

CASE NO. S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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In re CADEN C.,  
A Person Coming Under Juvenile Law.

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SAN FRANCISCO HUMAN SERVICES AGENCY,

Plaintiff and Appellant,

v.

CHRISTINA C., et al.,

Defendants and Respondents.

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Court of Appeal Case Nos. A153925, A154042  
San Francisco Superior Court Case No. JD153034

**AGENCY'S RESPONSE TO MOTHER'S LETTER BRIEF  
REGARDING NEW AUTHORITY**

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## **I. Introduction.**

On February 19, 2021, Mother’s counsel submitted a letter brief apprising the Court of the recent decision: *In re A.G.* (2020) 58 Cal.App.5th 973 [273 Cal.Rptr.3d 36]<sup>1</sup> (“A.G.”). By this response, the San Francisco Human Services Agency (“Agency”) disputes mother’s conclusions about the holding of the *A.G.* case, which does not go as far as mother would contend. Moreover, Agency submits that while the *A.G.* court is correct in its discussion of the standards governing the parental benefit exception and the standards governing a trial court’s right to require an offer of proof, the decision’s application of those standards is both internally inconsistent and in error.

## **II. Discussion.**

In *A.G.*, the appellant mother sought a contested hearing on whether the beneficial relationship exception applied to preclude the termination of parental rights. The trial court asked for an offer of proof from mother. After mother’s counsel made an oral offer of proof, the juvenile court granted a continuance to allow counsel to submit a more detailed written offer. (*A.G.*,

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<sup>1</sup>*In re A.G.* is not yet published in the official reports. Page citations are to the California Reporter.

*supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at pp. 53-54].) At the continued .26 hearing, the juvenile court then found the written offer to be insufficient, declined to set a contested hearing, and terminated parental rights. (*Id.* at p. \_\_ [273 Cal.Rptr.3d at p. 55].)

On appeal, mother contended, among other things, that her written offer of proof was sufficient. As described by the Court of Appeal, mother “contend[ed] that she was not required in her offer of proof to address the third component of whether, on balance, the parent-child relationship presented to the court a compelling reason to forgo adoption. She argue[d] further that the offer of proof was specific enough to warrant a hearing on the parental relationship exception.” (*A.G.*, *supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 65].) The Court of Appeal ultimately agreed that the offer of proof was likely sufficient to warrant a hearing on the exception and that on remand the juvenile court should reconsider the sufficiency of mother’s offer of proof. (*Id.* at p. \_\_ [273 Cal.Rptr.3d at p. 74].)

In discussing the beneficial relationship exception, the Court of Appeal reiterated the basic rule that:

The six specified circumstances in section 366.26, subdivision (c)(1)(B) are “actually, *exceptions* to the general rule that the court must choose adoption where possible.” (*In re Celine R.* [(2003)] 31 Cal.4th [45] at p. 53, original italics.) They “‘must be considered in view of the legislative preference for adoption where reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*, original italics.)

(*A.G., supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at pp. 56-57].) The Court of Appeal described the three prongs of the beneficial relationship exception:

There are three “ ‘component determinations’ ” made by the juvenile court, the first two of which establish the existence of a beneficial parental relationship, and the third being the court's assessment of whether that relationship (assuming its existence) presents a compelling reason not to terminate parental rights. Those three “ ‘component determinations [are]—[ (1) ] whether the parent has maintained regular visitation, [ (2) ] whether a beneficial parental relationship exists, and [ (3) ] whether the existence of that

relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” ’ [Citations.]” (*Caden C.* [2019] 34 Cal App.5th [87] at p. 104, rev. granted; see also *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1316, [mother demonstrated regular visitation but not a beneficial parental relationship].)

(*A.G., supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 57].)

The Court of Appeal further noted that:

The burden is on the parent asserting the parental relationship exception to produce evidence establishing that exception. (*In re Breanna S.* [2017] 8 Cal.App.5th [636] at p. 646.) “The court's decision a parent has not satisfied this burden may be based on any or all of the [three] component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citations.]” (*Id.* at pp. 646-647.) The parent must prove the exception by a preponderance of the evidence. (*Caden C., supra*, 34 Cal App.5th at p. 104, rev. granted.)

(*A.G., supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 59].)

Thus, the *A.G.* court recognized that the beneficial relationship exception is to be applied in exceptional

circumstances and that the party asserting the exception bears the burden of proof on each of the three prongs.

