

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CADEN C.,)
)
 A Person Coming Under the)
 Juvenile Court Law.)
 _____)
)
 SAN FRANCISCO HUMAN)
 SERVICES AGENCY,)
)
 Plaintiff and Appellant,)
)
 v.)
)
 CHRISTINE C. et al.,)
)
 Defendants and Respondents;)
)
 CADEN C., a Minor,)
)
 Appellant)
 _____)

No. S255839

Court of Appeal Nos.
A153925
consolidated with
A154042

San Francisco No.
JD153034

**SUPREME COURT
FILED**

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Deputy

CHRISTINE C.'S REPLY BRIEF ON THE MERITS

After the Published Decision by the Court of Appeal
First District, Division One
Filed April 9, 2019 and Modified April 10, 2019

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REPLY BRIEF ON THE MERITS
FOR RESPONDENT MOTHER CHRISTINE C.

Pursuant to California Rules of Court, rule 8.520(a)(3), Christine C. (Mother) respectfully submits this Reply to the Answering Brief on the Merits filed on behalf of the San Francisco Human Services Agency (the Agency) as well as the Minor's Brief on the Merits filed on behalf of Caden C. (the minor) regarding the published decision in *In re Caden C.* (2019) 34 Cal.App.5th 87, rehearing denied May 1, 2019, review granted July 24, 2019, S255839. In this Reply, Christine C. stands by the facts and arguments advanced in her opening brief on the merits and does not

concede that any of them have been rebutted or overcome by the facts and arguments contained in either the Agency's brief or the minor's brief.

Christine C. will reply more specifically as necessary.

INTRODUCTION

While this matter came to the attention of this Court under the particular facts and circumstances of the underlying dependency case, this Court granted review to address legal issues that have implications reaching far beyond the mother and child in this case. Specifically:

(1) What standard of review governs appellate review of the beneficial parental relationship exception to adoption?¹ and

(2) Is a showing that a parent has made progress in addressing the issues that led to dependency necessary to meet the beneficial parental relationship exception?

By the time of a Welfare and Institutions Code² section 366.26 hearing, the parent has failed to reunify and the focus turns to the best permanent plan for the child. Pursuant to the section 366.26, subdivision

¹ All parties agree that the hybrid standard of review is the appropriate standard to apply. However, as set forth in their respective briefs, the parties disagree as to whether the Court of Appeal properly applied that standard when it reversed the juvenile court's findings and orders.

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

(c)(1)(B)(i) beneficial parent-child relationship exception to adoption, a child can maintain important connections with his or her parent even when reunification is no longer possible. The main question presented by this case is precisely what consideration can the court give to the parent's efforts at reunification? The Agency and the minor agree with Mother that a parent seeking to establish that the beneficial parent-child relationship exception to adoption applies does not need to establish that he or she made progress addressing the issues leading to the dependency before the exception can be found to apply. (AAOM 7, 59, 67; MAOM 8, 37.) Nevertheless, the Agency and the minor argue that the parent's progress with his or her case plan should be considered under the second and third prongs of the beneficial parent-child relationship exception.

As set forth more fully below, Mother contends that a parent's progress may be considered under the second prong, where the courts are tasked with determining whether the evidence establishes that the relationship is beneficial to the child and where the courts are required to consider the positive and/or negative effects of the interaction between the parent and the child. Mother further contends that it is inappropriate to consider that progress again under the third prong, where the courts must decide whether the benefits resulting from maintaining that beneficial

parent-child relationship outweigh the benefits of adoption. This is so because at the section 366.26 hearing, it is the child's interests that the juvenile court must consider. Indeed, once a court has determined that the relationship is beneficial to the child, there is no longer a need to focus on the parent's progress. Rather, the focus is properly turned toward the child and whether the benefit of maintaining the beneficial parent-child relationship outweighs the benefits of adoption, i.e. what benefit the child derives from the relationship with their parent, who is flawed and was unable to reunify, but is also essential to the child's future. This is so also because requiring a parent to have made progress (or have success) in addressing the issues that led to the dependency before the child's beneficial relationship with the parent can overcome the Legislative preference for adoption would essentially write the exception out of existence.

It is Mother's position that this Court should determine that the hybrid standard of review governs appellate review of the beneficial parental relationship exception to adoption and that the exception does not require a showing that the parent has made progress in addressing the issues that led to dependency to meet the exception.

ARGUMENT

I.

THE HYBRID STANDARD OF REVIEW IS THE MOST APPROPRIATE STANDARD.

