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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.H. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.I. et al.,

Defendants and Appellants.

E080575

(Super.Ct.No. J287650-3)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn Poncin,
Judge. Affirmed.

Paul A. Swiller, Under Appointment by the Court of Appeal, for Defendant and
Appellant A.I.

Karen J. Dodd, Under Appointment by the Court of Appeal, for Defendant and
Appellant T.H.

Tom Bunton, County Counsel, Jessica L. Morgan, Deputy County Counsel for Plaintiff and Respondent.

A.I. (Mother) and T.H. (Father; collectively Parents) appeal from the termination of their parental rights with respect to S.H. (a girl, born 2016), C.H. (a girl, born 2017; the sisters), and twins Ky.H. and Ka.H. (boys, born 2019; the twins) (collectively, the children). Parents argue that the juvenile court erred by not applying the parental benefit exception to termination. (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i).) We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. REFERRAL AND DETENTION

San Bernardino County Children and Family Services (CFS) became involved with the family in December 2020 after Mother gave birth to a baby boy who tested positive for amphetamines.² Mother tested positive for amphetamines, benzodiazepines, and marijuana. Mother reported that she had not had any prenatal care because she was homeless and too busy.

Parents were homeless and had a long history of substance abuse and domestic violence, including engaging in violent episodes in the children's presence. In one such incident in 2016 when S.H. was one month old and Mother was pregnant with C.H., Father threw a table at Mother and kicked her in the abdomen. In 2017, Father was

¹ All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

² The newborn, referred to in the record as Baby Boy I. or D.H., is not a subject of this appeal.

convicted of willful child endangerment after a violent altercation between Parents during which Father was breaking furniture, S.H. tried to stop her parents' fighting, and C.H. fell and was hurt. In 2018 Father punched Mother's ex-boyfriend in the presence of the sisters and was arrested. After being handcuffed and placed in the back of a police car, Father repeatedly beat his head against the plexiglass partition, resulting in a two-inch laceration, and refused to stop until pepper spray was deployed. Parents initially denied domestic violence, but prior to the jurisdiction and disposition hearing, both acknowledged they had a history of engaging in domestic violence in the presence of the children and requested couple's counseling to improve their relationship and coping skills.

Parents also initially denied substance abuse but soon admitted they were both addicted to methamphetamine and marijuana. Father had been using methamphetamines, marijuana, and alcohol since he was 17 and was unable to stop despite having attended five different rehabilitation programs, some of them multiple times. He acknowledged that his use of alcohol had become progressively worse and he was drinking daily. He told the social worker, "I agree that I have a substance abuse problem that puts my kids at risk," but denied that he had abused or neglected the children.

Mother began using marijuana at age 13, alcohol at 14, and methamphetamine and heroin at 16. She stopped in 2015 when she learned she was pregnant for the first time, but relapsed some time after the twins were born. She was unable to stop smoking methamphetamine even after she learned that she was pregnant with D.H. Mother

admitted, “ ‘I was being a bad parent using [drugs] and having [the children] there,’ ” and said she needed help to regain her sobriety.

Mother was diagnosed with bipolar disorder, social anxiety, and had been hospitalized as a teenager after attempting suicide. Mother described having episodes of depression so severe that she was unable to get out of bed and other times became so angry that she could not be around others. She had been prescribed psychiatric medication as a teenager but stopped taking it when she was 18 and preferred to smoke marijuana daily to alleviate her symptoms.

The family had numerous prior referrals alleging neglect and abuse of the children dating back to 2016. The referrals reflected Parents’ history of substance abuse and domestic violence but were closed as either inconclusive or unfounded.

Parents lost their apartment and were homeless for some time, staying in motel rooms or sleeping in cars. They took the children to stay with their maternal grandmother (MGM). Caring for the children proved too demanding for MGM alone and the twins went back with Parents, living in and out of motels. Sisters remained with MGM and had been living with her for two years by the time the children were initially detained on December 30, 2020. Father reported that he had been the primary caregiver for the twins because Mother had relapsed and was roaming the streets. When the twins were removed from the motel where Parents were staying, they were in dirty diapers, dirty pajamas, their faces were covered in an unknown substance, and they smelled as if they had not

been bathed in a few days. The twins were not current on their immunizations and were slightly behind target in terms of their vocabulary.

