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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JOSEPH W., a Person
Coming Under the Juvenile
Court Law.

B283000
(Los Angeles County
Super. Ct. No. CK50780)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

L.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County. Stephen Marpet, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Minor.

In this juvenile dependency case, defendant and appellant L.B. (mother) challenges the juvenile court's order terminating her parental rights to her 12-year-old son, Joseph W.¹ In particular, mother argues that, at the permanency planning hearing, the juvenile court violated her due process rights by limiting her counsel's ability to address whether Joseph objected to adoption. As a result, mother claims she was unable to establish either the beneficial parental relationship exception or the child-objection exception to adoption. As explained below, we conclude that, even assuming the juvenile court erred and the challenged testimony should have been permitted, the error was harmless and not a ground for reversal. If admitted, the challenged testimony would not change the propriety of the juvenile court's ruling terminating mother's parental rights.

Mother also argues the juvenile court violated her due process rights by limiting her counsel's ability to ask whether Joseph's prospective adoptive parents understood that legal

¹ Joseph's father K.W. was also a party to the dependency proceedings below. He has not appealed the juvenile court's rulings and is not a party to this appeal.

guardianship was an available alternative to adoption. We disagree and find no error with respect to that evidentiary ruling.

Accordingly, we affirm the juvenile court's order terminating mother's parental rights.

BACKGROUND

1. Mother's Prior History with the Child Welfare System

Prior to the instant dependency proceedings, mother had been involved in the Los Angeles child welfare system dating back to 2002, when a dependency case was opened with respect to both mother's son born with special medical needs as well as her daughter Ashley W. Eventually, that son was adopted and mother reunified with Ashley. Nonetheless, the Los Angeles County Department of Children and Family Services (Department) continued to receive referrals alleging general neglect, emotional abuse, and domestic violence between mother and father and, later, as between mother and her boyfriend Victor V. The Department closed many of those referrals as unfounded or inconclusive.² In one instance, as a result of allegations of domestic violence between Victor and mother, a voluntary family maintenance case was opened. Victor participated in a domestic violence program and stated he would not be reconciling with mother and would no longer engage in domestic violence.

² In 2010, the Department received referrals related to the death of another one of mother's sons. However, it was determined that son died of natural causes and no dependency case was opened.

2. The Instant Section 300 Petition, Detention, and Adjudication

In February 2015, the Department received a referral alleging repeated domestic violence incidents between mother and Victor, many of which Joseph and his older sister Ashley had witnessed. As a result, the Department investigated the allegations and, on March 2, 2015, filed a petition under Welfare and Institutions Code³ section 300, subdivisions (a) and (b) on behalf of Joseph and Ashley.⁴ The two counts of the petition were identical and alleged mother and Victor had a history of domestic violence in the children's presence and mother allowed Victor unlimited access to the children, all of which put the children at risk of harm. At the detention hearing held the same day, and over mother's objection, the juvenile court ordered the children detained and placed with their paternal aunt. The court ordered family reunification services for mother, including monitored visits, drug testing, and parenting, individual, and domestic violence counseling. The court also appointed the children's attorney as their "CAPTA" guardian ad litem. (Child Abuse Prevention and Treatment Act, 42 U.S.C. § 1501 et seq.)

The next month, in April 2015, the Department filed an amended petition, which included the original two domestic violence-related counts and added one additional subdivision (b)

³ Undesignated statutory references are to the Welfare and Institutions Code.

⁴ At the same time, the Department also opened a case with respect to Victor's children. As a part of that case, Victor was required to attend individual counseling as well as domestic violence counseling and programs.

allegation with respect to father's long criminal history and substance abuse.

Prior to the adjudication hearing, the Department filed reports and other evidence with the juvenile court. Among other things, the Department reported the children witnessed domestic violence between mother and Victor, and at times the police responded to domestic disputes at their home. The reports also reflected mother took no responsibility for her actions and denied or at the least minimized the domestic violence that occurred. The Department also stated Joseph was in fourth grade at the time, had an individualized education plan (IEP) due to a learning disability, was diagnosed with attention deficit disorder, and attended a special day school. Joseph said he wanted to return to mother's care.

