Filed 1/21/26 In re C.N. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re C.N. et al., Persons Coming Under the Juvenile Court Law.	B346935 (Los Angeles County Super. Ct. No. 23LJJP0312A-F)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.N. et al., Defendants and Appellants.	

APPEALS from orders of the Superior Court of Los Angeles County, Donald A. Buddle, Jr., Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant B.N.

Katie Curtis, under appointment by the Court of Appeal, for Defendant and Appellant D.N.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, Sarah Vesecky, Principal Deputy County Counsel, for Plaintiff and Respondent.

B.N. (Mother) and D.N. (Father) appeal from the juvenile court's order terminating their parental rights over eight-year-old C.N., five-year-old Henry N., four-year-old Charles N., two-year-old L.N., and one-year-old Sharon N.[1] Mother and Father also appeal the court's denial of Mother's request for a bonding study with Sharon, and Father appeals the court's denial of his Welfare and Institution Code section 388[2] petitions to reinstate visitation with all the children, which he filed prior to the section 366.26 hearing. We affirm.

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[1] Mother and Father have a sixth child together, Clinton N., who was six years old at the time Mother's and Father's parental rights were terminated as to the other five children. Because Clinton had been recently moved to a new placement, his selection and implementation hearing was scheduled for a later date.

[2] Further undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Dependency Petition Regarding the Oldest Five Children*

On September 19, 2023 the Los Angeles County Department of Children and Family Services (Department) filed a dependency petition on behalf of C.N., Clinton, Henry, Charles, and L.N. alleging under section 300, subdivisions (a) and (b)(1), that Father and Mother had a history of engaging in violent altercations in the presence of the children. Specifically, on August 27, 2023 Father kicked Mother's leg, grabbed her throat, struck her face, and threatened to stab her to death. C.N. attempted to intervene, and Father pushed the child away. The petition alleged Father's violent conduct against Mother and Mother's failure to protect the children placed the children at substantial risk of serious physical harm.

On October 26, 2023 the Department filed an amended petition, adding allegations pursuant to section 300, subdivisions (b)(1), (d), and (j), that Father sexually abused C.N. and L.N. by touching their vaginas and digitally inserting his fingers inside their vaginas. The amended petition also alleged Mother knew or should have known about the abuse and failed to protect the children.

At the jurisdiction hearing on January 12, 2024 the juvenile court sustained the allegations in the first amended petition but deleted the references to L.N. being sexually abused. At the disposition hearing held on February 16, 2024 the court declared C.N., Clinton, Henry, Charles, and L.N. dependents of the court and removed them from Mother's and Father's custody. The court granted Mother and Father monitored visitation three times per week for three hours each visit. The parents

were not permitted to visit the children at the same time. C.N.'s visits with Father were to occur in a therapeutic setting.[3] The court also ordered the parents to attend counseling, parenting classes, and domestic violence programs.

B. *The Reunification Period*

C.N. and Clinton were placed in the same foster home in February 2024, and L.N. joined them in April 2024. Charles and Henry were placed together in another foster home as of April 2024. The four oldest children attended individual therapy, and L.N. received developmental services through the regional center. The children's caregivers provided safe and loving homes, and the children appeared to be well adjusted to their homes.

Mother visited the children twice per week during early 2024. However, Mother stopped visiting the children or communicating with the Department in late March 2024. In March 2024 the Department received a referral that Mother had given birth to another child. The children confirmed that Father told them about the baby (later identified as Sharon). The Department was unable to make contact with Mother or to locate the infant for several months. During an April 24, 2024 hearing, Father refused to answer questions regarding Mother's whereabouts, stating, "I don't want to answer that question right now" and "I plea my Fifth Amendment." In August 2024, the

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[3] On February 20, 2024 Father appealed the jurisdiction finding and disposition order with respect to C.N., Clinton, Henry, Charles, and L.N., but we dismissed the appeal under *In re Phoenix H.* (2009) 47 Cal.4th 835 after Father's counsel filed a brief stating there were no arguable issues and Father did not file his own brief. (*In re C.N.*, B335282.)

Department reported that it continued to ask Father about Mother's and the baby's whereabouts, but he refused to answer.

Despite his unwillingness to assist the Department in locating Mother, Father regularly visited the children (with the exception of C.N.) throughout 2024.[4] Father initially visited the children for two hours once per week, but the visits were reduced to every other week due to Father's aggressive behavior toward Department staff and the staff's resulting unwillingness to monitor Father's visits. Father was later offered visitation three days per week (as allowed by the case plan) when additional monitors were available, but he was unwilling to visit during the available times.