D.H. was removed from the hospital, and the sisters were removed from MGM's home. CFS was unable to obtain approval for the children to be placed with MGM because she had "substantiated history with [CFS]." Mother, as a teenager, had been placed in the foster care system due to MGM's substance use. Father "grew up in the foster care system." The twins and D.H. were placed together in the relative home of Mr. and Mrs. C., while the sisters were placed together in the foster home of Ms. R.

On January 4, 2021, section 300 petitions were filed alleging under subdivision (b), (failure to protect) that Parents' substance abuse, transient lifestyle, history of domestic violence, and Mother's untreated mental health conditions placed the children at risk. Parents were present and appointed counsel at the detention hearing held January 5, 2021. The juvenile court found a prima facie case had been established, ordered the children detained outside the home, ordered supervised visitation for Parents once a week for two hours, and set a combined jurisdiction and disposition hearing for January 26, 2021.

In the January 2021 jurisdiction and disposition report, CFS recommended the court find untrue an allegation that the children had been placed at risk by Parents' homelessness as well as two allegations that were duplicative of other allegations regarding Parents' substance abuse. CFS recommended that the remaining allegations be found true, the children be removed, and reunification services be provided to Parents.

Father had agreed to substance abuse testing but failed to show up for his first test, and tested positive for amphetamines on the next. Father was referred for outpatient drug treatment and completed his intake appointment. He also received referrals for domestic violence and parenting programs. Mother agreed to substance abuse testing, but failed to show up for her first test. She was referred to residential drug treatment.

Parents had a supervised visit and interacted well with the children, although Father had to be admonished twice not to discuss the case in front of the children. At one point, Father was raising his voice and had to be told that the visit would end if he couldn't calm down.

B. REUNIFICATION PERIOD

Parents appeared by telephone at the combined jurisdiction and disposition hearing on January 26, 2021. The allegations were sustained as recommended by CFS. The children were declared dependents of the court, removed from Parents' custody, and reunification services were ordered.

By the first status review report in July 2021, Parents had made "moderate progress" on their case plans. Mother was engaging in parenting, anger management, and domestic violence victim impact programs as well as couples counseling with Father. On two different occasions, Mother had been scheduled to receive inpatient substance abuse treatment, but she declined services both times and had not shown up for any of her random or on-demand drug tests. She was referred for individual counseling to address her mental health concerns but had not attended her scheduled appointments and had

taken no steps to complete the court-ordered psychological evaluation and medication assessment. Mother was given several referrals for housing assistance, shelters, and low-income housing programs, but remained homeless, sleeping in her car or in motels.

Father completed a 90-day residential substance abuse program. While in treatment, Father decided to end his “toxic” relationship with Mother because she did not share his recovery goals. He asked to visit the children separately from Mother. After completing treatment Father checked into a sober living facility to continue his services. However, he immediately left the facility, got back together with Mother, and relapsed. He failed to show up for any drug tests after that and told the social worker his test results would be positive. He was also homeless. Father reported that he completed a domestic violence program but did not produce any completion certificate.

The twins remained in the home of Mr. and Mrs. C., along with D.H. The twins, now age two, had “minimal” language development and often screamed and cried when upset. They were both receiving speech therapy. The caregivers found it challenging to care for the twins because of their developmental delays, their near-daily fighting, and “one is biting the other.” The sisters remained together in the home of Ms. R. No concerns were noted for C.H. S.H., however, showed signs of emotional disturbances during her visits with Parents, isolating herself and appearing tearful. During one visit in June 2021, S.H. told Mother that there were “ ‘bugs stomping inside her brain’ ” that caused her to become angry and sad. S.H. had demonstrated a need for services “to

address her trauma and emotional/behavioral health and well-being” and would be reassessed before starting kindergarten in the fall.

