day, or in the alternative that reunification services be extended, because he had complied with the case plan.

The juvenile court found that while the parents had substantially complied with the case plan, they had failed to make sufficient progress in treating the problems that required the children's detention. The court concluded there were too many unanswered questions, and did not believe mother's and father's testimony that there had been only one incident of domestic violence between them. The court concluded father was still not taking responsibility for his violence toward mother. The court was concerned that even

after receiving extensive services, mother and father were having diluted tests, were testing positive for marijuana, and mother refused to acknowledge or take responsibility for K.U.'s serious injuries. The court did not believe the parents were capable of appropriately caring for D.R.1 and D.R.2, who were very high risk and needed special care. The court finally concluded there was not a substantial probability the children would be returned by the 18-month date, and set a permanency planning hearing pursuant to section 366.26.

2. Law of the Case

"Under the law of the case doctrine, ' "the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinitive of the rights of the same parties in any subsequent retrial or appeal in the same case." ' . . . The doctrine promotes finality by preventing relitigation of issues previously decided." (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 309, citations omitted.) Our previous opinion established the above-recited facts, and the following facts, as law of the case.

Marijuana Use. While father testified he smoked or ingested marijuana only sporadically for medical purposes and did so outside the presence of the children, the juvenile court found his testimony was not credible. Indeed, mother had stated that before the Department's involvement she and father together smoked marijuana "daily" and "3 [to] 10 times per day," while they were caring for A.R. Mother and father even smoked this much while she was pregnant with the twins.

The juvenile court sustained allegations that the above drug abuse rendered mother and father incapable of caring for their children and placed them at a substantial risk of harm. These findings are now final and were never challenged on appeal. The children were taken from mother's and father's custody, at least in part, for this very reason. The juvenile court therefore set up a specific series of reunification services designed to eliminate this risk to the children.

Despite knowing that he would be under scrutiny and the consequence of failure was the possible loss of his children, father continued with his drug use. He tested

positive in February and March 2010, failed to test once in February 2010 and refused to test in October 2010 (complaining the whole process was unnecessary), tested positive again in February 2011, and had two diluted tests in March 2011.

It was not enough for father to show he had reduced his drug use during the period of scrutiny. Father's numerous positive, refused, and diluted tests indicated a good possibility he would return to his "'*all day every day*'" use once the court is no longer watching. (See § 300.2 ["The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child."]; *In re Brian R.* (1991) 2 Cal.App.4th 904, 918 [the juvenile court must evaluate the likelihood that the parent will be able to maintain a stable and sober lifestyle for the remainder of son's childhood].)

Domestic Violence. Despite mother's assertion that father struck her repeatedly in December 2009, she denied it three months later. At the 12-month review hearing, she again admitted it but said it was the one and only occurrence of domestic violence between her and father. Father denied the incident until the 12-month review hearing, when, like mother, he admitted his violence but said it was the only time. The juvenile court appropriately found this testimony lacked credibility.

The record shows that grandmother had explained how mother was an ongoing victim of father's domestic violence. He was in and out of jail and had threatened to kill mother. Grandmother refused to monitor his visits because he was so aggressive. The aunt also had reported mother called her and texted her many times complaining of father's physical abuse, including a black eye from a kick to the face. Father beat mother for calling the aunt to complain about his abuse.

While there is no direct evidence father caused mother's bruises and scratches observed during visits in April 2010 and March 2011, the evidence indicates mother and father went to visits together, and father picked up mother's bus passes so he could deliver them to her. Based upon father's history of violence toward mother, the juvenile court was entitled to infer that the April 2010 and March 2011 bruises suggested the parents' domestic violence was ongoing.

The Twins' Special Needs. The twins were born extremely premature and critically ill. They required extensive observation, physiological monitoring, mechanically assisted ventilation, and intravenous nutrition and medications. They would require high-risk follow-up treatment for at least the next 18 months of their lives, and their caretaker had to be specially trained to provide the required care.