The Department reported Father was in partial compliance with his case plan. He completed two parenting programs and enrolled in a domestic violence program. However, Father denied any wrongdoing and minimized the severity of the incidents that brought the children within the court's jurisdiction. Father attended four individual counseling sessions, but the therapist terminated treatment. The therapist wrote in a letter to the Department that Father "has reported over the counseling process that he disagrees with all of the allegations against him and that they never occurred. Therefore, ethically, I've made the decision to end services." The Department therefore recommended that the juvenile court terminate reunification services.

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[4] Father did not have visits with C.N. because her therapist recommended against it.

At the six-month review hearing (§ 366.21, subd. (e)) on October 16, 2024, the juvenile court found the parents' progress was not substantial. The court was particularly troubled by the statement of Father's therapist. The court noted that individual counseling is "a critical piece" of the case plan without which the court "can't find that there is progress." Regarding Mother, the court found there was no basis on which to find Mother had made progress on her case plan given her failure to visit the children or maintain contact with the Department since March 2024. The court terminated reunification services for both parents and set the matter for a selection and implementation hearing.[5]

C. *The Dependency Petition Regarding Sharon*

On September 25, 2024 the Department filed a petition on behalf of Sharon, although the Department could not locate Mother or Sharon. The petition included the same allegations under section 300, subdivisions (a), (b)(1), (d), and (j), that the amended petition alleged on behalf of the five older children regarding the parents' history of domestic violence and Father's sexual abuse of C.N. and L.N.

At the detention hearing on September 26, 2024, Sharon was detained at large, and the juvenile court issued arrest

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[5] Mother and Father filed notices of intent to file a writ petition under California Rules of Court, rule 8.450. Mother's counsel filed a notice pursuant to *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570 advising the court he was unable to file a petition for extraordinary writ on the merits. We granted an extension of time for Mother to file a petition. When no petition was filed by either parent, the proceeding was deemed inoperative. (*B.N. v. Superior Court*, B341511.)

warrants for both parents. Father was arrested on October 4, 2024 after a visit with Clinton, Henry, Charles, and L.N. The court held a contempt hearing on October 8, 2024, during which Father testified that he was "keep[ing] this daughter of mine" (Sharon) because the Department was destroying his family and was not treating his children well. Father admitted Mother and Sharon were at his home, but when the court stated the Department would go to the home to pick up Sharon, Father responded that Mother would not answer the door or accept a telephone call that was not from Father's telephone number. The court found Father's testimony was not "honest and complete" given the Department's inability to confirm that Sharon was in Father's home. It found Father in contempt and remanded him into custody. The next day Mother appeared in court and surrendered Sharon to the Department. The court recalled the arrest warrant for Mother and found Father was no longer in contempt.

The jurisdiction hearing for Sharon was held on December 19, 2024. The juvenile court dismissed the allegation pursuant to section 300, subdivision (a), with respect to Father and Mother. The court sustained the remaining allegations as to Father. With respect to Mother, the court sustained the allegations that Sharon's siblings were sexually abused and Mother failed to protect the children from sexual abuse, but the court dismissed the domestic violence allegation.

At the January 23, 2025 disposition hearing, the juvenile court declared Sharon a dependent of the court and removed her from her parents' custody. In considering whether to order reunification services, the court stated, "[I]t's clear that Father did take the classes and paid attention in the classes. But it's

also clear that his continued denials suggests that he lacks insight and hasn't learned anything from the classes that he took and the same thing could be said regarding Mother." The court found by clear and convincing evidence that the factual predicates of the bypass provision of section 361.5, subdivision (b)(10),[6] had been established as to both parents and denied them reunification services.[7]

At the conclusion of the disposition hearing, Mother's counsel requested the juvenile court order a bonding study for Mother and 11-month-old Sharon. Father joined in the request, and counsel for the Department objected. Sharon's counsel stated, "I don't know that Sharon is of an age to participate in a bonding study." The court took the matter under submission, and on February 20, 2025 the court denied the request, stating, "Given the minor's age, the court doesn't see the utility in

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[6] Section 361.5, subdivision (b)(10)(A), provides that reunification services need not be provided to a parent where the juvenile court terminated reunification services for any sibling of the dependent child after the sibling was removed from the parent pursuant to section 361, and the parent did not subsequently make a reasonable effort to treat the problems that led to the sibling's removal.

