

Filed 1/27/26 In re E.R. CA2/5

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

In re E.R., III et al., Persons  
Coming Under the Juvenile  
Court Law.

B346916  
(Los Angeles County  
Super. Ct. No.  
21CCJP03615A-B)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

E.R., Jr.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of County of Los Angeles, Jean M. Nelson, Judge. Affirmed.

Paul Couenhoven, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, Jessica Buckelew, Deputy County Counsel, for Plaintiff and Respondent.

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## I. INTRODUCTION

E.R., Jr. (father) appeals from the juvenile court's order terminating parental rights to his children, E.R., III, and H.R. (the children). He contends the court erred when it determined that the parental-benefit exception to adoption (Welf. and Inst. Code, § 366.26, subd. (c)(1)(B)(i))<sup>1</sup>, did not apply. We affirm.

## II. BACKGROUND

### A. *Petition, Jurisdiction, and Disposition*

On March 1, 2022, and April 6, 2022, the Los Angeles County Department of Children and Family Services (Department) filed first amended section 300 petitions as to each child. In counts a-1 and b-1, the amended petitions alleged, as later sustained by the juvenile court, that father's history of

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

engaging in domestic violence with mother<sup>2</sup> and his violation of a restraining order that prevented father from having contact with mother, endangered the children's physical health and safety and placed them at risk of serious physical harm, damage, and danger.<sup>3</sup>

At the May 3, 2022, adjudication and disposition hearing, the juvenile court ordered father to complete a domestic violence program for perpetrators; a developmentally appropriate parenting program; individual counseling to address case issues, including childhood trauma and the cycle of domestic violence and its effect on children; and to drug test upon reasonable suspicion of substance abuse. The court granted father monitored visits two to three times a week for two to three hours a visit. Father was ordered to abide by any restraining order in place and he and mother were not to visit the children together. (*In re E.R., III* (July 10, 2025, B338585 [nonpub. opn.].)

#### B. *Department's Section 388 Petition*

On March 13, 2024, the juvenile court ordered that father was to have unmonitored visits with the children in a public place, two to three times a week for two to three hours a visit.

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<sup>2</sup> The children's mother, A.S., is not a party to this appeal. Father has another child, A.P., with D.P. A.P. is not a subject of and D.P. is not a party to this appeal.

<sup>3</sup> The b-1 counts alleged that father's conduct constituted a risk of a failure to protect. The a-1 counts did not. The first amended petitions also alleged counts b-2, b-3, and b-4 against mother.

Father was not to involve “another partner” in the visits. One month later, on April 13, 2024, father was arrested for inflicting corporal injury on a spouse or cohabitant for an assault on D.P.<sup>4</sup> According to the Department’s report, D.P. stepped outside of father’s home to take a telephone call. When she returned, father accused her of stealing his game controller. Father and D.P. argued. Father struck D.P. in the face, “bust[ing] her lip.” D.P. left and walked to the nearest law enforcement office to file a report against father.

The Los Angeles County Sheriff’s Department report on the altercation stated D.P. said she was in a dating relationship with father for three years. There had been multiple past domestic violence issues she had reported to law enforcement. She spent the prior night at father’s home. Father woke her in the morning and accused her of stealing his “PS5” remote control. Father then punched D.P. three times in the face, lacerating her lip, and strangled her for four seconds. D.P. left to go home, but ran into father at the train station. They argued and then walked to the Compton Sheriff’s Station.

On April 24, 2024, the Department filed a section 388 petition to change the juvenile court’s order granting father unmonitored visitation with the children to monitored visitation. The Department’s request was based on the April 13, 2024, domestic violence incident between father and D.P. that led to father’s arrest.

On June 4, 2024, the juvenile court held a hearing on the Department’s section 388 petition. Counsel for the children joined in the Department’s request to modify father’s visits to be

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<sup>4</sup> Father had a separate dependency case involving his child A.P. based on domestic violence with that child’s mother, D.P.

monitored. The juvenile court granted the Department's section 388 petition. (*In re E.R., III, supra*, B338585.)