The parties, Mother, Father, the Agency and the minor, all agree that the hybrid substantial evidence and abuse of discretion standard of review, first developed in *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 and *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 and recently followed by nearly every Court of Appeal that has published on the issue, is the most appropriate standard to apply to the beneficial parent-child relationship exception to adoption. (AAOM 7, fn. 1, 50-51; MAOM 7-8, 26-31.) The Agency and the minor contend that Division One of the First District properly applied the standard of review. Mother disagrees.

The Agency and the minor acknowledge that the Court of Appeal elevated the opinions of Dr. Alicia Lieberman, which the juvenile court discounted because she had never even met Caden and Mother, over the opinions of Dr. Hugh Molesworth, upon which the juvenile court relied and who had conducted a very thorough bonding study. (AAOM 54-58; MAOM 31-36; *In re Caden C., supra*, 34 Cal.App.5th at pp. 113-115.) Nonetheless, the Agency and the minor contend that the Court of Appeal did not engage in any improper reweighing of the evidence and applied the abuse of

discretion portion of the hybrid standard of review properly. (AAOM 54-58; MAOM 31-36.) It is well settled that, “[t]he value of an expert’s opinion depends upon the quality of the material on which the opinion is based and the reasoning used to arrive at the conclusion.” (*People v. Marshall* (1997) 15 Cal.4th 1, 31-32.) Hence, a juvenile court is free to reject even uncontradicted expert testimony after considering the expert’s opinion, reasons, qualifications, and credibility, so long as he does not act arbitrarily. (*People v. McDonald* (1984) 37 Cal.3d 351, 371; *People v. Johnson* (1992) 3 Cal.4th 1183, 1231-1232.) Moreover, a juvenile court’s decision to reject an expert opinion is binding on the appellate court unless the juvenile court could not, in light of the record, reasonably reject the expert’s opinion. (*People v. Samuel* (1981) 29 Cal.3d 489, 498.) Here, had the Court of Appeal conducted any analysis and determined that City and County of San Francisco Superior Court Judge Monica Wiley could not have reasonably rejected Dr. Lieberman’s opinions, then the Agency and the minor would be correct that the Court of Appeal did not engage in any improper reweighing of the evidence. But the Court of Appeal did not do so. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 113, fn. 6.) And it could not do so as Judge Wiley had good reason to discount Dr. Lieberman’s opinions, which were not based on personal contact with Mother, or even Caden, and really added

little to the evidence bearing on the balancing test. (ACT 76-78; 1/29/18 RT 422-447.) Contrary to the position asserted by the Agency and the minor, the Court of Appeal did not properly apply the standard of review.

In sum, the parties agree that the hybrid substantial evidence and abuse of discretion standard of review is the appropriate standard to be applied to findings made as to the beneficial parent-child relationship exception to adoption. Because Division One of the First District improperly reweighed evidence and created its own inferences, it failed to properly apply the appropriate standard of review.

II.

A PARENT IS NOT REQUIRED TO MAKE A SHOWING THAT HE OR SHE HAS MADE PROGRESS IN ADDRESSING ISSUES THAT LED TO DEPENDENCY TO MEET THE BENEFICIAL PARENT-CHILD RELATIONSHIP EXCEPTION TO ADOPTION.

Again, the parties, Mother, Father, the Agency and the minor, all agree that application of the beneficial parent-child relationship exception to adoption does not require a determination that the parent has made progress in addressing the issues that led to the dependency. (AAOM 59-67; MAOM 37-41.) Nevertheless, both the Agency and the minor contend that consideration of the parent's efforts at, and progress toward, addressing the problems leading to the dependency can be considered by the juvenile court

when assessing applicability of the beneficial parent-child relationship exception to adoption. (AAOM 59-67; MAOM 37-41.) Mother agrees in part and disagrees in part.

Since its inception, the beneficial parent-child relationship exception to adoption has been judicially interpreted to be, in essence, a three-prong test, wherein the court must determine: 1) whether the parent maintained regular visitation and contact with the child; 2) whether the parent-child relationship is sufficiently beneficial to the child such that the child would benefit from continuing the relationship and/or suffer detriment from the loss of the relationship; and 3) whether there is a compelling reason to forego adoption because the benefits the child would gain from continuing the parent-child relationship outweigh the benefits the child would receive from adoption. (§ 366.26, subd. (c)(1)(B)(i); *In re Logan B.* (2016) 3 Cal.App.5th 1000, 1009-1013; *In re S.B.* (2008) 164 Cal.App.4th 289, 300-301; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) The first two prongs are evidentiary based while the third prong solely involves exercise of the juvenile court's discretion. (*In re Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.)

