Filed 1/26/23 In re B.B. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.B. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. D.B. et al., Defendants and Appellants.	E079314 (Super. Ct. No. SWJ2000156) OPINION

APPEAL from the Superior Court of Riverside County. Kelly L. Hansen and Judith C. Clark, Judges. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant D.B.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant E.M.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Prabhath Shettigar, Deputy County Counsels, for Plaintiff and Respondent.

I.

INTRODUCTION

D.B. (Father) and E.M. (Mother) appeal from the juvenile court's order terminating parental rights to their children: two-year-old B.B. and one-year-old S.B.[1] (Welf. & Inst. Code, § 366.26.)[2] Mother contends that the juvenile court erred in not applying the beneficial relationship exception to adoption set forth in section 366.26, subdivision (c)(1)(B)(i). Father argues that the Riverside County Department of Public Social Services (DPSS) failed to discharge its initial and continuing duty of inquiry under state law implementing the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.), and therefore substantial evidence did not support the juvenile court's findings that ICWA did not apply.[3] We disagree with these contentions. Accordingly, we affirm the order terminating parental rights as to B.B. and S.B.

---

[1] Mother and Father's third child who was born during the current dependency proceedings is not a subject to this appeal.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

[3] Mother and Father join in and adopt by reference each and every argument raised by the other.

II.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of DPSS in February 2020 after Mother gave birth to B.B. and tested positive for methamphetamine.[4] Mother and Father lived in a motel, and family members helped them with items for the baby. The social worker made several attempts to contact the parents in person at the motel they resided in but was unsuccessful. The social worker was also unsuccessful in contacting the parents via phone numbers provided by the maternal grandmother (MGM), emails and social media accounts. The social worker believed that the parents were evading DPSS.

Approximately 16 days later, on February 26, 2020, Mother texted the social worker from a new phone number. She sent a picture of B.B. and noted that it was her miracle baby. The social worker texted Mother back requesting that she meet with her. Mother did not reply. The following day, the social worker sent Mother another text message telling her to meet her at the Hemet DPSS. Mother did not reply. On March 2, 2020, the social worker received another text message from Mother with a new phone number stating that she had lost her phone and wanted to check in. The social worker

[4] The record from the parents' writ appeal, which was ultimately dismissed, in case No. E077145 is incorporated and placed with this appeal. The three volumes of the clerk's transcripts from case No. E077145 will be referred to as "1CT," "2CT," and "3CT." The clerk's transcript from this case will be denoted as "4CT." Likewise, the reporter's transcript from case No. E077145 will be referred to as "1RT," and the reporter's transcript from this case will be referred to as "2RT."

sent Mother a text message asking for her address. Mother again did not reply. The social worker attempted to call the phone number and left a message.

Mother eventually came into DPSS's Hemet office. She claimed that she did not know she was pregnant. MGM previously informed the social worker that no one knew Mother was pregnant. She explained that Mother and Father had been in a relationship for the past 12 years, Mother had an irregular menstrual cycle, and she had never been pregnant before. When asked if anyone in the family noticed Mother looking pregnant or gaining weight, MGM said Mother is normally 300 pounds and it was not obvious that she was pregnant. Mother and MGM claimed that Mother discovered that she was pregnant when she came into the hospital for heartburn about nine days before B.B.'s birth. Mother denied using methamphetamine while pregnant and also denied recent use. However, her on-demand saliva drug test was positive for amphetamines and methamphetamine.

When the social worker went to the motel room to evaluate Mother's living situation, the worker encountered Father. Father was uncooperative and claimed neither Mother nor B.B. were present, despite the social worker having observed them go into the motel room. Father refused to provide an interview and claimed MGM had picked up Mother and the baby. The social worker called MGM, and MGM claimed that she had not picked up Mother or B.B. Father refused an on-demand drug test.

On March 4, 2020, the parents came into the Hemet DPSS office for a scheduled appointment. Father stated that he and Mother had used methamphetamine daily on and

off for the last 10 years. He claimed that he had last used methamphetamine six months ago and that his and Mother's drug test could be positive because they had used so much.

Father has a prior child welfare history that included several substantiated allegations due to general neglect and substance abuse use between 2002 and 2020. In August 2010, the maternal grandmother of Father's older children, D.B., C.B. and E.B., filed for legal guardianship of the children. The guardianship was granted in December 2013. Father also has a criminal history with numerous arrests and several felony convictions for criminal threats and drug-related offenses.

Mother tested positive for amphetamine and methamphetamines on March 3, 2020, and admitted to breastfeeding B.B. She failed to attend an on-demand drug test scheduled for March 4, 2020. The parents continued to be uncooperative with DPSS, and DPSS eventually detained the baby from both parents on March 6, 2020. B.B. was placed with MGM on this same day.