Neither parent made any attempt to seek the training required to care for the twins. Also, father appeared unconcerned about their impaired immune systems and persistent respiratory problems because he insisted on D.R.2 undergoing a circumcision even though the procedure required anesthesia or a spinal block, which the doctors warned could kill him. Father also showed his lack of concern for the twins' fragile health by appearing at visits smelling of cigarette smoke and kissing them on the lips while having a cold, even though he was told doing so harmed the children's impaired immune system.

Consequently, it was appropriate for the juvenile court to find father could not adequately care for the twins, at least at this point in time. We agree with the Department there was substantial evidence to support the juvenile court's decision that placing the children with father at the time of the review hearing would create a substantial risk of detriment to their physical and emotional well-being.

The children in this case were removed from their parents on January 22, 2010. Eighteen months from that date was July 22, 2011. Reunification services were terminated 15 months after the children were removal from their parents, on April 13, 2011. To extend services beyond April 13, 2011, the juvenile court was required to find there was a reasonable probability that the parents could accomplish in three more months what they had not accomplished in 15 months.

As noted, it was not father's unwillingness to attend the programs that posed a problem. Rather, it was his unwillingness to admit the severity of the problems and make the changes necessary to alleviate the problems that prevented him from having custody of the children at the April 13, 2011 hearing. There is nothing in the record showing father can, much less will, make those changes within a mere three months. If he can do so beyond that time period, he has an adequate remedy by filing a petition under

section 388. Substantial evidence supported the juvenile court's order denying further reunification services.

3. Factual and Procedural Background of Events After July 28, 2011

After we filed the opinion from which we quoted the above facts established as law of this case, father failed to demonstrate an ability to make the changes necessary to alleviate the problems that prevented him from having custody of the children. To the contrary, on August 3, 2011, only a few days after we filed our previous opinion, father was arrested for evading a peace officer and for disregard of safety (speeding). He was still in custody on the date of the hearing on his section 388 petition (though he appeared and testified in court, in custody) and later, when the court terminated his parental rights. He expected to be released from custody on April 2, 2012.

At the section 366.26 hearing on March 27, 2012, mother appeared in court but father waived his appearance. No testimony was offered. The Department's various reports for the section 366.26 hearing were admitted in evidence, and counsel argued the matter to the court. The court found by clear and convincing evidence that it was likely the twins would be adopted, there were no exceptions to the preference for adoption, and parental rights should be terminated.

DISCUSSION

1. Father's Section 388 Petition

Some eight months after the court had terminated father's reunification services, and almost five months after he was arrested and incarcerated, father filed a section 388 petition. Father requested that six more months of reunification services be provided to him, and that the section 366.26 hearing be continued to April 2012, after he was released from custody. The twins were, at that time, living with the foster parents with whom they had lived from the time they were first released from the hospital and who had been approved as prospective adoptive parents in the event father's and mother's parental rights were terminated.

"The juvenile court may modify an order if a parent shows, by a preponderance of the evidence, changed circumstances or new evidence and that the modification would

promote the best interests of the child." (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446.) The resolution of a section 388 petition is "committed to the sound discretion of the juvenile court, and the trial court's ruling should not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citation.]" (*Id.* at pp. 318-319.)

Father contended there was a material change in circumstances on the grounds he continued to address substance abuse issues by participating in AA and attending a substance abuse program while incarcerated at Pitchess Detention Center, and he was waiting to enroll in additional programs at Wasco State Prison.

"For a parent 'to revive the reunification issue,' the parent must prove that circumstances have changed such that reunification is in the child's best interest." (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) Once reunification services to a parent have been terminated, as here, "a parent's interest in the care, custody and companionship of the child is no longer paramount." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) Instead, the court's focus, given the stage of the proceedings, is on the dependent child's need for stability and permanency. (*Ibid.*; see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

In assessing the sufficiency of a section 388 petition, the court looks to a number of factors, including "the seriousness of the reason for the dependency and the reason the problem was not overcome; the relative strength of the parent-child and child-caretaker bonds and the length of time the child has been in the system; and the nature of the change in circumstances, the ease by which the change could be achieved, and the reason the change was not made sooner." (*In re Aaliyah R., supra,* 136 Cal.App.4th at pp. 446-447.)