The Agency contends that the juvenile court must be able to consider the parent's progress in addressing the issues that led to dependency under

two of these three prongs, specifically when assessing whether or not the evidence establishes that relationship is beneficial to the child under the second prong and when determining whether the benefits of maintaining the parent-child relationship outweigh the benefits of adoption pursuant to the third prong. (AAOM 66-67.) The minor appears to make the same contention. (MAOM 37-41.) However, as this Court noted in *In re Zeth S.* (2003) 31 Cal.4th 396, 412, fn. 9, “[t]he one exception [to the rule that the juvenile court is no longer concerned with parental inadequacy at the section 366.26 hearing] is when a colorable claim that the so-called benefit exception should be applied is raised at the termination hearing, because under the second prong of the benefit exception, the trial court at such a hearing must inquire into whether the minor would benefit from a continuing relationship with the parent or parents whose parental rights stand to be terminated.” Thus, as explained below, consideration of the parent’s progress in addressing the issues that led to the dependency may be considered by the juvenile court when determining whether or not the evidence establishes that the relationship is beneficial to the child under the second prong of the exception. However, for the reasons set forth *ante*, consideration of the parent’s progress in addressing the issues that led to the dependency cannot and must not be considered by the juvenile court in

determining whether the benefits of maintaining the beneficial parent-child relationship outweigh the benefits of adoption under the third prong of the exception.

A. Consideration Of The Parent's Efforts To Address The Problems Leading To The Child's Dependency Can Be Appropriate As To The Second Prong Of The Exception And Specifically As To An Assessment Of The Positive And Negative Effects Of Interaction Between The Parent and The Child.

Regarding the second prong of the exception, the question of whether the child has a beneficial relationship with the parent “must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.) Those variables, according to *Autumn H.* and its progeny, include “[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[.]” (*Id.* at p. 576; see *In re S.B.*, *supra*, 164 Cal.App.4th at p. 297 [“*Autumn H.* has been widely followed by the Courts of Appeal....”]; AAOM 59-60, fn. 10.) The problems leading to the dependency, as well as the nature and success of the parent’s efforts to overcome those problems, can certainly play a role in the interaction between the parent and the child. (AAOM 59-61, MAOM 40.)

Indeed, one can easily imagine circumstances where the effect of the interaction between the parent and child would be directly related to the reasons for the dependency and the parent's lack of effort to address those problems. For example, a child who has been physically abused by the parent may lose trust in the parent that cannot be regained absent counseling, and if that counseling does not occur, the interaction between the parent and the child could certainly be negatively affected. Or, there is the child born drug exposed who is unable to form a bond with the parent because the parent attends visits under the influence of drugs and does not interact with the child. Certainly, there are many more instances where the parent's failure to ameliorate the problems leading to the dependency can result in negative effects on the child. Obviously, these circumstances cannot and should not be ignored by the juvenile court when assessing the strength and beneficial nature of the parent-child relationship.

On the other hand, it is also possible to imagine circumstances where the effect of the interaction between the parent and child would have no relation to the reasons for the dependency and/or the parent's effort to address those problems. For example, a child who was removed due to domestic violence but never directly exposed to the violence may have a close and loving relationship with the victim parent who simply cannot

separate from the perpetrator. Or the child whose parent falls into substance abuse when the child is older and who can stay clean for visits, which provide stability for the child, but cannot stay clean long enough to regain custody. And, again, there are many more circumstances where the parent's failure to ameliorate the problems leading to the dependency has no effect on the parent-child relationship. These circumstances also should not be ignored by the juvenile court when assessing the strength and beneficial nature of the parent-child relationship.

“The parent-child relationship consists of a combination of behaviors, feelings, and expectations that are unique to a particular parent and a particular child.” (<http://www.healthofchildren.com/P/Parent-Child-Relationships.html#ixzz636iv9ubd>.) The relationships are informed by the circumstances of the parent and the child and their lives. Hence, when assessing the strength and nature of the parent-child relationship under the second prong of the exception, the juvenile court must consider all variables affecting the relationship, including the positive and negative effects flowing from interaction between the parent and the child (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576), which can, in turn, include consequences related to the problems leading to the dependency and the parent's efforts to treat those problems.