On March 10, 2020, a petition was filed on behalf of B.B. pursuant to section 300, subdivision (b) (failure to protect). Both parents denied having any Native American ancestry on March 3 and 4, 2020. As such, the social worker indicated in the petition that her inquiry of the parents gave her "no reason to believe the child is or may be an Indian child."

Prior to the detention hearing, however, Mother filed an ICWA-020 Parental Notification of Indian Status (ICWA-020) form, declaring that she may have Blackfoot

and Cherokee Indian ancestry. On this same day, Father filed his ICWA-020 form, declaring that he may have Cherokee Indian ancestry.

The detention hearing was held on March 11, 2020. Both parents were present, as well as MGM. At that time, the court inquired of the parents as to their Native American ancestry and reviewed the ICWA-020 forms with the parents. Mother confirmed that she may have Indian ancestry through Blackfoot and the Cherokee Nation. Father indicated that he may have Indian ancestry through the Cherokee Nation. The court found that ICWA may apply to the proceedings and directed Mother, Father and MGM to speak with DPSS's ICWA noticing clerk after the court hearing. The juvenile court found Father to be the presumed father of B.B. The court made temporary detention findings and continued the hearing at the request of the parents.

On March 12, 2020, the parents and MGM were present at the continued detention hearing. The juvenile court formally detained B.B. from parental custody and found that there was reason to know that an Indian child was involved. The court thus ordered DPSS to provide notice to all identified tribes and/or the Bureau of Indian Affairs (BIA). The parents were provided with supervised visitation and services pending the dispositional hearing.

On March 17, 2020, DPSS filed an ICWA-030 Notice of Child Custody Proceeding for Indian Child (ICWA-030) form as to B.B. In the notice, DPSS provided relevant and known information as to Mother, Father, the maternal and paternal grandparents, as well as the maternal and paternal great-grandparents. DPSS also

provided information on the Indian ancestry of other lineal biological ancestors. ICWA-030 notice was sent to the parents, the BIA, the Blackfeet Tribe of Montana, the Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians.

At a hearing on March 20, 2020, the juvenile court ordered Father, who was present, to disclose the names of his relatives.

In its April 15, 2020 jurisdiction/disposition report, DPSS recommended that the allegations in the petition be found true and that the parents be provided with reunification services. DPSS also noted that ICWA may apply. On March 31, 2020, Mother stated that she had Blackfoot and Cherokee Indian ancestry on her maternal side of the family. Father reported that he had Cherokee Indian ancestry on his paternal side of the family.

Mother denied current drug use and claimed to have only used once when she was 21 years old to aid in weight loss. She also denied using any marijuana or drinking any alcohol. She further indicated that she did not believe she was in need of drug treatment, but acknowledged it was an issue identified by DPSS and was willing to engage in substance abuse treatment services to reunify with her daughter.

The case plan for the parents included counseling services, parenting education and substance abuse services. Both parents had enrolled in online services to include substance abuse treatment, parenting education and individual counseling through MFI Recovery Center (MFI). They were also willing to engage in alternative online services,

but continued to evade drug testing. DPSS was also concerned as to the stability of the parents' housing as their housing remained unknown to DPSS. The parents had failed to provide DPSS with a physical address of their whereabouts after they moved from the motel. Further, even though Mother had made efforts to obtain housing resources and the parents had been authorized by the court to live with MGM, the parents had shown hesitancy as to their willingness to live with MGM. This caused concern for DPSS as the parents would not be able to assist MGM with the child's care, and DPSS would not be able to ascertain their parenting abilities.

The parents had supervised telephone and video calls with B.B. MGM described the child as calm and happy when engaging with her and the parents. Mother appeared to be bonding with the child, but Father made little to no effort to engage with B.B.

On April 10, 2020, DPSS received return receipts from the ICWA-030 notice that had been mailed to the relevant tribes.

In June 2020, Mother informed DPSS that she and Father had completed a substance abuse assessment at MFI and that MFI had concluded they did not need substance abuse treatment services. DPSS was unable to confirm Mother's statement with MFI. In addition, Mother was a "'no show'" for five random drug tests and two scheduled hair follicle drug tests. Father also was a "'no show'" for four drug screening tests and two hair follicle drug tests. By June 12, 2020, the parents were living in a motel in Hemet and had transportation. MGM reported that Mother and Father had an

unhealthy relationship and that she would not be comfortable with the parents living with her at that time.

On June 12, 2020, the parents set the jurisdictional hearing for contest. In regard to ICWA, the juvenile court noted that it had read and considered the ICWA noticing documents and found good notice pursuant to ICWA.

On July 24, 2020, MGM expressed concern for Mother's well-being because Mother's focus and attention was centered around Father and not B.B. Mother failed to complete random drug screenings or a hair follicle drug test as ordered by the court. She indicated that she had completed her case plan services, but failed to provide any proof. She continued to reside with Father, despite describing him as abusive. Father had made no attempts to contact DPSS and was not participating in his services, including substance abuse testing as ordered by the court.