[7] Mother and Father filed notices of intent to file a writ petition under California Rules of Court, rule 8.450. Each of the parent's counsel filed a notice pursuant to *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570 advising the court they were unable to file a petition for extraordinary writ on the merits. We granted an extension of time for Mother and Father to file a petition. When no petition was filed by either parent, the proceeding was deemed inoperative. (*D.N. et al. v. Superior Court*, B343690.)

appointing an expert for a bonding study." Mother and Father timely appealed the denial (case No. B344576).

D. *Events After Termination of Reunification Services*

Sharon was placed in the same foster home where C.N. and L.N. had been residing since early 2024. C.N. had two placements since her initial removal in October 2023, and L.N. had three placements since that time. The Department observed the girls were thriving and had healthy and secure attachments to their caregiver, who was willing to adopt them.[8] The caregiver met their needs and ensured that C.N. attended weekly counseling sessions and that L.N. (and Sharon) received services from the regional center.

Henry and Charles had been in the same foster home since October 2024. It was the sixth placement for Henry and the fifth for Charles. The children were thriving in the home and had secure bonds with the caregiver. The children attended weekly therapy and were being evaluated for therapeutic behavioral services. In February 2025 Henry stated he would like to live with his current caregiver. Charles was too young to make a statement about his placement.

Mother and Father visited the children separately on alternating Fridays for two-and-a-half hours each visit, for a total of five hours per month for each parent.[9] For the most part, each parent's visits were with all the children together. The parents

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[8] Clinton had been placed in the same foster home as his sisters, but in February 2025 he was moved after behaving aggressively toward the caregiver, her biological daughter, and his sisters.

[9] C.N. still did not attend visits with Father.

were offered additional visitation, but they refused to sign the paperwork necessary to engage a paid monitor. Father also stated he could visit only on Fridays.

Mother did not visit the children between mid-March and October 2024. However, the children were excited to see Mother when visits resumed. Mother typically brought food for the children to eat during visits, asked about their homework, and prayed with them. She was attentive to their needs, changing the diapers of the younger children and cutting the children's nails. However, Mother often had trouble controlling the children when they were disruptive. During one visit on May 2, 2025 Charles repeatedly tried to leave the room and deliberately spilled juice on the floor and couch. Henry was playing with the light switch, and both boys were jumping on the furniture. The two monitors intervened several times to redirect the boys' behavior. When the monitors asked Mother to intervene, she refused. L.N. repeatedly went to one of the monitors for comfort when she was upset by her siblings. During the same visit, Mother yelled at the Department social worker because Mother was upset about the room in which the visit took place. The monitor reported regarding another visit in May 2025 that Mother "does not acknowledge or re-direct [the children's] incorrect behavior."

Father's visits with the children during late 2024 and early 2025 were generally positive. The children were happy to see him, and Father brought food and clothing for the children. The children would watch videos and play games on Father's phone. Father sang songs with Sharon and L.N., and the children took turns sitting on Father's lap. However, visits were "chaotic," with Charles and Henry running around the room and climbing

on furniture. Father did not redirect the children. During a visit on April 11 2025, Clinton said something quietly to Father, after which Father "became furious" and yelled at the monitor, "My son said that someone beat [L.N.] at daycare." Father became aggressive with the monitor again on April 25. Father repeatedly asked Clinton, "Did anybody beat you?" to which Clinton each time responded "no." Clinton "appeared to become tired of dad and left him and went under the table." When the monitor attempted to redirect Father, Father told the monitor, "Shut up, I'm talking to my child" and "God will punish you for all the things you're doing to me and my wife." Father came close to the monitor's face "appearing as if to physically attack" him. The monitor ended the visit 30 minutes early due to Father's behavior.

After the April 25 visit Father sent the Department a message accusing the monitor of pushing L.N., causing her to hit her head on the wall. Father also alleged the monitor had been "making advances" toward Mother during her visits and taking videos of Father and the children to send "to Nigerian people to make mockery of myself and my family." On May 5, 2025 Mother and Father appeared at the Department offices and demanded to speak to a manager. Father reiterated his complaints about the visitation monitor. He also claimed the children had reported being mistreated in their foster homes, alleging they were not provided sufficient food and were subject to inappropriate discipline. Throughout the meeting Father raised his voice and pointed his finger in the social worker's face in an aggressive and intimidating manner, and at one point he blocked her from leaving the room.