Parents continued their supervised visits with the children, sometimes visiting together and other times requesting separate visits. Parents usually arrived on time and were appropriate, but visits were described as chaotic with a number of concerns noted. Parents struggled with recognizing the children’s cues for when they needed to be fed, to have a diaper changed, or to be comforted and consoled. Parents had difficulty controlling and redirecting the children during visits, especially when they visited separately. At several visits during this period, the twins were not closely supervised, became too rambunctious, and sustained minor injuries. Father continued to make inappropriate comments in front of the children and frequently had to be redirected for discussing the case. Mother was appropriate.

At the six-month review hearing, reunification services were continued for Parents.

CFS filed its 12-month status review report on December 27, 2021, and recommended that family reunification services be terminated.

The twins’ placement was changed to the foster home of Mr. and Mrs. G., and they were adjusting well. They were continuing speech therapy, started to show improved language development, and were being assessed for autism spectrum disorder. The sisters continued to be placed together in the foster home of Ms. R. There were no concerns about C.H. S.H. completed a mental health assessment which found that

services were not medically necessary. She was enjoying kindergarten and making new friends but continued to have difficulty during visits with Parents.

Parents made minimal progress with their case plans over the reporting period. Parents' tumultuous relationship continued to distract them from their reunification services. The social worker reported that the tension between Parents was apparent, and they argued with each other during meetings. On November 30, 2021, Father asked to visit the children separately from Mother because they had again ended their relationship. Mother did not want separate visits. "Mother at one point stated to the father that she could have 'completed my services,' but she was focused more on the relationship and her living conditions." One week later, Mother reported that she and Father had moved into a three-bedroom house together, Father was working, and Mother was pregnant.

Although Mother reported that she was engaged in outpatient treatment and was abstaining from substances because of her pregnancy, she did not submit any documentation and failed to show up for any of her 12 drug tests during this period. All of Mother's 26 random and on-demand drug tests over the reunification period were no-shows. Mother was referred for individual counseling but did not attend any of her appointments and failed to undergo her court-ordered psychotropic medication evaluation.

Father had been referred for individual counseling, parenting education, and domestic violence and reported being engaged in services. However, when the social worker tried to obtain Father's progress reports, she learned he had never engaged in any of his services. Father was given additional referrals but then failed to complete the intake paperwork. Father had 10 random drug tests during this period: eight were no-shows, one was positive for amphetamines and marijuana in September, and one was positive for ethanol, marijuana, and amphetamines in December.

Visitation continued to be chaotic with Parents lacking the ability to control the children. Mother was observed on one occasion using coping skills to console S.H. when the child had difficulty expressing her feelings, but Parents continued to struggle to recognize the cues for when to attend to the smaller children. One visit had to be ended early when Parents were inappropriate with each other. On another visit, Father had an angry outburst in front of the children, was unable to control his temper and vulgar language, and had to be asked to leave. At a child and family team meeting at which the children were present, Father had an angry outburst and left the meeting early.

The report observed that throughout the reporting period, it was apparent that Parents were engaged in their codependent relationship but were "unable to focus on the safety and well-being of the children" and had not mitigated any of CFS's initial concerns.

On February 7, 2022, the juvenile court held a contested 12-month review hearing. Father had another angry outburst, interrupted the court with profanity, then left the courtroom before the hearing concluded. The court terminated reunification services for Parents, reduced their supervised visits from weekly to twice per month, and set a section 366.26 hearing for June 7, 2022.³

C. PERMANENCY PLANNING

At the initial section 366.26 hearing held on June 7, 2022, Parents requested a bonding study.

The sisters were placed with the paternal grandparents. Approximately two weeks later, the grandparents requested they be removed—due to their age and health limitations, they were not physically capable of caring for young children. The sisters were then placed with the twins in the home of Mr. and Mrs. G., who wished to adopt the children.