The contested jurisdictional hearing was held on July 30, 2020. The juvenile court found true the allegations in the petition, declared B.B. a dependent of the court, removed B.B. from the physical custody of the parents, and provided services to the parents. The court also found that DPSS had conducted a sufficient ICWA inquiry and that ICWA did not apply.

In August 2020, DPSS filed a response letter from the Blackfeet Indian tribe. The tribe indicated that B.B. was not eligible for enrollment with their tribe and that the child was not an Indian child. In September 2020, DPSS filed a response letter from the

Eastern Band of Cherokee Indians, stating that B.B. is neither registered nor eligible to register as a member of their tribe and that the child is not considered an Indian child.

The parents continued to report having Native American heritage, but provided no documentation. In January 2021, MGM reported that Mother had Native American heritage in her family, but provided no documentation.

By the six-month review hearing in February 2021, DPSS recommended that the parents receive additional services. Mother had completed a parenting education and substance abuse program, but refused to drug test. Father had participated in some services, but did not complete a substance abuse program and was inconsistent with drug testing. The parents continued to reside in a motel and were unemployed, but were receiving unemployment benefits. Father also worked on the side as a mechanic.

Meanwhile, MGM was providing excellent care for the child's needs and ensured that B.B.'s medical, developmental, physical, and emotional needs were being met on a consistent basis. B.B. was healthy, bonded to MGM, and reaching her developmental milestones. MGM provided a nurturing and stimulating home that allowed B.B. to engage, play, and explore within her environment. The parents visited B.B. consistently, with Mother taking a more active and engaging approach than Father.

By March 17, 2021, DPSS recommended that the parents' services be terminated and a section 366.26 hearing be set for B.B. Mother had made minimal progress to mitigate the concerns that led to the dependency and refused to submit to on demand drug testing and a hair follicle drug test as ordered by the court. Although she had completed a

parenting education program and was participating in individual therapy, she was terminated from her substance abuse treatment program for non-compliance. DPSS was thus concerned about Mother's ability to remain sober. Likewise, although Father had completed a parenting education program, there was no evidence he had participated and completed substance abuse services. He had submitted five negative drug tests, but his testing was inconsistent, and he refused to submit to a hair follicle drug test as ordered by the court. Further, he was discharged from individual counseling on February 10, 2021, due to his poor attendance and participation.

On April 2, 2021, DPSS filed a section 300 petition on behalf of B.B.'s newborn sibling S.B., who was placed with MGM and B.B. on March 30, 2021. DPSS had received an immediate response referral on March 30, 2021, stating that Mother had given birth and had provided a false name when she delivered the child. It was further reported that Mother was seen outside of her motel at 2:00 a.m. with the newborn in a stroller, walking back and forth, and exhibiting odd behaviors. Mother denied knowing that she was pregnant and denied failing to drug test.

On March 30, 2021, Mother and Father again reported that they had Native American ancestry with the Blackfeet and Cherokee Nation, but provided no further information. On April 5, 2021, Mother filed an ICWA-020 form, in which she checked a box stating that one or more of her parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe, noted the ancestor as MGM, and indicated the tribes' names as "Cherokee and Black foot."

At the detention hearing for S.B. on April 5, 2021, Mother and MGM were present in court. Father was not present. The juvenile court formally detained the child, found Father to be the presumed father of S.B., and ordered twice weekly supervised visits for the parents. The court inquired why Father had not provided an ICWA-020 form. Father's counsel stated that "we submitted one at the original detention" for B.B. and "Blackfoot and Cherokee" was reported. The court found that ICWA may apply and that DPSS must provide notice to the tribes or the BIA as required by law.

On April 7, 2021, Mother reported having Native American ancestry with the Blackfeet and Cherokee Nation, but denied she was enrolled in the tribes. On this same day, MGM stated that her "'great, great, great grandmother was Cherokee and Blackfoot.'" MGM further noted that she was "'not enrolled with a tribe'" and that "'the blood line has thinned out some much over the years.'"

On April 20, 2021, DPSS sent a further inquiry letter to the Blackfeet and Cherokee Indian tribes, inquiring about the ICWA eligibility or enrollment status of S.B.

In its jurisdiction/disposition report for S.B., DPSS recommended the court deny services for the parents under section 361.5, subdivisions (b)(10) and (b)(13). The parents continued to be non-compliant with substance abuse treatment services, random drug testing, and hair follicle testing. In addition, Mother had been discharged from her counseling services on March 31, 2021 for non-compliance. The parents also had not made themselves available to DPSS.