At the adjudication hearing held in June 2015, the juvenile court amended and sustained the subdivision (b) count alleging an unresolved history of domestic violence between mother and Victor. The court also sustained the second subdivision (b) count addressing father's extensive criminal history and substance abuse, and dismissed the subdivision (a) count in the interest of justice. Mother filed a waiver of rights and submitted on the amended petition. The court declared the children dependents of the court under section 300, subdivision (b) and ordered the Department to place the children with a relative. The court also ordered family reunification services for mother, including counseling, a domestic violence support group, and unmonitored day visits with her children; however, Victor could not be present during visits. The Department placed Joseph with his paternal aunt, L.G. and her husband, and Ashley with another paternal

aunt, L.R. and her partner, all of whom lived in the same duplex home.

3. Reunification Period

For approximately six months, mother appeared to do well both in her court-ordered programs and counseling, as well as during her visits with Joseph and Ashley. Similarly, the children seemed happy to visit with mother. Although Ashley was unsure what she wanted, Joseph consistently indicated he wanted to return to mother's care.

Mother was not honest about her relationship with Victor. Although she stated otherwise, it appeared mother continued to live with Victor or at least remained in a relationship with him. Moreover, the Department believed she continued to minimize the domestic violence between herself and Victor.

In a March 2016 report to the court, the Department reported it appeared mother was not utilizing the skills she learned in her parenting programs, continued to put her needs before those of her children, and had said things to the children to cause discord between them. The Department also reported mother and Ashley had stopped communicating and Ashley had decided she wanted to remain with her aunt. However, although Joseph was doing well in his aunt's care, he continued to express his desire to return to mother's care. In light of mother's limited progress with case-related issues, the Department recommended and, on March 7, 2016, the juvenile court ordered that mother attend additional counseling sessions as well as participate in conjoint counseling with Ashley.

A couple of months later, the Department reported the children were doing well in their aunts' care and working hard at school. Although Joseph was in fifth grade at the time, he was

reading at a first grade level but was working toward reading at grade level or at least at a fourth grade level. Joseph's IEP documents indicated his grandmother believed it was difficult and frustrating for Joseph when he returned from a weekend with mother. Nonetheless, Joseph told a Department social worker that he missed mother and felt sad because he had to stay with his aunt, although he was "okay staying there until he can return to his mother." Mother had attended an intake session for her further court-ordered counseling and her relationship with Ashley had improved.

The Department also reported, however, that in early April 2016, mother assisted Victor in taking his eight-year-old son without permission from the son's maternal grandmother's home in Arizona. Mother drove her car to Arizona with Victor and, without consent from the son's mother or maternal grandmother, drove Victor and the boy back to California. Victor refused to cooperate with the Department and would not reveal his son's whereabouts. Moreover, mother lied to the Department about her involvement in the incident, saying she had not seen Victor's son in years, and she also refused to reveal any information about the boy's whereabouts. In light of these events, and despite the fact Ashley's and Joseph's unmonitored visits with mother had been going well, the Department requested that mother's unmonitored visits be changed to monitored and that her reunification services be terminated. On May 2, 2016, the juvenile court provisionally ordered mother's visits with the children be monitored until the court could hold a hearing on the matter.

In July 2016, the Department reported on mother's monitored visits with the children. Mother had some difficulties

scheduling the visits with the children's caregivers (with whom mother did not have a good relationship), but her visits with the children went well and the children were happy to visit with her. In early June, however, Ashley no longer wanted to visit with or speak to mother because of hurtful things mother had posted on social media about Ashley. Nonetheless, Joseph continued to visit with mother and state his desire to return to her care.

The Department continued to express concern that mother refused to take responsibility for her actions, continued to have a relationship with Victor, put her desires above the needs of her children, and was not honest with the Department. Of particular concern, mother refused to admit her involvement in bringing Victor's son to California under false pretenses and did not seem to appreciate the seriousness of the situation. Similarly, mother denied posting insensitive things about Ashley on-line and instead told a Department social worker that someone may have had access to her social media account. In addition, Victor had not completed the court-ordered services in the dependency case involving his children. The Department again recommended mother's reunification services be terminated.