CFS filed a 366.26 report recommending a 120-day continuance to allow for an adoption assessment to be completed for the children. The children were appropriate for adoption, and all four had developed or were developing strong bonds with their prospective adoptive parents. The twins had no trouble adjusting, appeared emotionally stable, and both were observed to have secure attachments to their caregivers. The twins

³ Mother filed a notice of intent to seek writ review, but her trial counsel filed a letter informing this court that after carefully reviewing the record, he was unable to identify any legal or factual issues and would not be filing a writ petition. We ordered the record from the dismissed writ petition in case No. E078525 incorporated into the record on this appeal. (Cal. Rules of Court, rule 8.147.)

called Mrs. G. “mommy” and looked to Mr. and Mrs. G. as their parental figures. Both Ka.H. and Ky.H. had some developmental delays that were being addressed through services, but both had developed “several expressive language abilities” since having been placed with Mr. and Mrs. G.

The sisters were having some difficulties adjusting after having been uprooted from two homes in rapid succession. S.H. had several instances of bedwetting in her new home. Although she reported feeling safe and cared for, her drawings began to express “disturbing thoughts of death and dying.” C.H. was afraid of the dark at night and needed a nightlight to sleep in the new home. During one visit, she reported having nightmares. Mother confirmed the sisters had not previously had these issues. Mrs. G. took S.H. to a crisis counseling center to rule out any serious mental health concerns and remained committed to caring for the children’s emotional health and well-being. The social worker concluded that the sisters “demonstrate a desire for stability in a loving and nurturing environment as they have recently had two . . . placement changes and developed difficulty adjusting.”

Supervised visits, now reduced to twice per month, continued to be “consistently chaotic.” Parents “fail[ed] to set appropriate limits and boundaries with the children” and instead used visitation time to discuss with Mrs. G., who was monitoring the visits, the possibility of continued visitation if parental rights are terminated. Mother appeared “to be overwhelmed and sometimes withdrawn during visitation.” Father was observed to be

“irate and verbally hostile” with the visit monitor. CFS recommended that supervised visits be reduced to once a month.

An additional information to the court filed on August 17, 2022, stated that although Parents visited consistently, demonstrated affection for the children, and showed an interest in their daily lives, they lacked the skills to recognize and respond appropriately to the children’s behaviors and cues.

An addendum to the section 366.26 report was filed on September 20, 2022.⁴ The children were thriving in the care of Mr. and Mrs. G., who were committed to providing each child a loving, stable, safe, and permanent home. The sisters, now ages six and five, had a limited understanding of adoption, but they both understood they would be staying with their siblings in their current home and they both indicated they felt safe and happy—their caretakers were kind to them and took good care of them. The twins, age 3, could not understand adoption, but they indicated they too were happy and well cared for. The children referred to Mr. and Mrs. G. as “ ‘mom and dad.’ ” The children appeared to have a strong attachment to and trust in their caretakers and their observed interactions were positive with no signs of fear or hesitation.

The social worker was particularly struck by the effective use of positive affirmations by Mr. and Mrs. G. when the sisters needed to be redirected: they would get down to the child’s level, remind the child that they are good, and then tell them how to

⁴ During this reporting period, Mother gave birth to T.H., who was removed and placed with D.H., who was in the process of being adopted. T.H. is not a subject of this appeal.

do better. The social worker described this parenting style as “unconditional love and constantly using each moment as a teaching moment.” The sisters have responded to this with increased self-esteem.

Mr. and Mrs. G. have four adult children; three of whom visit often and assist in providing care to the children; their youngest child resided in the home while studying to be a nurse. Mr. G. had been a pastor for more than 20 years and the couple enjoyed an extensive support network that included their “church family.” They had experience fostering children and were licensed to provide “Intensive Services Foster Care” for children with a higher level of need. The children had developed a shared mutual attachment with their prospective adoptive parents, who were committed to meeting the children’s needs and raising them to adulthood. CFS recommended that adoption be selected as the children’s permanent plan and that parental rights be terminated.