On May 12, 2021, DPSS filed a response letter from the Blackfeet tribe that stated they were not able to find S.B. on its tribal rolls and that the child is not an Indian child as defined by ICWA. On this same day, DPSS filed a response letter from the Cherokee Nation tribe. The letter stated that neither the parents nor the child are registered as Cherokee Nation tribal members, the child is not an Indian child in relation to the Cherokee Nation and the ICWA does not apply.

The court held a combined contested six-month status review hearing for B.B. and the jurisdiction/disposition hearing for S.B. on May 24, 2021. MGM was present, but the parents were absent. The juvenile court found that DPSS had made sufficient ICWA inquiry and that there was no new information that ICWA may now apply as to B.B. The court terminated the parents' reunification services, set a section 366.26 hearing and reduced the parents' supervised visitation to one time per month.

In regard to S.B., the juvenile court found that ICWA did not apply and that S.B. was not an Indian child. The court found the allegations true in the petition, declared S.B. a dependent of the court, removed the child from the physical custody of the parents, and denied them services under section 361.5, subdivisions (b)(10) and (b)(13). The court set a section 366.26 hearing in S.B.'s case as well, and reduced the parents' supervised visitation to one time per month.

Both parents filed a notice of intent to file writ petition as to both B.B. and S.B. After counsel filed a no issue statement, this court dismissed the parents' writ petition.

On January 4, 2021, the parents again indicated that they have Native American heritage, but did not provide any documentation. On August 20, 2021, MGM again informed DPSS that Mother has Native American heritage in her family, but did not provide documentation or identify a tribe.

In its section 366.26 hearing report, DPSS recommended the juvenile court terminate parental rights and free the children for adoption. MGM had been providing excellent care to the children and both children were developing well physically, emotionally and educationally. The children were comfortable in MGM's home, were bonded to her, and had developed a healthy attachment to her. MGM had ensured that the children's medical, developmental, physical, and emotional needs were met on a consistent and ongoing basis. The children were provided with a safe home, meals, routine schedules, emotional nurturance, recreational activities, and direct supervision each day. DPSS noted that the children were thriving in MGM's care and had established a healthy and loving bond with their grandmother.

The parents visited the children at the DPSS's office. During the visits, Mother spent time with the children. However, B.B. struggled to spend time with Father, because the child had no obvious bond with him according to the visitation monitor, and oftentimes refused to go to him when encouraged by Mother. B.B. had been observed not wanting to be comforted by her father, and when Mother encouraged the child to interact with Father, she was oftentimes unwilling to stay with Mother. Mother spent time reading and engaging B.B. in activities while Father held S.B.

The Court Appointed Special Advocate (CASA) for the children reported in September 2021 that B.B. was a very active and curious 18-month old child who enjoyed running around in the home and climbing furniture. The CASA also noted that B.B. appeared to be a happy child who often laughed and giggled. As to S.B., the CASA explained that S.B. was often sleeping or eating and that she smiled all the time and was a very happy baby. B.B. appeared to be affectionate and responsive to MGM and both girls appeared to be happy and content in their environment. B.B. had monthly supervised visits with her parents and the CASA was unsure how B.B. felt about these visits. The CASA recommended that parental rights be terminated.

On September 8, 2021, DPSS filed a tribal response letter from the Cherokee Nation as to S.B. The Cherokee Nation stated it had examined the tribal records and had concluded that the child is not an Indian child.

On January 6, 2022, DPSS filed a preliminary adoption assessment report as to the children and recommended that parental rights be terminated. DPSS reported the children had a strong bond with MGM, and that MGM was committed to adopting the children and providing them with a safe, loving and stable home. DPSS again noted that the children were thriving in MGM's home. The children sought MGM for comfort, affection, attention, and to get their needs met.

The section 366.26 hearing set for January 18, 2022 was continued at the request of the parents to complete a bonding study.

Mother filed a bonding study conduct by Dr. Wendy Wray on February 9, 2022. Dr. Wray observed the parents' visit with B.B. and S.B. on February 1, 2022. The children were accompanied by MGM and, at the beginning of the visit, neither child displayed any signs of fear or distress and there was a warm greeting between the parents and the children. The parents took turns holding the children and engaged with the children for the duration of the visit. The parents fed and hugged the children and it appeared that both children enjoyed the attention from both parents. Mother also appropriately changed the children's diaper. Dr. Wray observed a positive bond between B.B. and her mother and the child called Mother "Ma." Neither child appeared distressed when held by their father. Dr. Wray reported that MGM appeared to be devoted to the children and did a good job taking care of the children, but that she would benefit from Mother's assistance. After speaking with Father and MGM, Dr. Wray noted that Father did not take responsibility for his actions in this case, he had anger issues, he was very influential on Mother, and that together they made poor choices. Dr. Wray found that it was in the children's best interests to leave the parental rights intact to allow Mother the opportunity to "further work on herself as she establishes a stronger bond with her children over time and possibly be a caregiver in the future to avoid abandonment issues as they get older." Dr. Wray opined that "it would be in the best interest of the children if [Mother] could get to a point where she could cooperate, be responsible, drug free, and become compliant to work as a team with the grandmother to provide the necessary support, nurturing and stability the children need to thrive."

