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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.B. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.B. et al.,

Defendants and Appellants.

E080536

(Super.Ct.No. RIJ2100119)

OPINION

APPEAL from the Superior Court of Riverside County. Dorothy McLaughlin,
Judge. Affirmed.

Deanna L. Lopas, under appointment by the Court of Appeal, for Defendant and
Appellant M.B.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant K.B.

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

Appellants M.B. (father) and K.B. (mother), the parents of M.B. and A.B., appeal the juvenile court's order terminating parental rights and freeing the children for adoption. (Welf. & Inst. Code,¹ § 366.26.) They contend the court erred in failing to find the beneficial parent-child relationship exception to adoption applies. (*Id.* at subd. (c)(1)(B)(i).) We reject the parents' contention and affirm.

I. PROCEDURAL BACKGROUND AND FACTS

On February 1, 2021, Riverside County Department of Public Social Services (the department) received an immediate response referral alleging general and severe neglect. Mother, who was 23 weeks pregnant, gave birth to a girl who died shortly thereafter. Mother had used methamphetamine during her pregnancy. She claimed that she had been clean for six years but relapsed after father went back to jail and left her to care for their autistic sons, M.B. and A.B.

While mother was hospitalized, the maternal grandmother (MGM) and maternal uncle (MU) cared for the children. The social worker made an unannounced visit to MGM's home. She was informed that mother was diagnosed with bipolar disorder as a minor, and father was recently arrested. MU, MGM's adult son, reported he helps care for the boys who are most comfortable in their own surroundings and routine as part of their autism diagnoses and have a room at MGM's home. The social worker met with

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

mother, who denied having bipolar disorder or taking any medication. She identified father as the boys' biological father and stated that they separated over one year ago when he began using heroin, which changed his behavior and necessitated a criminal protective order. The social worker provided referrals to substance abuse treatment programs and counseling; however, mother denied the need for such services. The social worker also interviewed father, who denied any knowledge of mother's drug use, any domestic violence in their relationship, and any personal drug use after the age of 18; he admitted to an arrest for assault with a deadly weapon. Both parents submitted drug tests in February; only father's test was positive.

During February 2021, the department offered services to mother, but she failed to participate and maintained contact with father who was using methamphetamine and subject to her restraining order. Mother was "not getting along with" MGM or making herself or the boys available to the department. The boys' behavioral therapist stated that mother was unable to provide the boys with in-home services because she abruptly stopped them in December 2020. When services were provided, mother failed to follow through with the directions from staff and thus hindered the boys' progress in their redirection and focus.

By March 1, 2021, MGM expressed concern that mother was using methamphetamine again, selling marijuana, and living with father. MGM was concerned about mother's untreated bipolar disorder, her recent purchase of a gun, and her prior attempted suicide. Her home was described as "in a deplorable condition with food and feces on the floor and throughout the home." MGM stated that mother mostly keeps A.B.

in her care, while M.B. is left with MGM because his “behaviors are more difficult and impulsive.” Mother texted the social worker to express her dismay that MGM allowed the social worker to contact the children. The department placed the boys in protective custody due to substance abuse and domestic violence concerns.

On March 4, 2021, dependency proceedings were initiated pursuant to section 300, subdivision (b)(1) (failure to protect), based on the parents’ histories of abusing controlled substances, their ongoing acts of domestic violence, their failure to engage in pre-placement preventative services, mother’s unresolved mental health issues and limited ability to parent the children, and father’s extensive criminal history. The boys were placed with MGM. After finding a substantial danger to the physical health of the boys, the juvenile court removed them from their parents’ care and ordered supervised visitation.

In its jurisdiction/disposition report, the department requested true findings on the allegations in the petition. Both M.B. and A.B. were diagnosed with autism spectrum disorder and required various therapy services. Mother wanted them placed with MGM because she “takes good care of [them] and provides for all their needs, including medical, developmental and educational needs.” Only mother visited the boys in March. At the contested jurisdiction hearing, the juvenile court found the amended petition’s allegations (except allegation b-3 concerning mother’s unresolved mental health issues) to be true, adjudged the boys to be dependents of the court, and found that ICWA did not apply. Family reunification services were ordered.