C. *July 10, 2024, Status Review*

In a July 8, 2024, status review report, a social worker advised that the children<sup>5</sup> were placed in the home of foster parent, J.T. Both children were "securely attached and bonded" to the foster parent, looked to her "for comfort and reassurance," and were "thriving" in her care.

Father visited the children twice a week during the reporting period and acted appropriately during his monitored visits. The social worker reported a "growing attachment and bond" between father and the children, and they looked forward to visits with him. During visits, he provided food, snacks, diapers, wipes, and toys. The Department believed father's visits provided "a positive enhancement to the children's lives."

The social worker, however, also observed concerning behaviors in the children which included "making statements and reports that were not congruent with [their] affect or development." H.R. told the social worker that she had "many 'hurts,'" but did not have bruises or marks on her body. The foster parent confirmed that H.R. made these types of statements often to anyone who visited the home. E.R., III, told the social worker he was "angry" and made an "angry' face," but then

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<sup>5</sup> E.R., III, was less than two years old when he was removed from his parents and he never lived with father. H.R. was less than five months old and had never lived with either parent. At the time of the July 10, 2024, status review report, E.R., III, was four years old and H.R. was two.

“crack[ed] up laughing.” He explained that he wanted the social worker to know he was angry and his sister was sad. According to E.R., III, his “daddy [was] angry at [him],” but he did not say why or provide any additional information.

Father admitted he had taken the children to his home, despite court orders requiring that visits be in a public setting during which the Department could make unannounced visits; and, on at least two occasions, he failed to inform the Department of the location of his unmonitored visits with the children. On one occasion when D.P. visited his home, father engaged in domestic violence with her, despite a restraining order against him.

The Department reported that father struggled to follow visitation guidelines and allowed others to attend visits without the Department’s approval. Father refused to take accountability and was accusatory and combative.

At the July 10, 2024, section 366.22 review hearing, the juvenile court found that father was not in substantial compliance with his case plan, terminated his reunification services, and set a section 366.26 permanency planning hearing.

D. *November 6, 2024, Section 366.26 Hearing*

In the October 22, 2024, section 366.26 report, a social worker reported that father visited with the children twice a week, did not miss any visits, participated in weekly conjoint therapy with them, and saw to their needs during visits. But his relationship with the children had some “negative features,” including that they were sometimes coached to say things to the caregiver and social worker.

The social worker concluded that “it [was] difficult to say definitively” how the children’s lives would change if they did not visit with father. The social worker observed that “father [did] represent a consistent link to the children’s biological family” but also noted that “both children [were] experiencing emotional distress evidenced by the anxiety behaviors . . . , [including] tantrums, sleep disturbance, at times regression in toileting needs, biting their nails, and anger.”

The social worker also observed that the foster parent was committed to adopting the children and providing a stable and loving home. “[T]he children . . . display[ed] a very secure attachment to the [foster parent]. Both children, in particular, the [four] year old[, E.R., III, were] acutely aware of the many placements they [had] experienced during the life of this case. [They] actively ask[ed] about the [the foster parent] and . . . [whether] they [would] be returning to her home . . . [and] care.” The social worker opined that the “stable, loving[,] supportive home that [the foster parent was] willing to provide the [children] . . . [would make] the loss of . . . mother and father not detrimental to the [children] as adoption would allow [them] to continue having [their] needs met and give [them] the stable home [they needed].” The Department recommended adoption as the permanent plan and requested that the juvenile court terminate parental rights.

At the November 6, 2024, section 366.26 hearing, the juvenile court granted the Department’s request to continue the matter to prepare the case for adoption and set a continued hearing date for February 5, 2025.

E. February 5, 2025, Continued Section 366.26 Hearing

In a January 24, 2025, section 366.26 report, the social worker advised that the children had been in the foster parent's home since February 22, 2024, and that she was committed to providing them with a permanent home through adoption. The social worker met with H.R., but she was too young to make a meaningful statement. E.R., III, told the social worker that he liked his new home.