On December 9, 2022, CFS filed a report that attached the bonding study of Dr. Elizabeth Stanton, a licensed psychologist, and provided CFS’s response. Dr. Stanton based her study on direct observations of the family over two visits of two hours each.⁵ She had not reviewed the entire dependency case file, only the addendum report filed September 20, 2022, which contained CFS’s recommendation of adoption.

The study begins by explaining that while the terms bonding and attachment are sometimes used interchangeably, bonding is more precisely used to refer to the parent’s experience of their connection to the child, which results from giving care to the child in

⁵ Dr. Stanton never spoke with the children and did not conduct any interviews.

the first few weeks of life. Attachment refers to the child's sense of connection to the parent, which builds more slowly over time and is defined by the quality of the relationship between child and parent. The study describes the hallmarks of a healthy, secure attachment style and contrasts it with the three types of insecure attachment that children may develop. It then details Dr. Stanton's observations of the children's interactions with Parents during visits as they played, ate, and participated in activities. Dr. Stanton states that "[o]verall, the interactions between the parents and the children were positive, playful, reciprocal, and appropriate." The study notes twice that the children did not become overly emotional when it was time to leave. Nevertheless, the study concluded: "Considering the relationship that exists between the parents and the children, severing contact could be detrimental. Even if not immediate, there may be challenges related to negotiating the ambiguous loss that can result when there is a healthy parent-child relationship that is severed without significant reason (e.g., an unhealthy or unsafe parent)." The bonding study does not make any recommendation on the question of whether adoption and termination of parental rights or continuation of the parental relationship with a less permanent plan would be more or less beneficial to the children. Rather, the study recommends only that the secure attachment pattern observed between the children and Parents be taken into consideration "when making any determinations regarding the future of all parties."

CFS's response included observations from two days of supervised visitation. On one of the days, Parents had separate visits. Father visited first and was attentive to the children, but had to be redirected after engaging in negative talk about the caregiver in front of the children. C.H. called Father by his first name, and Father had to redirect her to call him "dad." Mother visited later that day and was affectionate, but inappropriately asked the children more than once about Father's visit and whether he seemed "stressed." S.H. spent that visit playing alone or with MGM and had minimal interaction with Mother. On another day, Parents visited together and everyone ate pizza and then painted pictures. S.H. looked to Mother for assistance when she needed help cleaning paint off her arms. When Mrs. G., who was monitoring the visit, stepped out of the room, the children appeared distressed, asked where "mama" went, and needed reassurance that she would be back soon.

CFS agreed that the children do have an attachment to Parents, but disagreed with Dr. Stanton's conclusion that severing the relationship with Parents without significant reason could cause detriment at some point. There would be a detriment to continuing the relationship with Parents, who have consistently failed to demonstrate protective capacity. CFS observed that Parents continued to struggle with age-appropriate communication and needed constant redirection during visits. CFS agreed the children were not overly emotional when leaving Parents at the conclusion of visits. In CFS's assessment, the children's bond with Parents was not so strong that severing it would cause them detriment. On the contrary, not terminating parental rights would cause the

children to suffer greater emotional damage from remaining in foster care with constant uncertainty for their future. Moreover, any potential issues the children might develop as they adjust to the loss of their birth parents would be mitigated by appropriate services and the support, love, and permanency provided by the prospective adoptive parents, to whom the children had already formed strong attachments.

Dr. Stanton testified at the December 12, 2022, hearing that from her observations, the children appeared to have a positive, healthy, and secure attachment to their parents. She explained that “the early childhood attachment with a parent does have [an] impact on later relationships” because it forms “an internal working model and . . . sort of a template of how to interact and engage and be in a relationship with others.” Dr. Stanton gave examples where she observed the children seeking attention or assistance from the parents, who were responsive and appropriate. “There was no indication of any insecure or unhealthy attachment behavior,” and it appeared that all the “children have a positive, healthy, and secure attachment to their parents.” “When the children were aware that the time was coming to an end . . . there wasn’t any indication of distress or negative emotion because of the separation with the parents.”