The *A.G.* court then discussed offers of proof in general and specifically offers of proof in support of the beneficial relationship exception, concluding a juvenile court may require a parent to provide an offer of proof in support of the exception before granting a contested hearing (*A.G.*, *supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 60]), but that none of the three cases it had examined “discussed whether the parent's offer of proof must include evidence concerning whether preservation of the parent-child relationship ‘constitutes a ‘compelling’ reason to forgo termination of parental rights.’” (*Id.* at p. \_\_, [273 Cal.Rptr.3d at p. 66].)

Without direct guidance from the three cases it examined, the *A.G.* court then concluded that “if the parent's offer of proof addresses regular visitation and the existence of a beneficial parent-child relationship, it is for the court to then weigh the importance of that relationship against the benefits of adoption. Nothing more should be required of the parent to gain a contested hearing.” (*A.G.*, *supra*, 58 Cal.App.5th at p. \_\_ [273



Cal.Rptr.3d at pp. 66-67].)

This conclusion, however, contradicts the points recognized elsewhere in the decision. The court acknowledges that the party asserting the exception bears the burden of proof on all three prongs, and further that the third prong requires that party to establish that the “the relationship 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, at p. 575.) Yet the court then holds that because the trial court must weigh the importance of the relationship against the benefits of adoption, the parent is *not* required to make an offer of proof on this prong. (*A.G., supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 67].) This conclusion is internally inconsistent, both because the court has already acknowledged that the parent has the burden of proof on the exception, and because immediately following its conclusion, the court inserts a footnote appearing to contradict its holding:

In concluding that the parent's offer of proof need not address the third component of the exception, we emphasize that such determination is

strictly within the purview of the juvenile court because the “finding that the relationship is a ‘compelling reason’ for finding detriment to the child is based on the facts but is not primarily a factual issue. It is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.]” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

(*A.G.*, *supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 67, n. 12].)

In sum, *A.G.* recognized that the court’s finding on the third prong “is based on *facts*” and calls for an evaluation of the detrimental impact on the child of severing the relationship. Whether arguing that the exception applies or contesting its application, the parties will be required to put forth evidence supporting their position. A party bearing the burden of proof must meet its burden of production to show that the relationship 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. If the party asserting the exception meets its burden, then the burden will shift to the party opposing application of the

exception. The court, in the exercise of its discretion, will weigh all of the relevant evidence to determine whether there is a compelling reason to find that termination of parental rights is not in the child's best interests.

An example of such a case is *In re Scott B.* (2010) 188 Cal.App.4th 452. There, the child was removed when he was nine years old based on his mother's limited ability to care for him; he was 11 when his mother's parental rights were terminated. He had lived with his mother his whole life prior to removal. (*Scott B., supra*, 188 Cal.App.4th at p. 471.) He suffered from attention deficit hyperactivity disorder and autism, needed special education services, and had behavioral problems, problems interacting with his peers, and bladder control issues. (*Id.* at pp. 455–456.) After he was removed from his mother's care, he and his mother had weekly visits and he looked forward to them. (*Id.* at p. 471.) When he learned he might be adopted, his behavior regressed to growling and biting. (*Id.* at p. 458.) At the section 366.26 hearing, he said that if he was adopted, he would run away to live with his mother. (*Id.* at p. 466.) His court appointed special advocate reported that the mother and the

child had a very close relationship, and it would be detrimental to the child for the relationship to be disrupted. (*Id.* at p. 471.)

In reversing the order terminating parental right, the Court of Appeal noted that the mother-child relationship, “coupled with Scott's continued emotional instability and his repeated insistence that his preference would be to live with Mother, presents a compelling reason for finding that termination of parental rights is detrimental to the minor.” (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 471.) The court pointed to the evidence that the child’s “emotional make up will not enable him to endure interruption of his long-standing frequent visits with Mother.” (*Id.* at p. 472.) The court also pointed out that while in foster care he had stabilized “with the support of mother,” and:

Mother provides stability to Scott's life. That is what adoption is supposed to do, but it may not in this case. Given Scott's strong emotional attachment to Mother, his continued precarious emotional state, and his history of regressing and running away when he is stressed, there is a very good chance that he will have a meltdown if his usual frequent visitation with Mother does not continue. The only way to avoid that serious emotional and developmental setback and ensure that

Scott's usual visitation with Mother continues is by court order. The only way to have such an order is to have Scott's permanent plan be legal guardianship or long term foster care.

(*Id.* at p. 472.)