On July 15, 2016, the court found neither mother nor father was in compliance with their case plans, terminated reunification services, and set the matter for a permanency planning hearing. The court also granted the Department's request that mother's visits be monitored.

4. Permanency Planning Hearing

a. Department Interviews and Reports

Prior to the permanency planning hearing, the Department conducted interviews and submitted various reports and documents to the court. In November 2016, the Department

reported the prospective adoptive parents were paternal aunt L.R. and her partner, with whom the children were living at the time and who were “very eager for the opportunity to adopt” the children. The Department stated both L.R. and her partner “have a clear understanding of their rights and responsibilities as adoptive parents, and understand the differences between Long Term Foster Care, Legal Guardianship and Adoption. They both are aware that Adoption is a lifelong commitment” and “are committed to adopting the two minors and providing them with a stable loving permanent home.”

In addition, the Department reported “[b]oth Ashley and Joseph stated that they wanted to be adopted by [their aunt and her partner] and they want to remain in their home.” In another November 2016 report, it was reported the children each told a Department social worker they were “okay with being adopted by [their aunt and her partner].” Joseph stated he wanted to return to mother’s care and was sad if he could not do so. He said if he could not return to mother’s care, he “is okay with being adopted by [his aunt and her partner].”

As of November 2016, mother continued to have monitored visits with Joseph, but Ashley did not want to participate. Joseph’s visits with mother went well, although mother sometimes canceled the planned visits when she did not like the monitor or the chosen location. During their visits, mother and Joseph talked about school and other topics, worked on projects together, played outdoors, watched shows on a tablet, or played video games. Mother usually brought food for them to eat as well as items like clothing, shoes or toys for Joseph and Ashley. Mother and Joseph were appropriately affectionate with one

another during their visits and both appeared to enjoy their time together.

The Department also reported mother continued to refuse to take responsibility for her actions and instead blamed the Department for the termination of her reunification services and for the fact her children had not been returned to her. The Department believed mother was not using the skills taught at the programs she completed, had poor impulse control, and continued to put her desires before the needs of her children.

In May 2017, the Department again reported “[b]oth Ashley and Joseph verbally expressed that they are okay with being adopted by [their aunt and her partner].” It was also reported, however, that Joseph continued to voice his preference to return to mother’s care, but if he could not do that he was “okay” with adoption and continuing his visits with mother. Mother also stated that, despite what Joseph might have told the Department, he did not want to stay with his aunts, but wanted to return to her care. Mother believed Joseph would be upset if he could not return to her care.

As of May 2017, mother continued to have monitored visits with Joseph, and sometimes Ashley would join them. There were no concerns with mother’s visits and both she and the children appeared to enjoy their time together. A school report for Joseph indicated he was in sixth grade and continued to make progress in his special education day class, although he still struggled in certain areas due to his learning disability. He also received speech services.

On May 22, 2017, the day of the permanency planning hearing, the Department submitted a last minute report describing events that occurred the week before. Specifically, a

Department social worker had seen mother's car at her former home, where she had lived with Victor. That same day, the social worker asked mother where she was living. At first, mother lied to the social worker, but eventually admitted that, a few months earlier, she had moved back in with Victor. Nonetheless, mother insisted Victor had moved out on May 1st, although he still had a key to the home. Mother said she told Victor she was working to reunify with her children and, if she had to choose, she would choose them over him. The social worker expressed concern both to mother, and then to the court, that mother still did not utilize skills taught at the programs she had completed and appeared to continue a relationship with Victor, who had not completed his court-ordered programs, had not reunified with his children, and would pose a risk to Ashley and Joseph if they were returned to mother's care.

b. Hearing

The permanency planning hearing was held on May 22, 2017. There was no dispute the adoptive parents could provide the children a loving, safe and appropriate home, or that the children were adoptable. Father agreed to adoption by the adoptive parents.