On February 9, 2022, Father filed therapist letters and other documents regarding his participation in services.

The children continued to visit with their parents in a supervised setting. During the visits, Mother spent time with the children, while Father sat and watched Mother interact and read to the children. B.B. continued to struggle to spend time with Father.

On March 21, 2022, the children's counsel filed a bonding study completed by Dr. Kenneth Garett. Dr. Garett described the children as young, friendly and responsive to himself and his office staff. The children played with a member of Dr. Garett's office and "seemed to completely embrace her, hugging her, playing on the floor, interacting playfully and dancing." The children had no fear, hugged each other and only briefly fussed with each other. Both children interacted with their grandmother. B.B. sat on MGM's lap and called her "Mom" a couple of times. Dr. Garett opined the children appeared to be normal toddlers who could easily bond and show affectionate responses to any caring stranger. Dr. Garett noted that Dr. Wray's report did not show any "unique connection" the children had with Mother. Dr. Garett pointed out that the children had been living with MGM their entire lives and had bonded with her.

In March 2022, DPSS reported that there was no updated information given by MGM or the parents regarding the claim of having Native American ancestry.

In May 2022, DPSS filed declarations of due diligence as to the parents, because they were unable to find them.

On May 26, 2022, the juvenile court held a jurisdiction/disposition hearing for the children's newborn sibling, who is not a party of this appeal. DPSS's counsel reported that the parents and the new sibling were "missing" and asked the court to allow for a protective custody warrant for the child and bench warrants for the parents to remain in full force and effect. The court ordered that "All outstanding warrants for both child and parents remain outstanding" and continued the jurisdiction/ disposition hearing as to the children's sibling to locate their whereabouts.

The section 366.26 hearing in S.B. and B.B.'s case was held on June 6, 2022. The parents were not present. DPSS's counsel and the children's counsel asked the court to terminate parental rights. Mother's counsel objected to the termination of parental rights and asked that the court adopt legal guardianship as the permanent plan based on the bond between the parents and the children. Father's counsel joined with Mother's request for legal guardianship. The court did not find Dr. Wray's bonding study opinion to be "powerful or convincing." The court believed the children showed affection to their mother because "the maternal grandmother has done such a good job in raising these kids, that they're happy, healthy little ones." The court also noted that the children showed the same level of interaction with a complete stranger as they did with their parents. The court found none of the exceptions to termination of parental rights applied, found the children to be adoptable and terminated parental rights. The court also concluded that termination of parental rights would not be detrimental to the children. The parents timely appealed.

III.

DISCUSSION

A. *Beneficial Relationship Exception*

Mother contends she established the existence of the beneficial relationship exception and therefore the juvenile court erred by terminating her parental rights. She argues the juvenile court should have ordered legal guardianship based on the bonding study. Father joins with Mother.

Section 366.26 governs the proceedings at which the juvenile court must select a permanent placement for a dependent child. The express purpose of a section 366.26 hearing is "to provide stable, permanent homes" for dependent children. (§ 366.26, subd. (b).) If the court determines it is likely the child will be adopted, the statute mandates termination of parental rights unless the parent opposing termination can demonstrate that one of the statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B).) In other words, the court must select adoption as the permanent plan unless "the parent shows that termination would be detrimental to the child for at least one specifically enumerated reason." (*In re Caden C.* (2021) 11 Cal.5th 614, 630 (*Caden C.*).) The exceptions allow "'the court, in exceptional circumstances [citation], to choose an option other than the norm, which remains adoption.'" (*Id*. at p. 631, quoting *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Mother contends the exception found in section 366.26, subdivision (c)(1)(B)(i), i.e., the beneficial relationship exception, applied in her case. Recently, in *Caden C.*,

our Supreme Court explained, for this exception to apply, a parent is required to 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 first element—regular visitation and contact—is straightforward. The question is just whether 'parents visit consistently,' taking into account 'the extent permitted by court orders.'" (*Id*. at p. 632.) "As to the second element, courts assess whether 'the child would benefit from continuing the relationship.' [Citation.] Again here, the focus is the child. And the relationship may be shaped by a slew of 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.'" (*Ibid*., quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*).) "Concerning the third element—whether 'termination would be detrimental to the child due to' the relationship—the court must decide whether it would be harmful to the child to sever the relationship and choose adoption." (*Caden C.*, *supra*, at p. 633.)