The social worker "observed the children's display of affection toward" the foster parent as they "cuddled on the sofa with her and engaged [her] in play. . . . The [foster parent] appeared to be attentive to the children" and they appeared "to be comfortable and content and well bonded in their environment . . ." The foster parent had "developed a strong parent-child bond with [the] children," and she told the social worker "that [they had] become an essential part of her life" and that it was "a pleasure to care for [them] and to provide them with a stable, loving[,] and nurturing environment." The foster parent's family agreed with her desire to adopt the children who participated "in all family and friends' gatherings and events, and [were] a natural part of the family, and accepted by all." According to the social worker, the family was "adoption ready" at the time of the report.

At the February 5, 2025, continued section 366.26 hearing, the juvenile court again continued the matter to allow the Department to provide an updated analysis of the factors set forth in *In re Caden C.* (2022) 11 Cal.5th 614 (*Caden C.*) concerning the parental-benefit exception.

F. April 4, 2025, Continued Section 366.26 Hearing

In an April 1, 2025, last minute report, the social worker noted that the children had been detained from their parents for over three years, since March 3, 2022. On the *Caden C.* factors, the social worker reported that father “appear[ed] to have some positive effects” on the children during visits. They “appear[ed] excited to visit with . . . father,” but the social worker added that their excitement may have been due, in part, to the gifts and toys he would bring to “almost all the visits [with] the children. [E.R., III, would] ask . . . father for a toy if he [did] not have one and [would] get upset or angry if . . . father [did] not give him a toy during the visit.” The social worker also observed that the children “would typically ask if they would be returning to the [foster parent] after the visits [were] complete.” She added that the children occasionally acted out or showed behavior regression after visits with father.

The social worker stated that it remained “difficult to say definitively if the children did not visit with the father, how their life would change.”

The social worker reiterated her belief that the foster parent’s stable, loving home would “make the loss of . . . father not detrimental to the [children] as adoption would allow [them] to continue having their needs met and give them the stable home they need in order to thrive.” Accordingly, the Department recommended that the juvenile court “terminate parental rights, as the relationship/bond with . . . father [was] not so strong that the [children] would be harmed. [They were] safe and happy with [the foster parent and were] having their basic needs met on an ongoing and consistent basis. [Father had] not been

successful in providing the level of care that both children need[ed] and the security of a new adoptive home outweigh[ed] the severing of the [children’s] relationship with . . . father.”

On the issue of father’s recent visitation with the children, the Department reported that, between September 30, 2024, and March 4, 2025, father had 41 visits with the children but had missed 11. Father’s visitation with the children, however, stopped on February 13, 2025, when he was incarcerated for committing a burglary at D.P.’s home.<sup>6</sup> The police report for father’s burglary arrest stated that on February 13, 2025, police responded to a call from D.P.’s home concerning a restraining order violation. D.P. and another witness said father went to the home, took the screen off the bedroom window, and attempted to talk to D.P. in violation of a restraining order. When D.P. told him to leave, he became angry, smashed the window, and entered D.P.’s bedroom. He argued with D.P., took her phone and a PlayStation 5, and left.

At the continued April 4, 2025, section 366.26 hearing, father’s counsel advised that father was in custody on a burglary charge related to the incident at D.P.’s home described above, and the juvenile court therefore continued the hearing at counsel’s request. On April 30, 2025, the hearing was again continued at

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<sup>6</sup> The foster parent advised in a subsequent last minute information that when father was first incarcerated, he spoke with the children by telephone twice a day. But the calls “started to slow down to father calling only once a week.” Father claimed he could only call when he was at the courthouse. According to the foster parent, the last time father called, he said he would “skip talking to them until he was [able] to call more frequently.”

counsel's request because father remained in a detention facility and could not be transported to the hearing.

G. *May 6, 2025, Section 366.26 Hearing*

At the May 6, 2025, continued section 366.26 hearing, father's counsel argued, among other things, that the parental-benefit exception applied. Following argument, the juvenile court found that the exception did not apply.