Ashley and Joseph testified in chambers at the hearing. At the time of the hearing, Joseph was 12 years old. On direct examination, Joseph testified he was happy when he visited with mother and was sad when the visits ended. He stated that, if he were not able to visit with mother, he would be "[m]ad and sad" because "I love her and stuff. She means everything to me." He testified he wanted mother to be his parent and liked living with her, but he also liked living with his aunts. On cross-examination, Joseph agreed he previously had told a Department

social worker that, if he could not return to mother's care, he wanted to be adopted by his aunt, who had told him he could continue to see mother. Finally, on redirect, mother's attorney asked, "If being adopted meant that you couldn't have visits with your mom anymore— [¶] . . . [¶] —would you still want to be adopted?" The juvenile court sustained the Department's objection to the question as assuming facts not in evidence. Nonetheless, Joseph answered, "No." The court struck Joseph's "no" answer and his testimony concluded.

Ashley testified she wanted to be adopted by the adoptive parents. Like Joseph, Ashley stated her aunt had promised she could continue to have visits with mother even after adoption. Unlike Joseph, however, the juvenile court permitted—over the Department's objection—mother's attorney to ask Ashley whether she would choose adoption even if that meant she could not visit with mother. Ashley answered, "Yes."

Mother also testified. She stated she had been speaking with the children by phone and visiting with them twice a week. She reiterated much of what the Department had reported. She provided food during the visits, she played games with the children, and they talked. She testified her participation in counseling had helped improve her relationship with the children.

The Department called paternal aunt and adoptive parent L.R. to testify. She explained she and her partner had been caring for the children for approximately two years. She stated she would continue to allow mother to visit with the children even if the court terminated parental rights. On cross-examination, mother's attorney attempted to ask L.R. whether she had discussed legal guardianship with the Department social

worker. The court sustained the Department's objections to that line of questioning based on relevance and as being beyond the scope of the examination.

Following testimony, mother's counsel urged the court to find two exceptions to adoption existed, namely the beneficial parental relationship exception (section 366.26, subdivision (c)(1)(B)(i)) and the child-objection exception (section 366.26, subdivision (c)(1)(B)(ii)). Counsel argued Joseph had "a very significant relationship with" mother, "appears to be extremely bonded with" mother, and had not consented to and would not consent to adoption. Counsel believed it would be detrimental to Joseph to terminate mother's parental rights. Mother's attorney also explained that, although L.R. promised to continue the children's visits with mother after adoption, her promise was unenforceable and no guarantee that visits would in fact continue post-adoption. Thus, counsel argued the court could not consider that promise when determining whether terminating mother's parental rights would be detrimental to Joseph.

Counsel for the children argued no exception to adoption applied and urged the court to terminate parental rights and order adoption as the children's permanent plan. Although counsel agreed Joseph preferred to return home with mother, counsel stated "that's not an option in the foreseeable future." Counsel emphasized, "We have to look at the best interest of these children and the children's permanency not be subjected to ongoing litigation. As evidenced by the last minute information of today, the issues that brought this case to the attention of the court are ongoing and mother's progress has been slow and incremental." Counsel asked the court to "consider Joseph's IEP

in weighing his responses and look to his best interest to find there is no exception in this case.”

Finally, the Department’s attorney urged the court to terminate parental rights and order adoption as the permanent plan for both children. Counsel for the Department noted that, although Joseph “loves his mother and wants to live with her[,] . . . he also is okay with adoption.”

At the conclusion of the May 22 hearing, the juvenile court terminated mother’s and father’s parental rights and ordered adoption as the permanent plan. In making its ruling, the court did not mention the adoptive parents’ statements that the children could continue to visit with mother post-adoption. Rather, the court stated it could not “ignore how this case came into the system and what occurred during the course of this litigation since the children were detained and how mother has been handling the situation as recent as this month.” Although the court noted mother had ongoing contact with the children, the court found that contact did not rise “to the level of being an ongoing parent.” The court also determined Joseph had “indicated his desire to stay with his current caretakers and understands what adoption is in his mind and I find that he gave an appropriate answer and he wants to be adopted.” Thus, the court found no exception to adoption existed.