The Supreme Court's decision in *Caden C.* focuses primarily on the third element. The court rejected reliance on whether the parents have complied with their reunification services or case plan and explained, "Because terminating parental rights eliminates any legal basis for the parent or child to maintain the relationship, courts must assume that terminating parental rights terminates the relationship. [Citations.] What courts need to determine, therefore, is 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. [Citation.] . . .' [T]he effects might include emotional instability and preoccupation leading to acting out, difficulties in school, insomnia, anxiety, or depression [or] . . . a new, stable home may alleviate the emotional instability and preoccupation leading to such problems, providing a new source of stability that could make the loss of a parent not, at least on balance, detrimental. [¶] In each case, then, the court acts in the child's best interest in a specific way: it decides whether the harm of severing the relationship outweighs 'the security and the sense of belonging a new family would confer.' [Citation.] '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, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The parent must show that his or her relationship with the child "promotes the well-being of the child to such a degree *as to outweigh* the well-being the child would gain in a permanent home with new, adoptive parents." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added; accord, *Caden C.*, *supra*, 11 Cal.5th at p. 632 [When "assessing whether termination would be *detrimental*, the trial court must decide whether the harm from severing the child's relationship with the parent outweighs the benefit to the child of placement in a new adoptive home."].) "A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory

preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646, disapproved on another ground in *Caden C.*, *supra*, at pp. 637, fn. 6., 638, fn. 7.) "A parent must show more than frequent and loving contact or pleasant visits." (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

We review the juvenile court's findings as to whether the parent has maintained regular visitation and contact with the child and the existence of a beneficial parental relationship for substantial evidence. (*Caden C.*, *supra*, 11 Cal.5th at pp. 639-640.) We review the third step—whether termination of parental rights would be detrimental to the child due to the child's relationship with his or her parent—for abuse of discretion. (*Id.* at p. 640.) We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Here, the juvenile court did not explicitly address regularity of visitation, but substantial evidence in the record supports that Mother maintained regular visitation and contact with B.B. and S.B. until the parents fled the jurisdiction with their newest child in May 2022. After examining the bonding studies, the court "did not find Dr. Wray's opinion especially powerful or convincing," and found the children "showed affection to their mother . . . because the maternal grandmother has done such a good job in raising these kids, that they're happy, healthy little kids." The court further explained, "And because they're emotionally healthy, that they're not generally fearful of strangers, and that is indicative of Dr. Garrett's report when the two children were playful with a member of his office staff who was a complete stranger and showed the same type of

level of interaction with a complete stranger as they did with their parents." We agree that these findings are supported by substantial evidence. Assuming for the sake of argument that the children would benefit from continuing their relationship with Mother, the issue is whether the children shared such a "substantial, positive, emotional attachment" to Mother that the harm in severing the parental relationship would "outweigh[ ] 'the security and the sense of belonging a new family would confer.'" (*Caden C.*, *supra*, 11 Cal.5th at pp. 633, 636.)

The juvenile court did not abuse its discretion by determining that any benefits derived from the children's relationship with Mother did not outweigh the benefit of stability through adoption. Under the balancing test set forth in *Autumn H*. and approved by in *Caden C.*, we conclude the juvenile court acted within its discretion in terminating Mother and Father's parental rights.

It was undisputed Mother loved the children and had generally positive visits with them. The record also shows that the children generally enjoyed their visits with Mother and that Mother had a bond with them. But, as previously noted, "[a] parent must show more than frequent and loving contact or pleasant visits." (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.) Contrary to Mother's suggestion, there was no evidence that the relationship was so significant as to outweigh the security and stability of an adoptive home. (Cf. *Caden C.*, *supra*, 11 Cal.5th at pp. 633-634 ["When the relationship with a parent is so important to the child that the security and stability of a new home wouldn't outweigh its loss, termination would be 'detrimental to the child *due* to' the child's

beneficial relationship with a parent"]; *id.* at p. 635 [when a child has "'very strong ties'" with a parent, and termination of parental rights "'is likely to be harmful to the child, courts should retain parental ties if desired by both the parents and the child'"].) Although the children enjoyed their visits with Mother, there was substantial evidence that the children were bonded to MGM, whom they considered a parental figure. Both B.B. and S.B. had been placed with MGM almost immediately following their births and were two years old and one year old, respectively, at the time of the section 366.26 hearing. They had spent most of their young lives outside of parental custody and in the care of MGM. The children were very bonded to MGM and sought MGM for comfort, affection, attention, and to get their needs met.

The relationship Mother enjoyed with the children during their visits is not sufficient to demonstrate that Mother and the children shared such a substantial, positive emotional attachment that terminating parental rights would greatly harm the children. The extent of Mother's influence over the children was necessarily limited; the record supports that MGM acted as primary influential parental figure in the minds of these young children. They did not look to Mother to attend to their physical, developmental, emotional, and other daily needs. (Cf. *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [positive emotional attachment results from an adult's attention to a child's needs for physical care, nourishment, comfort, affection, and stimulation, typically arising from day-to-day interaction, companionship, and shared experiences].)