According to the six-month status report filed August 31, 2021, father was homeless, unemployed, and subject to two felony warrants for possession of a firearm and one misdemeanor warrant for battery on a spouse; mother was unemployed and struggling financially; and both were irregularly participating in reunification services. M.B. and A.B. were in good health and adjusting well in MGM's home. Mother participated in consistent visitation; however, father "stopped visiting with his children and is maintaining minimal contact with the department." M.B. was receiving speech services and being taught American Sign Language at school. He could sign his name with his hands and was learning to sign mom, dad, and the alphabet. M.B. would get frustrated when father failed to show up for scheduled visitation; M.B. would sign "'dad' with his hand on his forehead, over and over, due to his unmet expectation to see his father." To prevent the child from being stressed, he only attended visits when father was already there. M.B. appeared to have a good bond with mother. A.B. also appeared to have a close bond with mother; he hugged, kissed, and cuddled with her during visits. Nonetheless, the social worker opined that it "would be detrimental to the children's overall well-being to return them to their mother's care as [she] continues to abuse methamphetamine," is noncompliant with testing, and has minimally participated in counseling to address anger and grief due to the loss of her baby. MGM was willing to provide a permanent home for the boys if reunification failed.

On September 10, 2021, at the six-month status review hearing, the juvenile court continued reunification services despite finding that father made no progress on his case plan and mother made minimal progress on hers.

By the time of its 12-month status review report filed February 14, 2022, the department asked the juvenile court to terminate the parents' reunification services and set a section 366.26 hearing. During the review period, father was arrested on January 4 and sentenced to prison (two counts of possessing firearm ammunition) for a term of one year four months. Mother continued to use methamphetamines, and both parents made little to no progress on their case plans. Despite mother's continued drug use, the department allowed her to visit the boys when she appeared calm, coherent, patient, and her behavior was appropriate; however, her visits were random, and she would cancel when she was not feeling well. Father stopped visiting the boys in June 2021 and reported he was couch surfing, had financial difficulties, and his phone was disconnected. After he was incarcerated, he expressed a desire to resume visitation. At the contested hearing on March 14, 2022, father requested continuation of services because he was due to be released in six months. The juvenile court adopted the department's recommendations and found there is no substantial probability the children would be returned to parents' custody if given six more months of services; therefore, the court terminated reunification services and set a section 366.26 hearing. The boys' education rights were assigned to MGM.

In the selection and implementation report filed July 1, 2022, the department recommended termination of parental rights with the permanent plan of adoption, but requested a continuance to complete a preliminary adoption assessment report. The boys had adjusted well to living with MGM and MU, who met their needs. MGM was committed to adopting them.

According to the addendums to the selection and implementation report filed on September 7, November 17, and December 7, 2022, and January 9, 2023, the department continued to recommend termination of parental rights with the permanent plan of adoption. The children appeared to have a good bond with mother, but she had only visited them in-person on March 11, August 11, and November 21, 2022; father's visitation was limited to phone calls/video chats while he was in prison, but he was released on October 6, 2022. Father did not provide his new address to the department, but stated that he "would like a visit with his children." MGM and MU preferred the visit take place at the department's office to prevent the children from being upset in the event father does not show. On December 30, 2022, MGM stated that over the last three months, father video chatted with the children for approximately "5 minutes per session" and sent Christmas gifts to them. MGM and MU wanted to adopt the boys.

The adoption assessment noted that the boys, who have severe autism and are mostly nonverbal, had been placed with MGM and MU since March 2, 2021. Their home meets the California resource family approval standards. MGM stays at home to care for the boys while MU works as a bus driver for the local school district. The children are very comfortable with, and bonded to, MGM and MU, who understand that adoption is a lifelong commitment with financial responsibilities and are willing and able to provide a permanent and loving adoptive home for the boys. MGM and MU have established daily routines, which enables them to meet the boys' physical, medical, emotional, and developmental needs. The department recommended adoption of the boys by MGM and MU.

The selection and implementation hearing was held on January 17, 2023. The department submitted on its reports and requested the juvenile court terminate parental rights and free the children for adoption. The children's counsel concurred with the department's recommendations. Both parents asked the court to apply the beneficial parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) and select a plan of legal guardianship. The department did not dispute that the parents love their children; rather, it argued that they failed to meet their burden of showing the parent-child bond exception to termination.

After reviewing the evidence and considering the arguments of counsel, the juvenile court found a sufficient basis to terminate parental rights. The court found that termination of parental rights would not be detrimental to the children in that none of the exceptions contained in section 366.26, subdivision (c)(1)(A and/or B) apply. After concluding that it is likely the children will be adopted and that adoption is in their best interests, the court terminated parental rights and ordered adoption as the permanent plan.

II. DISCUSSION

Father contends the juvenile court erred in terminating parental rights because the beneficial parent-child relationship exception applies. More specifically he asserts the order must be reversed because the court made no factual findings, and it is unclear whether its ruling complied with *In re Caden C.* (2021) 11 Cal.5th 614 (*Caden C.*) in determining whether the beneficial parent-child relationship exception to adoption applied. Mother adopts and joins in father's contentions and argues if we reverse the

order terminating his parental rights, we should reverse the order terminating hers. As we explain, we reject father's contentions.