5. Appeal

On May 25, 2017, mother appealed the juvenile court’s May 22, 2017 order as to the termination of her parental rights and order of adoption as to Joseph only. Mother does not challenge the juvenile court’s decision with respect to Ashley.

DISCUSSION

1. Applicable Law

Prior to the juvenile court's setting of the section 366.26 permanency planning hearing, "the parent's interest in reunification is given precedence over a child's need for stability and permanency.'" (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) However, "[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.'" (*Ibid.*) "At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child." (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299.) At that stage of the proceedings, the preferred plan for the dependent child is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.) "If there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic." (*In re Zacharia D., supra*, 6 Cal.4th at p. 447.)

Nonetheless, there are statutory exceptions to the preferred plan of adoption, two of which are relevant here. "One exception to adoption is the beneficial parental relationship exception. This exception is set forth in section 366.26, subdivision (c)(1)(B)(i) which states: '[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.'" (*In re Noah G., supra*, 247

Cal.App.4th at p. 1300.) A second exception to adoption is the child-objection exception, which provides that the juvenile court need not order adoption if the court “finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] . . . [¶] (ii) A child 12 years of age or older objects to termination of parental rights.” (§ 366.26, subdivision (c)(1)(B)(ii).)

Thus, at the permanency planning hearing, the juvenile court conducts a two-step inquiry. “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 645–646.) “ ‘The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.’ ” (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1334.)

As noted above, there is no dispute here as to the first step of the inquiry: Joseph was adoptable. Rather, the dispute centers on the second step of the inquiry: whether either the beneficial parental relationship exception or the child-objection exception applied such that it was error to terminate mother’s parental rights as to Joseph. Specifically, mother argues that, at the permanency planning hearing, the juvenile court improperly barred her counsel’s attempt to establish whether Joseph objected to adoption, which then impacted her ability to establish an exception to adoption. As discussed below, however, even

assuming the juvenile court improperly restricted mother's questioning, we conclude it was harmless error. Specifically, even considering the excluded testimony, the trial court did not abuse its discretion in finding the permanency and long-term stability of adoption outweighed any detriment to Joseph in terminating mother's parental rights. Therefore, neither exception applied here and the juvenile court correctly terminated mother's parental rights and ordered adoption as the permanent plan for Joseph.

2. Standard of Review

In reviewing challenges to the juvenile court's decision as to the applicability of an exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, depending on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.) We "apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues," such as the existence of a beneficial parental relationship or whether a child objected to adoption. (*Ibid.*) However, given the existence of a beneficial parental relationship or child objection, we review for an abuse of discretion the juvenile court's determination as to whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*Ibid.*; see *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Such decisions are " " "quintessentially discretionary." " " (*In re J.S.*, *supra*, 10 Cal.App.5th at p. 1080.) "In the dependency context, both standards call for a high degree of appellate court deference." (*Ibid.*)

3. The alleged error was harmless because, even in its absence, mother cannot show the juvenile court abused its discretion in terminating her parental rights.

Mother contends the juvenile court violated her due process rights by striking Joseph’s “No” answer to the question: “If being adopted meant that you couldn’t have visits with your mom anymore,” “would you still want to be adopted?” Mother contends Joseph’s answer to that question was relevant to the court’s consideration of the beneficial parental relationship exception. Although not entirely clear, it appears mother also argues Joseph’s answer to that question was relevant to the child-objection exception as well.⁵ Assuming mother is correct and it was error for the juvenile court to bar her attorney’s question and strike Joseph’s answer, we hold it was harmless error and, therefore, not a ground for reversal.