As a result of this interaction, the Department assigned a new social worker to monitor the parents' visits. The Department also filed a walk-on request seeking to stop the parents' visits, stating the parents' behavior was unsafe for the children and the Department monitors, and noting the lack of other available monitors. The Department reported in May 2025 that Henry, then five years old, told the social worker that he did not want to visit with Father, saying, "No! I don't want to see dad." Charles, then four years old, told the social worker as to recent visits: "Dad was being mean to [the former social worker] and slammed the door. [The social worker] called the police. . . . Dad was being mean to Henry, he grabbed his hand hard!" Charles said he was scared during the interaction. The boys' caregiver reported Henry was having "severe nightmares" and Charles was excessively wetting the bed, sometimes while he was awake. The caregiver also stated the boys were "deathly afraid" of Father.

On May 23, 2025 the juvenile court held a hearing on the Department's request to stop the parents' visitation. Father addressed the court directly, insisting there was nothing "chaotic" about the visits. He stated the Department's reports showed the children sat on his lap during visits and "there's nothing, like anything, like in violence. . . . Let them leave my kids alone. This case is not about my kids. . . . Nothing [chaotic] occurs in my visits. My visit is always pleasant with my kids." The court granted the Department's request to end visits with Father, finding the visits were detrimental to the children. The court stated, "Although the court believes that the Father adores his children and loves them," some of the children exhibited negative physical symptoms after a recent visit and "this isn't the first

time [Father's] behavior impacted visits." The court stated, "It's hard for me to find [Father's] statement credible about the visits, in essence, going perfectly when you have multiple people, including [the] children, stating otherwise." Further, Father did not have insight into how his behavior negatively impacted the children. However, the court allowed visits with Mother to continue. The court set the matter for a contested selection and implementation hearing for June 11, 2025 with a permanent plan of adoption.

On June 6 and June 10, 2025 Father filed section 388 petitions requesting the court return the children to his custody, reinstate reunification services, or reinstate visitation. The petitions asserted Father had completed his case plan, had a bond with the children, and the children were being mistreated in their foster homes. The juvenile court summarily denied the petitions on June 9 and June 10, finding the requests did not state new evidence or a change of circumstances.

E. *The Selection and Implementation Hearing*

On June 11, 2025 the juvenile court held a contested selection and implementation hearing for C.N., Henry, Charles, L.N., and Sharon. C.N., then eight years old, testified in chambers outside the presence of her parents. C.N.'s attorney asked, "If being adopted means that you are going to stay with your caregiver Miss Crystal, is that what you want?" C.N. responded, "Yes." However, she said it would make her "sad" not to see Mother anymore and she liked to "get snacks and play games" during visits. Later, C.N.'s attorney asked if she would like to be adopted and "basically have Miss Crystal as your mom . . . [and] you wouldn't get to visit with [Mother]. Would

that be okay?" C.N responded, "No" and that she would still want to visit with Mother. When asked whether she was afraid someone will be mad at her because of her testimony she said, "Yeah," that Mother would be mad "because I got a new mom." After C.N.'s testimony, a recess was taken while the parties returned to the courtroom. When proceedings resumed, the court stated, "Unfortunately, off the record, it appeared that the minor wanted to go downstairs. Mother saw things differently. There was an outburst. Mother was screaming. Father raised his voice. Things are now calm."

Mother testified her children were always happy to see her at visits and asked when they could return home. She claimed C.N. told her she was afraid of her caregiver and the caregiver had told C.N. to say she wanted to be adopted.

Father likewise testified that the children were happy to see him at visits and asked when they would return home. He said C.N., whom he had not seen since the children were removed, was happy to see him in the courtroom that day and told him she was being abused in her foster home. Father alleged the former social worker "always beat [the children] up in the car when they [were] transporting them and also pinch[ed] them." Further, Father was "furious" because the girls' caregiver was "putting my own kids on time-out" and denying them food. Regarding Sharon, Father stated they had "a good bond" and at the end of visits "she doesn't want to go home . . . She stretch out her hands that she don't want to go and she wants me to carry her more."

Mother's counsel argued against the termination of parental rights, stating Mother had visited the children to the extent allowed and termination of parental rights would be

detrimental to the children because they had a strong emotional attachment with Mother. Mother's counsel highlighted that C.N. seemed confused about the nature of adoption and said she did not want to stop seeing Mother. Father's counsel also argued against termination of parental rights, noting the alleged sexual abuse had not been confirmed by a forensic interview and the Department had failed to investigate the children's purported allegations of abuse in their foster homes.