Furthermore, the children were thriving emotionally, developmentally, and educationally due to the excellent care provided by MGM. (Cf. *Caden C.*, *supra*, 11 Cal.5th at p. 633 [losing the parental relationship might result in "emotional instability and preoccupation leading to acting out, difficulties in school, insomnia, anxiety, or depression"].) Perhaps most importantly, adoption would bring the children stability and permanency with a loving, caring caregiver who also happens to be their maternal grandmother and who has provided for their needs since birth.

Mother also did not present any evidence that the children would be greatly harmed by severance of the parental relationship, or that the security and stability of a new home would not outweigh the loss of that relationship. Although the children, especially B.B., were bonded to Mother and happy to see her at the visits, there was no evidence in the record to suggest the children would be emotional harmed, angry or sad from not being able to live with Mother. There was no evidence that terminating parental rights would be detrimental to the children. Dr. Wray's bonding study, which the court found unconvincing, did not suggest that termination of parental rights would have a significant detrimental effect on the children's lives. While Dr. Wray noted a positive bond between the children and Mother, Dr. Wray did not state that termination of parental rights would be detrimental to the children. Dr. Wray recommended that parental rights be left intact to allow Mother the opportunity to "further work on herself as she establishes a stronger bond with her children over time . . . ." However, the children, especially B.B. who had been removed from parental custody when she was

around one month old and was two years old at the time of the section 366.26 hearing, required stability and permanency.

The record fails to show that Mother's relationship with the children was so beneficial to them that it outweighed the benefit they would gain from being adopted. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *Caden C.*, *supra*, 11 Cal.5th at pp. 631, 633-634, 636.) Accordingly, the juvenile court did not err in finding that the beneficial relationship exception does not apply in this case.

B. *ICWA*

Father contends that neither the juvenile court nor DPSS conducted any proper initial inquiry into his reported Cherokee Indian heritage, in that they never questioned any of his paternal relatives, such as the paternal grandmother, about his Indian heritage. He thus argues the evidence did not support the court's findings that ICWA did not apply and the ICWA-030 notices were defective as they were based on a defective initial inquiry of the reported paternal Indian heritage. Mother joins with Father. DPSS contends the issue is forfeited, and that in any event, DPSS made a sufficient initial inquiry and thus the court correctly found ICWA did not apply.

ICWA establishes minimum federal standards that a state court must follow before removing Indian children from their families. (*In re T.G.* (2020) 58 Cal.App.5th 275, 287.) California law implementing ICWA also imposes requirements to protect the rights of Indian children, their families, and their tribes. (See §§ 224-224.6; *In re Abbigail A.* (2016) 1 Cal.5th 83, 91 ["persistent noncompliance with ICWA led the Legislature in

2006 to 'incorporate[] ICWA's requirements into California statutory law'"].) "An Indian child is any unmarried person under 18 who 'is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.' (25 U.S.C. § 1903(4); § 224.1, subd. (b).)." (*In re Ricky R.* (2022) 82 Cal.App.5th 671, 678.)

"""'Federal regulations implementing ICWA . . . require that state courts "ask each participant in an emergency or voluntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child." [Citation.] The court must also "instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child."''" [Citations.] 'State law, however, more broadly imposes on social services agencies and juvenile courts (but not parents) an "affirmative and continuing duty to inquire" whether a child in the dependency proceeding "is or may be an Indian child."'" (*In re J.C.* (2022) 77 Cal.App.5th 70, 77 (*J.C.*).)

As discussed in *In re Austin J.* (2020) 47 Cal.App.5th 870, 883 and *In re D.S.* (2020) 46 Cal.App.5th 1041, 1048-1049, California law imposes a duty of initial inquiry in every case, and a duty of further inquiry when there is reason to believe a child may be an Indian child under the ICWA. The department's initial duty of inquiry at the beginning of a child welfare proceeding includes "asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an

Indian child." (§ 224.2, subd. (b); see *J.C.*, *supra*, 77 Cal.App.5th at p. 77.) Extended family members include adults who are the child's stepparents, grandparents, siblings, brothers-or sisters-in-law, aunts, uncles, nieces, nephews, and first or second cousins. (25 U.S.C. § 1903(2); § 224.1, subd. (c).) The court must inquire at each party's first appearance, whether any participant in the proceeding "knows or has reason to know that the child is an Indian child." (§ 224.2, subd. (c).) Part of the initial inquiry also includes requiring each party to complete California Judicial Council form ICWA-020, Parental Notification of Indian Status. (Cal. Rules of Court, rule 5.481(a)(2)(C).)