At a permanency planning hearing, once the juvenile court finds by clear and convincing evidence that a child is likely to be adopted within a reasonable time, the court is required to terminate parental rights and select adoption as the permanent plan, unless the parent shows that terminating parental rights would be detrimental to the child under one of several statutory exceptions. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) One exception is the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) In *Caden C.*, our Supreme Court examined this exception and held that a drug-addicted parent's failure to succeed in drug rehabilitation programs and continuing struggles with addiction did not, on its own, disqualify the parent from being accorded the beneficial parent-child relationship exception. (*Caden C., supra*, 11 Cal.5th at pp. 637-641.) In other words, unless the factors that led to the dependency in the first place also bear on the question of whether a child would benefit from continuing the relationship and be harmed, on balance, by losing it, they are irrelevant. (*Id.* at p. 638.)

Under the beneficial parent-child relationship exception, the parent bears the burden of proving three elements by a preponderance of the evidence: "(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 pp. 631, italics omitted; see *id.* at p. 636; § 366.26, subd. (c)(1)(B)(i).) If all three elements have been established, the exception applies, and the court should select a permanent plan other than adoption. (*Caden C.*, at pp. 636-637.)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, disapproved on another ground in *Caden C.*, at p. 636, fn. 5.)

We employ a “hybrid standard” of review to the juvenile court’s findings on the application of the beneficial parent-child relationship exception. (*Caden C.*, *supra*, 11 Cal.5th at pp. 639-641.) The first two elements are primarily factual and reviewed for substantial evidence. (*Id.* at pp. 639-640.) On the third element, the “court makes the assessment by weighing the harm of losing the relationship against the benefits of placement in a new, adoptive home.” (*Id.* at p. 640.) Thus, any factual determinations underlying the juvenile court’s evaluation would also be reviewed for substantial evidence, but the court’s ultimate balancing of the detriment of severing the parent-child relationship against the benefits of adoption is reviewed for abuse of discretion. (*Id.* at pp. 640-641.)

The record supports the juvenile court’s conclusion that the beneficial parent-child relationship exception did not apply, as neither parent satisfied the first prong, regarding regular visitation. The court considered the department’s reports filed on November 17 and December 7, 2022, and January 9, 2023, and questioned the parties regarding “the gap in visits from August and November” 2022. Neither parent challenged the court’s belief that “there were no visits” from August 11 to November 21. Instead, father explained that the dependency was initiated mid-COVID and there were significant

changes in general in his life, “the primary one being the work schedule,” which was never conducive to visitation, followed by his incarceration. According to the evidence, father stopped visiting the boys in June 2021 and, during incarceration, his visitation was limited to five or six short phone calls/video chats and one letter. Since his release from prison on October 6, 2022, his visitation consisted of video chats for approximately “5 minutes per session.”

Mother offers no argument regarding her regular visitation and contact. Nonetheless, we consider whether the evidence supports the juvenile court’s conclusion that mother also failed to satisfy the first prong. In response to the court’s observation that there were no in-person visits from August 11 to November 21, 2022, mother claimed that she had a lot of medical issues, one regarding COVID, and she did the best she could “to maintain contact via video chat” and in person. The evidence shows that she initially participated in consistent visitation; however, her visits were random, and she canceled when she was not feeling well. By 2022, her in-person visits were limited to March 11, August 11, and November 21. Otherwise, she did not participate in weekly video chats until the end of 2022.

We recognize that life presents challenges—illnesses, work schedules, homelessness, and incarceration—that may impact how parents spend their time. However, neither parent has offered any evidence to explain their failure to avail themselves of *regular visitation and contact*, either in-person or via telephone/video chats. Instead, father argues that his visitation was “as consistent as court orders permitted and within the confines of what the children’s circumstances allowed.” We disagree. The

parent must prove that he “maintained *regular visitation and contact* with the child.” (§ 366.26, subd. (c)(1)(B)(i), italics added; see *Caden C.*, *supra*, 11 Cal.5th at pp. 629-631.) It is not the role of the appellate court to redraft an otherwise clear and unambiguous statute. (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047 [The statute’s words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, “[t]here is no need for judicial construction and a court may not indulge in it.”].) Moreover, the children’s circumstances—autism diagnosis—which limited their attention during visitation also required a routine of *regular visitation*.

Because the juvenile court found that the parents had failed to visit consistently, and we find that substantial evidence supports that finding, it is unnecessary to address father’s remaining arguments pertaining to the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(B)(i); see *In re Eli B.* (2022) 73 Cal.App.5th 1061, 1068 [unnecessary to address remaining elements where juvenile court’s finding father did not prove regular visitation and contact was supported by substantial evidence].)

III. DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

RAPHAEL
J.