At the conclusion of the hearing, the juvenile court found by clear and convincing evidence that C.N., Henry, Charles, L.N., and Sharon were adoptable. The court found Mother had maintained regular visitation with Sharon but not with the older children, especially given the extended seven-month period during which she did not visit them. Father had maintained regular visitation. The court found C.N. "didn't really understand adoption, but she did, I think, understand that it was permanent." The court determined based on C.N.'s testimony that C.N. did not want to be adopted. Nevertheless, C.N.'s reluctance to be adopted and statement that she would be "sad" if she could not see Mother did not satisfy Mother's burden to show an exception to adoption applied. With respect to the other children, the court found the parents did not have a beneficial relationship with the children and terminating the parental-child relationship would not be detrimental to them. Thus, the court found no exception to adoption applied, and it terminated Mother's and Father's parental rights to C.N., Henry, Charles, L.N., and Sharon.

Mother and Father timely appealed (case No. B346935).[10]

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[10] Mother also filed a notice of appeal from the juvenile court's May 23, 2025 denial of her section 388 petition to increase her

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Denying Mother's Request for a Bonding Study*

Evidence Code section 730 states that, when "expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required." In the juvenile dependency context, bonding studies may "supply expert opinion about the psychological importance to the child of the relationship with his or her parent(s) to assist the court in determining whether 'the child would benefit from continuing the relationship.'" (*In re M.V.* (2023) 87 Cal.App.5th 1155, 1179;

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visitation (case No. B346492). We consolidated the appeals from the denial of Mother's request for a bonding study (case No. B344576), the denial of Mother's section 388 petition (case No. B346492), and the termination of Mother's and Father's parental rights (including the June 9 denial of Father's appeal from the order denying his section 388 petition regarding visitation with Sharon) (case No. B346935).

However, Mother's briefs on appeal do not present any argument regarding the juvenile court's May 23, 2025 denial of her section 388 petition. Accordingly, any claims of error with respect to the denial are forfeited. (See *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [issues not raised on appeal are deemed forfeited]; *Swain v. LaserAway Medical Group, Inc.* (2020) 57 Cal.App.5th 59, 72 [""Issues not raised in an appellant's brief are [forfeited] or abandoned.""].)

accord, *In re S.R.* (2009) 173 Cal.App.4th 864, 869 ["the parties or the court may require a bonding study to illuminate the intricacies of the parent-child bond so that the question of detriment to the child [of terminating parental rights] may be fully explored"].)

Accordingly, juvenile "courts should seriously consider, where requested and appropriate, allowing for a bonding study or other relevant expert testimony." (*In re Caden C.* (2021) 11 Cal.5th 614, 633, fn. 4 (*Caden C.*).) However, "parents are not automatically entitled to the appointment of a bonding expert under Evidence Code section 730; a sufficient need for one must be shown." (*In re P.S.* (2024) 107 Cal.App.5th 541, 559; see *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339 (*Lorenzo C.*) ["There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order."].)

"The court's power to appoint an expert under [Evidence Code section 730] is discretionary and reviewed for abuse of discretion." (*In re P.S.*, *supra*, 107 Cal.App.5th at p. 553; accord, *Lorenzo C., supra*, 54 Cal.App.4th at p. 1341 ["The applicable standard of review is whether, under all the evidence viewed in a light most favorable to the juvenile court's action, the juvenile court could have reasonably refrained from ordering a bonding study."].)

In denying Mother's request for a bonding study with Sharon, the juvenile court explained that, given Sharon's young age (11 months), a bonding study would not be useful. The court did not abuse its discretion in denying the request. Sharon was too young to provide a statement to a psychologist to assist with an evaluation. As the Court of Appeal observed in *In re M.V.*,

supra, 87 Cal.App.5th at page 1179, bonding studies "are particularly informative in cases like *Caden C.*, in which the child was eight or nine years old and had a complex parental relationship with both positive and negative aspects." (Cf. *Lorenzo C., supra*, 54 Cal.App.4th at p. 1341 [trial court did not abuse its discretion in denying request for bonding study for two-year old child where record showed "some bonding" between father and child].)

Here, Mother's entire argument consists of a summary of the positive interactions between Mother and Sharon reflected in the record, including that Sharon spent the first seven months of her life with Mother, who breastfed her during this period; on some visits Sharon reached out to Mother and at times smiled or appeared happy when she saw Mother; during most visits Mother fed Sharon, changed her diaper, and prayed over her; and Sharon often slept during visits or Mother and Sharon watched educational videos together on Mother's phone. Mother argues these reports by the Department monitor show Mother and Sharon had a "close parent-child bond," and therefore "a bonding study from an expert could have provided evidence as to the strength of that bond. . . ." However, the reports of these interactions were available for the juvenile court to review, and given Sharon's inability to provide a statement to an expert, it was reasonable for the juvenile court to conclude a bonding study was unlikely to have yielded additional information on the attachment between Mother and Sharon.