B. Consideration Of The Parent's Efforts To Address The Problems Leading To The Child's Dependency Is Not Appropriate Under The Third Prong Of The Exception.

Under the third prong of the exception in making a determination whether exceptional circumstances exist to forego the preferred permanent plan of adoption, "the court balances the strength and quality of the natural parent [-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In other words, the court must balance the benefits of maintaining the parent-child relationship against the benefits of adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The focus of this balancing test is on the interests of the child. (*Ibid.*)

At the point in time where the juvenile court is assessing the third prong of the exception, it has already necessarily found that the parent maintained regular visitation and contact with the child under the first prong of the exception. The juvenile court has also necessarily found that the parent-child relationship is beneficial to the child under the second prong of the exception; a finding that has already taken into consideration the parent's progress in addressing the issues leading to dependency. All that is left for the juvenile court to decide is whether the benefits that the court has already found that the child receives from the parent-child relationship

outweigh the benefits of being adopted. This decision is focused on the child and whether it is in the child's best interests to forego the preference for adoption to preserve the parent-child relationship. Indeed, if there were issues that affected the nature and quality of the parental relationship, those issues would already have been considered by the court in deciding whether the parent had actually established the existence of a beneficial parent-child relationship. Moreover, those issues would have already been taken into account by the juvenile court in its assessment of the strength of the relationship and the degree to which that relationship is beneficial to the child. To consider those issues a second time, and as a basis on which application of the exception could be denied, would essentially write the exception out of existence. Therefore, because the focus has fully shifted to the child's needs, parental inadequacies no longer have a place in the equation and it would be improper for the juvenile court to once again consider the nature of the problems leading to the dependency and the parent's effort and success in addressing those problems.

C. A Parent Is Not Required To Show Progress In Addressing the Issues That Led To Dependency In Order For The Beneficial Parent-Child Relationship Exception To Adoption To Apply.

In sum, application of the section 366.26, subdivision (c)(1)(B)(i), beneficial parent-child relationship exception to adoption does not permit

the imposition of a requirement that the parent have made progress in addressing the issues that led to the dependency. Nevertheless, assessment of the nature and quality of the parent-child relationship and its beneficial nature under the second prong can properly include consideration of the problems leading to the dependency and the parent's efforts to address those problems as they bear on the positive or negative effects of the interaction between the parent and the child. However, once the juvenile court has found the parent-child relationship to be beneficial, because the focus shifts solely to the child, there is no place for any consideration of the problems leading to the dependency and/or the parent's efforts to address those problems.

In the present case, the juvenile court found that Mother maintained regular visitation and contact with Caden and that Caden's relationship with Mother was beneficial to him. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 107-109.) The Court of Appeal affirmed these findings despite Mother's shortcomings related to addressing the problems leading to Caden's dependency and any impact on the parent-child relationship. (*Ibid.*) The Court of Appeal then found that the benefits of maintaining the parent-child relationship did not outweigh the benefits of adoption and, therefore, the third prong of the exception was not satisfied because Mother had not

addressed the problems that led to Caden's dependency. (*Id.* at pp. 109-115.) This was error because it was wholly improper for the Court of Appeal to consider the problems leading to the dependency and/or Mother's efforts to address those problems when assessing the third prong of the exception. Therefore, this Court must reverse the judgement of the Court of Appeal and affirm the judgment of the juvenile court.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in her Opening Brief on the Merits, Christine C. requests this Court find that the appropriate standard of review as to the beneficial parent-child relationship exception to adoption is the hybrid substantial evidence and abuse of discretion standard, that application of the beneficial parent-child relationship exception to adoption does not require a showing that the parent has made progress in addressing the issues leading to the child's dependency, and that the Court of Appeal in *In re Caden C.* improperly applied the standard of review and imposed an inappropriate requirement on application of the beneficial parent-child relationship exception to adoption.

Dated: October 25, 2019

Respectfully submitted,




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Attorney for Appellant, Christine C.

CERTIFICATE OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.520(c) and contains 4,260 words, including footnotes, according to the word count feature of Corel Word Perfect X8, the computer program used to prepare this brief.



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DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of Orange, and not a party to the instant action. My business address is listed above and my e-service address is barry212303@gmail.com. On October 25, 2019, I served the attached **CHRISTINE C.'S REPLY BRIEF ON THE MERITS** by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses:

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Christine C.
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On October 25, 2019, I also transmitted a PDF version of this document, via email, to each of the following using the email address indicated:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 25, 2019, at Huntington Beach, California.


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