In *Scott B.*, the court recognized the existence of the parental relationship, but also looked at the compelling evidence indicating that termination of mother's parental rights would be detrimental to the child such that it would outweigh the well-being the child would gain in an adoptive home. This evidence included the nature of the visits, mother's conduct in helping to support his behavior, the child's fragile emotional and developmental state, and the child's expressed wishes. All of this was relevant evidence, admissible to support a finding that the relationship constituted "a compelling reason for determining that termination would be detrimental to the child." (*A.G., supra*, 58 Cal.App.5th at p. \_\_ [273 Cal.Rptr.3d at p. 57].)

A further example demonstrating that the parties may submit evidence on the third prong is *In re E.T.* (2018) 31 Cal.App.5th 68. There, the Court of Appeal reversed an order terminating parental rights, finding the appellant mother had

met her burden of establishing the beneficial relationship. (*Id* at p. 77.)<sup>2</sup>

The Court of Appeal reviewed the evidence, which showed that once services were terminated mother nonetheless participated in programs designed to maintain her sobriety and make her a better parent; consistently tested negative for drugs; remained in drug treatment; and took classes in life skills, parenting, cognitive behavior, and anger management and children of alcoholics and addicts. (*In re E.T., supra*, 31 Cal.App.5th at p. 77.) “The [consistent] visits coupled with Mother's efforts during the dependency showed that the children would benefit from continuing their relationship with her.” (*Id.* at p. 76.) The court also noted mother’s testimony demonstrated she had insight into her own development and that she loved and cared for her children. (*Ibid.*) The court concluded:

[Mother] recognized her children were in jeopardy and sought help. She voluntarily placed her children with their godparents and sought treatment. The agency's response when she did not immediately test negative for drugs was to initiate this supplemental petition, remove the children and deny her services. This

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<sup>2</sup> Because this case is discussed in the briefs already on file in this matter, the Agency will refrain from setting out the facts here.

record leads to a conclusion that her die was cast at that time. But that should not be so. Mother did all she was asked to do and more. In these circumstances, we cannot condone making her pay such a severe price when she has worked so hard to overcome her addiction, acquired such insight into her parental responsibilities and been so attentive to her children's best interests.

(*Id.* at p. 78.) Even though reunification services had ended long before the .26 hearing, the decision to apply the beneficial relationship exception was premised on more than a finding that a beneficial parental relationship existed. Evidence of the mother's conduct, along with evidence of her insight into her parental responsibilities, supported a finding that the relationship constituted a compelling reason to determine that termination would be detrimental to the child.

### **III. Conclusion.**

Mother's assertion that *In re A.G.* "makes clear that, consistent with Mother's position in this pending case, it is error to consider evidence regarding the parent's efforts at rehabilitation in reference to the third, discretionary prong of the exception" is simply not what the case holds or stands for, as the above discussion makes clear. *In re A.G.* holds, at most, that

where a juvenile court requires a parent to make an offer of proof before being granted a contested hearing on the beneficial relationship exception, the parent is not required to make an offer of proof on the third prong of the exception to be granted a contested hearing.

Moreover, to the extent that mother contends that the case stands for the proposition that *no evidence* is admissible either to support or oppose the third prong of the exception, she is incorrect. The determination on the third prong is committed to the juvenile court's discretion, but it is a decision "*based on the facts.*" (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.) The juvenile court cannot be precluded from considering all evidence relevant to the determination, including, in the appropriate case, evidence that the parent has made progress in addressing the issues that led to the dependency.

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Dated: February 19, 2021

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE**  
**(California Rules of Court, rule 8.204(c)(1), 8.360(b), and**  
**8.412(a).)**

I certify that this brief complies with Rule 8.204, because it uses proportionately spaced font with a typeface of 13 point and contains 2,598 words.

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Dated: February 19, 2021

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**PROOF OF SERVICE**

I, Linda J. Halperin, declare as follows:

I am a United States citizen, over 18 years of age, and not a party to the instant action. My business address is 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, California, 94612. On the date shown below I served the within **AGENCY'S RESPONSE TO MOTHER'S LETTER BRIEF REGARDING NEW AUTHORITY** to each of the following persons:

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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 and that this Declaration was executed on February 19, 2021, at Concord, California.

  
\_\_\_\_\_  
Linda J. Halperin

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

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Case Number: **S255839**  
Lower Court Case Number: **A153925**

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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.

2/19/2021

Date

/s/Linda Halperin

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Signature

Sugerman, Jeremy (146315)

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