B. *The Juvenile Court Did Not Abuse Its Discretion in Denying Father's June 2025 Section 388 Petitions*

1. *Governing law and standard of review*

Section 388, subdivision (a)(1), provides, "Any parent or other person having an interest in a child who is a dependent of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to [s]ection 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." "Section 388 provides for modification of juvenile court orders when the moving party presents new evidence or a change of circumstance and demonstrates modification of the previous order is in the child's best interest." (*In re Malick T.* (2022) 73 Cal.App.5th 1109, 1122; accord, *In re Jasmon O.* (1994) 8 Cal.4th 398, 414-415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).)

"[Section 388] petitions are to be liberally construed in favor of granting a hearing to consider the parent's request. [Citations.] The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; accord, *In re R.A.* (2021) 61 Cal.App.5th 826, 836; see Cal. Rules of Court, rule 5.570(a) ["A petition for modification must be liberally construed in favor of its sufficiency."].) "'A "prima facie" showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.' [Citation.] 'Whether [the petitioner] made a prima facie showing entitling [the petitioner] to a hearing depends on

the facts alleged in [the] petition, as well as the facts established as without dispute'" by the court's records. (*In re B.C.* (2011) 192 Cal.App.4th 129, 141; see *In re Justice P.* (2004) 123 Cal.App.4th 181, 189 ["In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case."].)

"A juvenile court may summarily deny a section 388 petition without an evidentiary hearing, but . . . 'only if the application fails to reveal any change of circumstance or new evidence which might require a change of order.'" (*In re R.A, supra*, 61 Cal.App.5th at p. 836; accord, *In re Justice P.*, *supra*,123 Cal.App.4th at pp. 188-189.) Further, "'[n]ot every change in circumstance can justify modification of a prior order'" under section 388. (*In re N.F.* (2021) 68 Cal.App.5th 112, 120.) Rather, "'"the change in circumstances must be substantial."'" (*In re Malick T., supra*, 73 Cal.App.5th at p. 1122; accord, *In re J.M.* (2020) 50 Cal.App.5th 833, 846.)

When a section 388 petition is filed after reunification services have been terminated, the focus is on the child's best interest. (*Stephanie M., supra*, 7 Cal.4th at p. 317 ["After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child."]; *In re I.B.* (2020) 53 Cal.App.5th 133, 159.)

"We review the juvenile court's decision to grant or deny a section 388 petition for abuse of discretion." (*In re I.B., supra*, 53 Cal.App.5th at pp. 152-153; accord, *Stephanie M., supra*,

7 Cal.4th at p. 318.) We likewise review a summary denial of a section 388 petition for abuse of discretion. (*In re R.A., supra*, 61 Cal.App.5th at p. 837; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

2. *Father's notice of appeal encompassed the denial of his section 388 petition with respect to the older children*

On June 12, 2025 Father filed a notice of appeal regarding Sharon that stated the appeal was from the order terminating his parental rights and from the June 9 denial of his section 388 petition. On July 22 Father filed a notice of appeal regarding C.N., Henry, Charles, and L.N. that stated the appeal was from the termination of parental rights, without mentioning the court's June 10, 2025 denial of Father's section 388 petition with respect to the older children. The Department contends Father failed to properly appeal the June 10 denial of his section 388 petition with respect to the older children and we therefore lack jurisdiction to review the denial.

As the Department acknowledges, however, appellate courts "will liberally construe a parent's notice of appeal from an order terminating parental rights to encompass the denial of the parent's section 388 petition, provided the trial court issued its denial during the 60-day period prior to filing the parent's notice of appeal." (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451; accord, *In re Angelina E.* (2015) 233 Cal.App.4th 583, 585, fn. 2; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413, fn. 9.) Father's notice of appeal regarding the older children was filed within 60 days of the juvenile court's June 10, 2025 denial of his section 388 petition. We therefore liberally construe Father's

notice of appeal from the order terminating parental rights over his older children to encompass the denial of his section 388 petition.

3. *Father's section 388 petitions failed to state a prima facie case for modification of the juvenile court's prior orders*

The juvenile court summarily denied Father's June 2025 section 388 petitions, stating Father had not shown changed circumstances or new evidence that would warrant a hearing to modify his visitation or custody. The changed circumstances Father cited in his petitions were his completion of parenting classes and domestic violence classes in January 2023 and March 2025, respectively, and his regular visitation with the children throughout the case. Father also asserted the children, particularly Sharon, had an "undeniable bond" with him.