The juvenile court began its analysis of whether the exception applied by noting that “[t]here has not been a doubt that father tried to establish a bond and was consistent [with visitation].” The court then turned to the second prong of the *Caden C.* analysis: “Was the attachment between the children and father a substantial and emotional one? This was developing—father was developing that relationship by being consistent with his visits, but he was unable to get to the point where it is such a substantial emotional attachment that it would satisfy [the second] prong under [*Caden C.*]” Finally, the court addressed the third prong of the *Caden C.* analysis: “Further, it would not be detrimental to terminate the relationship for the children because their life has been quite difficult until now, and now they are establishing and [have] established a safe relationship with the [foster parent].” The court added that the children have “significant behavioral and emotional needs that will continue if they do not have stability with the [foster parent] they currently have, and that [the foster parent] needs to provide all of that support without being interrupted by father’s frustration of not having the children in his care, which I believe will continue unless the parental rights are terminated. I admire

father's persistence but believe that he will continue to undermine the children's development and excellent bond that is more developed and more stable than what they have with the father."

The juvenile court concluded: "I find by clear and convincing evidence that these children are adoptable, and it would be detrimental to them to be returned to the custody of either parent; therefore, the parental rights . . . are terminated."

### III. DISCUSSION

#### A. *The Parental-Benefit Exception*

"[T]he goal at the section 366.26 hearing is 'specifically . . . to select and implement a permanent plan for the child.' [Citations.] To guide the court in selecting the most suitable permanent arrangement, the statute lists plans in order of preference and provides a detailed procedure for choosing among them. [Citation.] According to that procedure, the court must first determine by clear and convincing evidence whether the child is likely to be adopted. [Citation.] If so, and if the court finds that there has been a previous determination that reunification services be terminated, then the court shall terminate parental rights to allow for adoption. [Citation.] But if the parent shows that termination would be detrimental to the child for at least one specifically enumerated reason, the court should decline to terminate parental rights and select another permanent plan. [Citation.]" (*Caden C., supra*, 11 Cal.5th at pp. 630–631.)

One such enumerated exception to the termination of parental rights is the parental-benefit exception. (§ 366.26, subd. (c)(1)(B)(i).) To demonstrate that the exception applies, a parent must show: “(1) regular *visitation and contact*, and (2) a *relationship*, the continuation of which would *benefit* the child such that (3) the termination of parental rights would be *detrimental* to the child.” (*Caden C.*, *supra*, 11 Cal.5th at p. 631.) The parent asserting the exception bears the burden of demonstrating its existence by a preponderance of the evidence. (*Id.* at p. 637.)

“A substantial evidence standard of review applies to the first two elements.” (*Caden C.*, *supra*, 11 Cal.5th at p. 639.) “[T]he ultimate decision—whether termination of parental rights would be detrimental to the child due to the child’s relationship with his parent—is discretionary and properly reviewed for abuse of discretion.” (*Id.* at p. 640.)

## B. *Analysis*

Father contends the juvenile court erred in finding that the beneficial parental relationship exception to adoption did not apply. According to father, the evidence showed he had a strong bond with the children and they would suffer detriment if that bond was severed. We disagree.

For purposes of our analysis, we will assume father satisfied the first two prongs of the *Caden C.* analysis, that is, he consistently visited with the children and had a significant relationship with them from which they benefited. We conclude, however, that the juvenile court did not abuse its discretion by finding that terminating the relationship would not be

detrimental to the children when balanced against the countervailing benefit of their new, adoptive home.

The evidence showed that E.R., III, was less than two years old when he was removed from his parents, and H.R. was less than five months old. Neither child had ever lived with father. Although the children enjoyed their visits with father, that reaction appeared to have been due, in part, to the fact that he brought them gifts and toys. Further, they exhibited anxious behaviors after visits with him and wanted to know if they would be returning to the foster parent's home. And, father continued to engage in domestic violence which periodically interrupted his relationship with them and threatened to expose them to the risk of harm.

The foster parent, on the other hand, had developed a strong and affectionate parent-child bond with the children and they felt comfortable and secure in her home. She was ready and willing to adopt them, and her family was supportive of her decision and accepted the children as part of the family.

In light of the evidence, we conclude that the juvenile court did not abuse its discretion when conducting the required weighing of interests under the third prong of the *Caden C.* analysis and finding that the harm from severing the children's relationship with father did not outweigh the security and the sense of belonging their new adoptive family would confer.

#### **IV. DISPOSITION**

The order terminating parental rights and freeing the children for adoption is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KIM (D.), J.

We concur:

HOFFSTADT, P. J.

MOOR, J.