“ ‘Of course a parent has a right to “due process” at the hearing under section 366.26 which results in the actual termination of parental rights.’ [Citation.] ‘Due process is a flexible concept which depends upon the circumstances and a balancing of various factors. [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court.’ ” (*In re J.S., supra*, 10 Cal.App.5th at p. 1081.) “ ‘In dependency proceedings, due

⁵ In her opening brief, mother primarily addresses the beneficial parental relationship exception, stating, for example, “The question on review in this case is whether the juvenile court abused its discretion in failing to permit mother to present relevant evidence as to the existence of a beneficial parent-child relationship.” However, because mother later also mentions the child-objection exception, we address both exceptions.

process violations have been held subject to the harmless beyond a reasonable doubt standard of prejudice.’” (*Id.* at pp. 1080–1081.)

Of particular relevance here, before either the beneficial parental relationship exception or the child-objection exception can apply, the parent must make a showing that the detriment to the child caused by the termination of parental rights would outweigh the benefits of the preferred permanent plan of adoption. Put another way, with respect to the beneficial parental relationship exception, the parent “has the burden of proving her relationship with the children would outweigh the well-being they would gain in a permanent home with an adoptive parent.” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; see § 366.26, subd. (c)(1)(B)(i).) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an ‘“emotional bond”’ with the child, ‘“the parents must show that they occupy ‘a parental role’ in the child’s life.”’” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Noah G.*, at p. 1300 [“Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. [Citations.] The mother also must show she occupies a parental role in the children’s lives”].)

Similarly, with respect to the child-objection exception, the parent must show that, if parental rights were terminated, the benefits of adoption would be outweighed by the detriment the objecting child would suffer as a result. (§ 366.26, subd. (c)(1)(B)(ii).) “Before terminating parental rights, the juvenile court must consider the child’s wishes, to the extent that

they are ascertainable. [Citations.] The juvenile court should explore a child's feelings toward his or her parents, foster parents, and prospective adoptive family.” (*In re Christopher L.*, *supra*, 143 Cal.App.4th at p. 1334.) However, although the court considers the objecting child's wishes, the court is “required to act in each child's best interest (§ 366.26, subd. (h)(1)) and a child's wishes are not necessarily determinative of the child's best interest.” (*In re C.B.* (2010) 190 Cal.App.4th 102, 125.)

Thus, here, the juvenile court was required to act in Joseph's best interest when choosing a permanent plan for him. If a child is adoptable, as is the case here, the juvenile court must determine “ ‘whether termination of parental rights will be detrimental to the minor based on four enumerated circumstances.’ [Citation.] . . . [A]s this court has stated, ‘consideration of the child's best interests is inherent in the legislative procedure for selecting and implementing a permanent plan.’ [Citation.] The purpose of the specified exceptions to adoption provided in section 366.26, subdivision (c)(1) is to ensure termination of parental rights is in the minor's best interests and is the least detrimental alternative. [Citations.] Accordingly, the court should consider the minor's best interests when making its determination in a section 366.26 hearing.” (*In re Christopher L.*, *supra*, 143 Cal.App.4th at p. 1336.) A parent may not claim entitlement to a section 366.26 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.* (2000) 78 Cal.App.4th 1339, 1349.)

Despite the benefits Joseph derived from his relationship with mother and his desire to return to her care, we conclude the

trial court did not abuse its discretion in finding no exception to adoption existed. Indeed, on appeal, mother almost entirely ignores the element of detriment required to establish the application of one or both of the exceptions she claims. Instead, her briefs focus primarily on the trial court's exclusion of testimony at the permanency planning hearing. But even if we accept mother's argument and assume Joseph objected to adoption (which he did not unequivocally do),⁶ our conclusion would not change. Although the record reveals mother and Joseph loved each other and enjoyed their visits together, the record also reveals mother consistently failed to take responsibility for her actions, minimized the harm done and the risk caused by her ongoing and abusive relationship with Victor, and often put her desires above the needs of her children. Not only was this case pending for over two years by the time of the permanency planning hearing, but mother previously had encounters with the child welfare system as a result of domestic violence incidents. Yet she continued to maintain her abusive relationship with Victor, who himself had not completed the

⁶ Although we agree with mother that, when it stated Joseph "wants to be adopted," the juvenile court overstated Joseph's position, the record does not support a finding that Joseph unequivocally objected to adoption. Rather, Joseph consistently stated both that he preferred to return to mother's care, but if that was not possible, he was "okay" with adoption by his aunt and her partner. Mother's position on appeal that Joseph had not "clearly articulated consent" to adoption is immaterial because adoption does not depend on such consent. In any event, as noted above, for purposes of this opinion we assume Joseph objected to adoption.

domestic violence counseling and programs required in his open dependency case.