Far from representing changed circumstances, the evidence Father relied on in his June 2025 petitions had been submitted at hearings prior to the juvenile court's May 2025 decision to suspend Father's visitation. The juvenile court reviewed that evidence and still concluded Father's visits should be suspended. Rearguing already determined issues and introducing previously available (and here, submitted) evidence are not the proper functions of a section 388 petition. (See *In re Matthew M.* (2023) 88 Cal.App.5th 1186, 1195 [""[T]he term 'new evidence' in section 388 means material evidence that, with due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered.""]; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451 [parent failed to state changed circumstances in support of

section 388 petition where alleged facts had previously been submitted to the court].) The court therefore did not abuse its discretion in summarily denying the section 388 petitions based on Father's failure to make a prima facie showing of changed circumstances or new evidence.

C. *The Juvenile Court Did Not Err in Terminating Mother's and Father's Parental Rights*

1. *Governing law and standard of review*

"At the section 366.26 hearing, the focus shifts away from family reunification and toward the selection and implementation of a permanent plan for the child." (*In re S.B.* (2009) 46 Cal.4th 529, 532; accord, *Caden C., supra*, 11 Cal.5th at p. 630.) "'Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).'" (*In re B.D.* (2021) 66 Cal.App.5th 1218, 1224-1225 (*B.D.*); accord, *In re Celine R.* (2003) 31 Cal.4th 45, 53 ["the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child"].)

Under section 366.26, subdivision (c)(1)(B)(i), the parent may avoid termination of parental rights if the parent establishes by a preponderance of the evidence "that the parent has regularly visited with the child, that the child would benefit from continuing the relationship, and that terminating the relationship would be detrimental to the child. [Citations.] The language of this exception, along with its history and place in the

larger dependency scheme, show that the exception applies in situations where a child cannot be in a parent's custody but where severing the child's relationship with the parent, even when balanced against the benefits of a new adoptive home, would be harmful for the child." (*Caden C., supra*, 11 Cal.5th at pp. 629-630; accord, *B.D., supra*, 66 Cal.App.5th at p. 1225.)

A parent has regular visitation and contact when the parent "'visit[s] consistently,' taking into account 'the extent permitted by court orders.'" (*Caden C., supra*, 11 Cal.5th at p. 632; accord, *In re I.E.* (2023) 91 Cal.App.5th 683, 691 (*I.E.*).) Whether "'the child would benefit from continuing the relationship'" with his or her parent is shaped by factors "such as '[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.'" (*Caden C.*, at p. 632; accord, *In re Katherine J.* (2022) 75 Cal.App.5th 303, 316-317 (*Katherine J.*).) When determining whether termination of parental rights would be detrimental to the child, courts need to consider "how the child would be affected by losing the parental relationship—in effect, what life would be like for the child in an adoptive home without the parent in the child's life." (*Caden C.*, at p. 633; accord, *In re D.P.* (2022) 76 Cal.App.5th 153, 164.)

"'If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that,' even considering the benefits of a new adoptive home, termination would 'harm[]' the child, the court should not terminate parental rights." (*Caden C., supra*, 11 Cal.5th at p. 633; accord, *Katherine J., supra*, 75Cal.App.5th at p. 317.) "While application of the beneficial parental relationship

exception rests on a variety of factual determinations properly reviewed for substantial evidence, the ultimate decision that termination would be harmful is subject to review for abuse of discretion." (*Caden C.*, at p. 630; accord, *I.E., supra*, 91 Cal.App.5th at p. 691.)

2. *The juvenile court did not abuse its discretion in finding the beneficial parental relationship exception did not apply*

Mother and Father contend the juvenile court abused its discretion in finding the beneficial parental relationship exception did not apply because the parents consistently visited the children to the extent allowed, the children had a positive relationship with their parents and would benefit from continuing it, and severing the relationship would harm the children. The court did not abuse its discretion.