When there is reason to believe that an Indian child is involved in a proceeding, further inquiry is required. (*In re Austin J.*, *supra*, 47 Cal.App.5th at p. 883; *In re D.S.*, *supra*, 46 Cal.App.5th at pp. 1048-1049; *In re A.M.* (2020) 47 Cal.App.5th 303, 321-323.) The law requires further inquiry only "'when "the court, social worker, or probation officer has reason to believe that an Indian child is involved [or, under Cal. Rules of Court, rule 5.481(a)(4), 'may be involved'] in a proceeding. . . ."'" (*In re J.S.* (2021) 62 Cal.App.5th 678, 686.) "'When that ["reason to believe"] threshold is reached, the requisite "further inquiry" "includes: (1) interviewing the parents and extended family members; (2) contacting the Bureau of Indian Affairs and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child's membership or eligibility in a tribe."'" (*Ibid.*; accord, *J.C.*, *supra*, 77 Cal.App.5th at p. 78) Thus, there are two types of inquiry the social service agency is required to conduct: an initial inquiry, which is

always required, and a further inquiry, which is required only when the agency has reason to believe an Indian child is or may be involved in the proceeding. Finally, if the further inquiry """'results in a reason to *know* the child is an Indian child, then the formal notice requirements of section 224.3 apply.'"""" (*J.C.*, *supra*, at p. 78.)

The duty to provide formal notice arises only if DPSS or the court "knows or has reason to know that an Indian child is involved." (25 U.S.C. § 1912(a); § 224.3, subd. (a); *In re Austin J.*, *supra*, 47 Cal.App.5th at pp. 883-884.) Federal regulations define the grounds for reason to know that an Indian child is involved (25 C.F.R. § 23.107(c)(1)-(6)), and state law conforms to that definition (§ 224.2, subd. (d)(1)-(6)). There is "reason to know" a child is an Indian child if "(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; [¶] (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; [¶] (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; [¶] (4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village; [¶] (5) The court is informed that the child is or has been a ward of a Tribal court; or [¶] (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe." (25 C.F.R. § 23.107(c); accord, § 224.2, subd. (d).)

""""The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings.'" [Citation.] "If the court makes a finding that proper and adequate further inquiry and due diligence as required in [section 224.2] have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that [ICWA] does not apply to the proceedings, subject to reversal based on sufficiency of the evidence.""" (*J.C.*, *supra*, 77 Cal.App.5th at p. 78.)

Initially here, we disagree with DPSS that Father forfeited his ICWA claim. In other words, Father is not foreclosed from raising an ICWA inquiry violation even if the issue could have been more timely raised. It is well established, and our Supreme Court has affirmed, that a parent may raise an ICWA inquiry or notice violation on appeal from an order terminating parental rights, even if the parent did not appeal an earlier order finding the ICWA inapplicable. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 9-15.)

Alternatively, DPSS asserts that it "contacted every available relative to inquire into ICWA and none of [F]ather's relatives were available for ICWA inquiry as none were involved at any stage of this proceeding." DPSS also argues Father "admitted that he did not maintain much contact with his family, including the paternal grandmother and other family members," and that there is no evidence it "failed in its duty to inquire into [F]ather's extended family members, because no one participated in this matter."

DPSS repeatedly inquired of the parents and MGM as to their Native American heritage. However, there is no documentation in the record to support a finding that

DPSS inquired of the extended paternal relatives that were readily available or evidence to suggest any paternal relative was involved in the proceedings. DPSS did not document its awareness of the paternal relatives in its reports. There is no report to indicate that Father had informed DPSS of his relative's names and contact information. In other words, DPSS did not document what efforts it made to contact the extended relatives. Nonetheless, the ICWA-030 notices DPSS had mailed to the relevant tribes show that DPSS must have inquired of paternal relatives as the notices contained the names, addresses, birthdates and birthplace, and other relevant information for the paternal grandparents and paternal great-grandparents with Native American heritage. The purpose to inquire further is to gather information related to ICWA as to the child's possible Indian status. The record contains sufficient evidence that DPSS had inquired further of the extended relatives to gather such information. And there is no evidence suggesting the information contained in the notices regarding the paternal relatives was erroneous or inadequate.

The social services agency is obligated "to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*In re K.R.* (2018) 20 Cal.App.5th 701, 709.) The juvenile court "has a responsibility to ascertain that the agency has conducted an adequate investigation and cannot simply sign off on the notices as legally adequate without doing so." (*Ibid*.)

In this case, the court and DPSS did not fail to discharge its duty of initial and further inquiry required under section 224.2. Because the notices contained relevant information for the paternal relatives and there is no evidence suggesting this information was incorrect, DPSS likely inquired further of the extended paternal relatives. There is thus sufficient evidence to support the court's determination that ICWA was inapplicable to the case. (See § 224.2, subds. (b), (c), (e); *In re K.R.*, *supra*, 20 Cal.App.5th at p. 709; *In re Darian R.* (2022) 75 Cal.App.5th 502, 509.)

IV.

DISPOSITION

The juvenile court's orders terminating parental rights are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.