The record shows no abuse of discretion in the denial of father's section 388 petition. There is ample evidence supporting the court's determination there was no

change of circumstances that would suggest the twins' interests would be promoted by reinstating reunification services. While he was housed at the Pitchess Detention Center, father attended weekly group classes on substance abuse and anger management. In December 2011, he was transferred to Wasco State Prison, where he received weekly, 30-minute individual counseling. But father had not seen the children or spoken with them since his arrest on August 3, 2011. Father had never lived with the twins, and the only unmonitored visits he ever had with them were at the foster agency.

In our previous opinion, we determined the court did not abuse its discretion by terminating reunification services. In the ensuing months, father was unable to visit or speak with the twins while incarcerated, and he was incarcerated for most of the time after the termination of reunification services. Given the stage of the proceedings, the need to give "special weight" to the interests of the children for stability, and the evidence before it, we find the juvenile court was well within its discretion in determining father had failed to carry his burden on his section 388 petition. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 319.)

2. Termination of Mother's and Father's Parental Rights

Mother and father contend the juvenile court erred in concluding there was no showing that either parent had a beneficial parent-child relationship sufficient to prevent termination of parental rights. We disagree.

Once reunification services to the natural parents have been terminated and the dependency proceedings reach the section 366.26 hearing, adoption is the preferred permanent plan decreed by the Legislature. (§ 366.26, subd. (b); see also *In re Beatrice M*. (1994) 29 Cal.App.4th 1411, 1419.) The statute mandates that parental rights be terminated, unless the parent can establish one of the enumerated exceptions. (§ 366.26, subd. (c)(1).) "An exception to the adoption preference applies if termination of parental rights would be detrimental to the child because the 'parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.' (§ 366.26, subd. (c)(1)(B)(i).)" (*In re C.F*. (2011) 193 Cal.App.4th 549, 553.) "[T]he party claiming an exception to adoption has the burden of proof of

establishing by a preponderance of evidence that the exception applies." (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 449.)

We review the juvenile court's decision regarding the applicability of the parental relationship exception for an abuse of discretion. (*In re C.B.* (2010) 190 Cal.App.4th 102, 123; accord, *In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 449 & *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) At the section 366.26 hearing, father and mother had the burden to establish both prongs of the parental relationship exception. First, they had to show they had maintained regular contact with the twins, and also that the twins would benefit from a continued parental relationship with mother and father. (§ 366.26, subd. (c)(1)(B)(i).) There must be solid, credible evidence in support of both prongs of the exception. "The Legislature emphasized the exceptional nature of all the circumstances identified in section 366.26, subdivision (c)(1) by revising the statute in 1998 to require the court to find not only that one of the listed circumstances exists, but also that it provide 'a compelling reason for determining that termination would be detrimental to the child.' [Citation.] This amendment . . . makes it plain that *a parent may not claim entitlement to the exception . . . simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights*." (*In re Jasmine D.*, *supra*, at p. 1349, italics added.)

"To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

Some of the factors the court assesses in making a finding as to the existence of a substantial, beneficial relationship are: "'(1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs.' [Citation.] '[F]or

the exception to apply, *the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt*.' [Citation.]" (*In re Jason J*. (2009) 175 Cal.App.4th 922, 937-938, italics added.)

The twins never lived in father's or mother's custody and there was no evidence showing a substantial and beneficial *parental* relationship between the twins and either mother or father. Except for the reports that mother's visits with the twins at their maternal grandmother's home were regular and mother behaved appropriately, mother has not provided any citations in her brief to any part of the record before the court at the section 366.26 hearing to support her argument there was a beneficial parent-child relationship that weighed against the finding that adoption was the preferred permanent plan for the twins. Neither has father; father contends the court erred by not inquiring into whether the parent-child relationship exception applied; but father also acknowledges that the law places upon him the burden to produce such evidence. Given the substantial evidence in the record supporting the court's determination, no abuse of discretion has been shown.

DISPOSITION

The February 21, 2012 order and the March 27, 2012 order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.