As to the first step of the *Caden C.* analysis, the juvenile court found Father had maintained regular visitation with the children (other than C.N.) and Mother had maintained regular visitation with Sharon but not the older children. These findings were supported by substantial evidence. With respect to Mother, it is undisputed that she failed to visit the older children from March to October 2024. Once she resumed visitation, Mother visited the older children for two-and-a half hours every other week, despite being entitled to visit them for nine hours per week under her case plan. Mother was offered additional visitation time but refused to sign the paperwork necessary to arrange a monitor for the visits. These factors "fatally undermine any attempt to find the beneficial parental relationship exception" as to Mother. (*In re I.R.* (2014) 226 Cal.App.4th 201, 212 [parental

relationship exception did not apply where there were "significant lapses in visits" and the parents did not "visit consistently to the extent permitted by court orders"]; see *In re Eli B.* (2022) 73 Cal.App.5th 1061, 1070 [father's visits were not consistent where visitation "throughout the years-long dependency proceeding was sporadic and also entailed significant gaps, and . . . even when he did visit his children he was frequently late"].)

With respect to the second step, Mother and Father argue the children would benefit from continuing their relationships with the parents because the children were happy to see the parents and were affectionate during visits, including giving the parents hugs. However, the juvenile court's finding Mother and Father did not have substantial, positive emotional attachments to their children was supported by substantial evidence. While the children were usually happy to see their parents, there is little evidence of any substantial, positive bond. The older children were frequently rambunctious during visits and did not respond to the parents' attempts to redirect them. During visits with Father, the children spent most of their visitation time watching videos or playing video games rather than engaging with Father.

There was evidence the parents met the children's immediate needs by feeding and cleaning them up during visits, and the parents often held the younger children. However, Charles and Henry reported being scared of Father, and Henry at one point said he did not want to visit Father. Charles was aware of Father's volatile behavior, telling the social worker that Father was being mean and had grabbed Henry. During one visit when Mother was unable to control the children's behavior, L.N.

repeatedly sought comfort from the social workers. There was no evidence the children expressed a desire to see their parents more frequently, other than the parents' testimony at the selection and implementation hearing that the children asked when they could return home. Nor was there evidence the children were unhappy when visits ended. The fact the children sometimes enjoyed spending time with Mother and Father and generally appeared happy during visits is not sufficient to show they had a substantial emotional attachment to their parents. (See *Katherine J., supra*, 75 Cal.App.5th at p. 318 ["the beneficial relationship exception demands something more than the incidental benefit a child gains from any amount of positive contact with her natural parent"]; *B.D.*, *supra*, 66 Cal.App.5th at p. 1230 ["an emotional attachment is one where the child views the parent as more than a mere friend or playmate and [where the child's] interactions with the parent were not ambivalent, detached, or indifferent"].)

As to the third step of the *Caden C.* analysis, the record supports a finding the benefit and security provided by the children's caregivers outweighed any harm that would be caused by loss of the children's relationships with Mother and Father. The children had been out of their parents' care for large portions of their lives, with the three youngest children being in foster care for more than half their lives. All the children were thriving in their placements, and their caregivers ensured they received mental health and developmental services.

We recognize that C.N. testified at the hearing that she wanted to continue seeing Mother, and the juvenile court inferred C.N. did not want to be adopted. While a child's feelings regarding adoption must be considered by the juvenile court (see

§ 366.26, subd. (h)(1)), those "wishes are not necessarily determinative of whether termination of parental rights will be in the child's best interest." (*I.E.,* 91 Cal.App.5th at p. 694; accord, *In re Joshua G.* (2005) 129 Cal.App.4th 189, 201 [affirming termination of parental rights despite minors stating they wanted to live with their mother].) Although C.N. stated she did not want to be adopted if it meant she could no longer see Mother, C.N. stated she wanted to live with her current caregiver, and her answers appeared to be somewhat influenced by the fact she was concerned Mother would be angry with her. C.N. made clear she would miss her enjoyable visits with Mother where they would eat snacks and play games, but, as discussed, something more than positive contact with a parent is required for the beneficial parental relationship exception to apply. (See *Katherine J., supra*, 75 Cal.App.5th at p. 318.)

On this record, there is no showing of "'exceptional circumstances [citation], to choose an option other than the norm, which remains adoption.'" (*Caden C.*, *supra*, 11 Cal.5th at p. 631.) The juvenile court therefore did not abuse its discretion in finding the benefit and security provided by adoption outweighed any harm that would be caused by the loss of the children's relationships with Mother and Father. (*Id.* at p. 634; *Katherine J., supra*, 75 Cal.App.5th at p. 317.)

DISPOSITION

The orders denying Mother's May 23, 2025 section 388 petition, denying Mother's request for a bonding study, denying Father's June 6 and June 10, 2025 section 388 petitions, and terminating Mother's and Father's parental rights are affirmed.

FEUER, J.

We concur:

SEGAL, Acting P. J.

STONE, J.