When asked how the children would be affected if their relationships with Parents were severed and they were adopted, Dr. Stanton struggled to identify any detriment: “I’m not sure what the children may experience upon adoption, but I think that—if I’m answering your question—If I understand it right [L]oss and rejection and guilt . . . could become an issue.”

Dr. Stanton explained that “the impact of having a healthy, secure attachment experience in childhood” is generally “positive experiences with self-esteem, low anxiety, et cetera” later in life. But even those who develop healthy, secure attachments in early childhood may still “experience a sense of ambiguous loss” as they struggle to understand why their parents are absent. Dr. Stanton conceded that “the boys are quite young, and so the transition may not have an immediate impact on them.” When asked for her views regarding the benefits conferred by adoption versus the risk of feeling a sense of ambiguous loss from the parental separation, Dr. Stanton replied: “My opinion is I can’t really speak to the benefits of adoption specifically with any particular family, because that wasn’t a part of my observation or assignment, per se. But in terms of risk, . . . It’s something that, again, could happen. Maybe it won’t.” On cross-examination Dr. Stanton confirmed she had intentionally used the word “could” in discussing the effects of severing the parent-child relationship. She could not say for certain whether any harm would result.

When the hearing continued on January 25, 2023, minors’ counsel delivered stipulated testimony from six-year-old S.H. and five-year-old C.H. Counsel reported: “They really are very, very happy children where they are.” The children call the caretaker Mom. “There was a lot of affection.” He also observed that the children were well cared for. He reported that he asked the sisters if they “love their parents,” and they responded that they did. They also answered in the affirmative when asked if they like the visits.

Mother testified that the children address her as, “Mommy,” are excited to see Parents, and are physically affectionate, giving lots of hugs. Mother testified that when it was time for the last visit to end, S.H. started crying, telling Mother that “she wants to come home with me and doesn’t want to go back to that house” and “doesn’t want a new family.” Mother said C.H. also started crying and crawled under a table, saying she wanted to go home. At the end of the visit before that the sisters were also upset, with S.H. asking why she couldn’t go home with Mother.

Father testified that at the beginning when their visits were over, it was “very heartbreaking” to see the children “crying [and] freaking out.” Over the course of two years, the children have gotten less upset at the end of a visit because they know the routine and expect to see their parents again. Father testified that each of the children “secretly whispered in my ear, like, Daddy, can you take us home?” Father admitted that until recently he had been discussing the case with the children during visits. Father admitted that before CFS’s intervention, he “was a horrible father” who “did just enough to keep them alive.” He thanked CFS “for rescuing [his] children” and said he “would do anything to just take all of it back.”

The social worker testified that she has observed the family at 20 to 30 visits, but did not always stay for the entire time. Mrs. G., the children’s caregiver and prospective adoptive mother, was often present as a visit monitor. The social worker testified that “all of the kids actually do get a little distressed or kind of uneasy about caregivers leaving the visit. They ask where she’s going and if she’s coming back. Sometimes they

try to follow her out of the room and then parents do have to go get them.” The children usually call Parents “mom and dad,” but at more recent visits, she has heard them use a parent’s first name a few times. Father was recalled and testified the social worker had only attended a single visit, not the 20 to 30 she claimed, although he later said she was present for a portion of six or seven more. He confirmed that C.H. had called him by his first name.

After hearing argument from counsel, the court delivered its ruling. The court reviewed the salient evidence, carefully noting where the testimony of various witnesses aligned and where there were conflicts. The court explained the legal test set forth in *In re Caden C.* (2021) 11 Cal.5th 614 (*Caden C.*) and went through each of the three elements that Parents must prove, finding that parents had done so for the first two. They had maintained consistent, regular visitation with the children, and there was a positive relationship between the children and their parents, the continuation of which would be beneficial to the children. However, Parents failed to carry their burden of showing by a preponderance of the evidence that the termination of the parental rights would be detrimental to the children when weighed against the benefits conferred by a stable and permanent adoptive home. The court noted that Dr. Stanton “was not able to opine whether or not termination would be detrimental, based on her training and experience. She testified it *could* happen in the future, it *may* damage the children, it *may* cause issues of loss, but nothing was definitive from Dr. Stanton.” (Italics added.) The court then balanced that possibility of some remote future harm against the benefits of adoption,

some of which the children were already starting to receive in the adoptive home, as described in both the stipulated testimony of C.H. and S.H. and the addendum report.