Moreover, both before the juvenile court and now on appeal, Joseph's attorneys have supported and urged adoption as being in Joseph's best interest. "[T]he paramount duty of counsel for minors is not zealously to advocate the *client's* objectives, but to advocate for what the *lawyer* believes to be in the client's best interests, even when the lawyer and the client disagree." (*In re Zamer G.* (2007) 153 Cal.App.4th 1253, 1265.) "Despite the seemingly inherent conflict in all dependency cases where a minor's counsel takes a position contrary to the minor's stated wishes, the Legislature has expressly provided that the best interests of the minor, not his or her wishes, determine the outcome of the case." (*In re Kristen B.* (2008) 163 Cal.App.4th 1535, 1541.)⁷

Thus, in light of the record in this case, we conclude the juvenile court did not abuse its discretion in finding the permanency and long-term stability of adoption outweighed both Joseph's preference to return to his mother's care as well as benefits he received from his relationship with his mother. Our conclusion does not change even considering, as mother urges on appeal, Joseph's testimony that he did not want to be adopted if that meant he could no longer visit with mother.

Mother relies on *In re C.B.*, *supra*, 190 Cal.App.4th 102, where the Court of Appeal reversed the juvenile court's order

⁷ Joseph's attorney below was also appointed as his CAPTA guardian ad litem. "[T]he CAPTA guardian ad litem is a fiduciary whose role is to investigate the child's circumstances and advocate for her best interests." (*In re Zamer G.*, *supra*, 153 Cal.App.4th at p. 1266; Cal. Rules of Court, rule 5.662(d).)

terminating parental rights and ordering adoption as the permanent plan. On appeal there, the court found that, in terminating parental rights, the juvenile court improperly relied on the adoptive parents' promise to continue visits with the biological parents after adoption. (*Id.* at pp. 128–129.) *In re C.B.* is factually distinct from this case. First, unlike here, the record in *In re C.B.* supported a finding that the beneficial parental relationship exception existed. (*Id.* at pp. 126, 128.) The court held, once the exception is found to exist, the juvenile court “cannot nevertheless terminate parental rights based upon an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and a biological parent, even if substantial evidence supports that expectation.” (*Id.* at p. 128.) Here, as discussed above, the juvenile court properly found the beneficial parental relationship exception did not exist. Second, as is clear from the transcript of the permanency planning hearing, the juvenile court here did not rely on any perceived promise by the adoptive parents that visits with mother would continue post-adoption.

4. The juvenile court did not improperly limit counsel’s questioning of the prospective adoptive parent, L.R.

Mother also argues the juvenile court violated her due process rights by restricting her counsel’s questioning of Joseph’s aunt and prospective adoptive parent, L.R., at the permanency planning hearing. Specifically, mother argues the court improperly barred counsel from asking L.R. if she had discussed legal guardianship with a Department social worker. We disagree and find no error in the court’s ruling.

First, mother cites no authority for the proposition that the juvenile court is required to allow counsel to question a

prospective adoptive parent about legal guardianship. Second, the record reflects L.R. and her partner in fact were aware of and had considered legal guardianship, but decided they preferred adoption. Third, mother concedes L.R. and her partner were willing to adopt Joseph. Finally, and as the Department correctly points out, mother did not call L.R. as a witness at the permanency planning hearing. Rather, the Department called L.R. as a witness. Therefore, the juvenile court properly limited mother's counsel on cross-examination to matters within the scope of the Department's direct examination of the witness. (Evid. Code, § 773, subd. (a).)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.