The court found Parents had failed to carry their burden and there was insufficient evidence to find the termination of parental rights would be detrimental to the children. The court denied Parents' requests for a permanent plan of legal guardianship, saying it was not a case of exceptional circumstances where it would be appropriate to deviate from the legislative preference for adoption. The court found by clear and convincing evidence that the children were likely to be adopted, terminated parental rights, selected adoption as the permanent plan, and set a post-permanency review hearing for July 25, 2023.

Parents timely appealed.

DISCUSSION⁶

As Parents raise the same arguments and join in each other's arguments, we address them together. Parents contend that the court erred in finding that termination of their parental rights would not be detrimental to the children. We disagree.

When a juvenile court cannot safely return a child to a parent's custody, the court must set a permanency planning hearing under section 366.26. (*Caden C.*, *supra*, 11 Cal.5th at p. 630.) “ “[A]t a section 366.26 hearing, the court may select one of three alternative permanency plans for the dependent child—adoption, guardianship or long-

⁶ Parents, in their opening briefs, set forth the procedures followed by the juvenile court in finding that the children are not Indian children; it is not an issue on appeal and so we do not discuss it here.

term foster care.” [Citation.] At this stage of the dependency proceedings, adoption is preferred because it ensures permanency and stability for the minors. [Citations.] [Citation.] Thus, as a general rule, at a section 366.26 hearing, if the trial court finds that the child is adoptable, it must select adoption as the permanent plan and terminate parental rights.” (*In re L.A.-O.* (2021) 73 Cal.App.5th 197, 205-206)

Subdivision (c) enumerates several limited exceptions to this rule. The beneficial parent-child relationship exception applies if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to . . . [¶] . . . [t]he parents hav[ing] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

Caden C. clarified that a parent must prove three elements for the beneficial relationship exception to apply. (*Caden C., supra*, 11 Cal.5th at p. 631.) Specifically, a parent must show by a preponderance of the evidence (1) “regular visitation and contact with the child, taking into account the extent of visitation permitted”; (2) “the child has a substantial, positive, emotional attachment to the parent—the kind of attachment implying that the child would benefit from continuing the relationship”; and (3) “terminating that attachment would be detrimental to the child even when balanced against the countervailing benefit of a new, adoptive home.” (*Id.* at p. 636.)

When the parent has met that burden, “it would not be in the best interest of the child to terminate parental rights, and the court should select a permanent plan other than adoption.” (*Caden C., supra*, 11 Cal.5th at pp. 636-637.) “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.” (*Id.* at p. 633.) “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.” (*Ibid.*)

We review the first two prongs for substantial evidence. (*Caden C.*, *supra*, 11 Cal.5th at p. 640.) For the third prong, the juvenile court “must make a series of factual determinations” and “may make explicit or implicit findings.” We review this factual basis for substantial evidence. (*Ibid.*) The ultimate assessment is made “by weighing the harm of losing the relationship against the benefits of placement in a new, adoptive home. And so, the ultimate decision—whether termination of parental rights would be detrimental to the child due to the child’s relationship with his parent—is discretionary and properly reviewed for abuse of discretion.” (*Ibid.*)

“In reviewing factual determinations for substantial evidence, a reviewing court should ‘not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.’ [Citation.] The determinations should ‘be upheld if . . . supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.’ [Citations] Uncontradicted testimony rejected by the trial court ‘ “cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved.” ’ ” (*Caden C.*, *supra*, 11 Cal.5th at p. 640.)

An abuse of discretion will be found only if “ “ “the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.’ ” ’ [Citation.] But ‘ “ “[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” ’ ” (Caden C., supra, 11 Cal.5th at p. 641.)

The parties do not dispute that Parents satisfied their burden on the first element, consistent visitation and contact with the children. On the second element, CFS argues that the court erred in finding the children had a substantial, positive emotional relationship with Parents that would be beneficial for the children to continue. CFS argues the court based its decision solely on the testimony of Parents and Dr. Stanton’s observations at two visits but ignored CFS’s reports over a two-year period that were replete with documentation of Parents’ negative effects on the children. CFS also argues the children had so little time in Parents’ care prior to removal that Parents could not have established the parent-child relationship was substantial or significant: the twins were only a year old; CH and S.H. were three and four respectively, but had already been living with MGM for two years. But the juvenile court “noted the date the children were detained and the children’s age[s] in this case and the testimony . . . as to how long the children were with the [MGM] prior to removal.” The court cited substantial evidence of the positive, beneficial aspects of the parent-child relationship in support of its finding on the second element, and we do not reweigh the evidence on appeal.

Parents contend that the court erred in finding they had failed to carry their burden of proving the third element—that termination of parental rights would be detrimental to the children when weighed against “ ‘the security and sense of belonging’ ” conferred by adoption. (*Caden C.*, *supra*, 11 Cal.5th at p. 642.) Mother argues that the evidence in the record—the testimony of Parents and Dr. Stanton regarding the family’s positive, healthy interactions; Dr. Stanton’s conclusions in the bonding study and testimony regarding detriment and ambiguous loss; the stipulated testimony of S.H. and C.H.; and Mother’s testimony that both girls cried at the conclusion of their last visit—“compels application of the section 366.26, subdivision (c)(1)(B)(i) exception.” Father joins in that argument.

Most of the evidence cited by Parents concerns the beneficial nature of their relationship with the children. It, therefore supports the second element of the *Caden C.* test but does not suggest that termination would cause detriment. A child can have many beneficial, nurturing, positive emotional attachments without suffering significant harm when the relationship ends. Dr. Stanton’s bonding study and testimony established only that harm is a possibility in the abstract whenever a parental relationship is severed; Dr. Stanton never opined that harm to the children was likely or reasonably expected, much less that the detriment would exceed the benefits of adoption. She did not identify any particular behaviors, traits, or special needs of any of the children that would make them likely to suffer harm from severing the parental relationship.

The only evidence of any detriment was Mother's testimony that at the end of her last visit, S.H. was crying and asking to go home with Mother and C.H. crawled under the table crying and saying she wanted to go home. When citing the testimony of Parents that supported its ruling, the juvenile court repeatedly pointed out that it was corroborated by other testimony. But the court had ample basis for implicitly not crediting Mother's testimony about the sisters' reactions. Both Dr. Stanton and the social worker agreed the children were not overly emotional when separating from Parents, and Father testified the kids were distressed at the end of early visits but that had resolved by the time of the hearing. Because there was no substantial evidence of detriment, the juvenile court did not err.

Finally, Parents both argue the juvenile court abused its discretion by improperly "comparing the parent[s'] attributes as custodial caregiver[s] relative to those of [the] potential adoptive parent(s)." (*Caden C.*, *supra*, 11 Cal. 5th at p. 634.) Parents ask that we remand for the juvenile court to evaluate whether termination would be detrimental under the correct standard. The argument is meritless. The juvenile court expressly stated it was not deciding "whether the parents may resume custody of the children." The court's discussion of the children's bonds with the prospective adoptive parents was in connection with its finding that the children were likely to be adopted, or its evaluation of the benefits conferred by the children's new adoptive family. Nowhere did the juvenile court improperly compare the parenting skills of Parents with those of the caregivers.

Rather, the court properly evaluated “what life would be like for the child in an adoptive home without the parent in the child’s life.” (*Caden C.*, *supra*, 11 Cal.5th at p. 633.)

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

CODRINGTON
J.

MENETREZ
J.