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**RESPONDENT MINOR'S ANSWER TO
APPELLANTS' OPENING BRIEFS ON THE
MERITS**

ISSUES PRESENTED

1. What standard of review governs appellate review of the beneficial relationship exception to adoption?
2. Must a parent attempting to establish the beneficial relationship exception to adoption show progress in addressing the issues that led to dependency?

INTRODUCTION

In this appeal from a unanimous published opinion in a juvenile dependency case, the parties have been asked to brief two issues.¹ On each, the parties are in agreement.

The parties agree that the so-called “hybrid” standard of review governs appellate review of the beneficial relationship exception to adoption. The hybrid standard has emerged in recent years as the most-often standard employed by appellate courts that have considered the beneficial relationship exception and is the standard this Court should embrace. As the minor discusses, *infra*, it is the standard of review best tailored to the statute and the standard that best promotes judicial decision-making grounded in the evidence. An appellate court should review for substantial evidence a juvenile court’s highly fact-specific findings that a parent maintained regular visitation with a child

¹ *In re Caden C.* (2019) 34 Cal.App.5th 87, 95, 110, 114, as modified April 10, 2019, rehearing denied (May 1, 2019), review granted July 24, 2019 (S255839) (hereafter *Caden C.*).

or that a beneficial parent-child relationship exists. A juvenile court's decision that a parent-child relationship confers such a benefit on a child that it rebuts the statutory presumption favoring adoption in an inherently discretionary decision calling for application of the law to factual findings, so does not lend itself well to the substantial evidence standard.

As to the second issue, the parties also agree. A parent seeking to meet the beneficial relationship exception need not show progress in addressing the issues that led to dependency in order to establish that the exception applies. No published case has so held. Here, the court of appeal did not declare a new requirement that a parent must show progress in alleviating her problems in order to prove the exception applies to her. Nor did the opinion state or even suggest that completion or compliance with a case service plan is prerequisite to proving the exception. The court held, rather, that the juvenile court abused its discretion because no reasonable court would have concluded from the evidence that Mother's relationship with Caden conferred such a significant and positive benefit to Caden that there was a compelling reason to maintain it. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 110–113.) The court of appeal's decision does not require a parent to show she has made progress toward reunifying or made recent efforts to overcome her problems; it merely acknowledges that a parent's past non-compliance, her ongoing serious problems, and her denial about the effects of her problems on her child may legitimately be considered when balancing the parental relationship against the benefits the child would gain from being adopted.

If the decision is affirmed, no new rule will spring into existence. Rather, juvenile courts will continue as they always have to be able to exercise their discretion to consider all aspects of a parent's behavior, including the impact of that behavior on the child's ability to grow into healthy adulthood, if adoption is foregone in favor of keeping the child in foster care. Juvenile courts will continue to be constrained when exercising their discretion to determine whether the parental relationship confers such a significant positive benefit on the child that the child should remain in foster care from ignoring undisputed evidence of a parent's total disengagement from treatment, inability or unwillingness to remain sober, and the parent's deficient insight regarding her parenting where that lack of insight places the child at high risk of being unable to remain stable in a foster home.

This Court should affirm the decision of the court of appeal, which did not impose an unlawful or new requirement on parents seeking to establish the beneficial relationship exception when trying to block their child's adoption.

PROCEDURAL AND FACTUAL HISTORY

Caden joins in the Agency's summary of the case and facts and adopts that portion of the Agency's merits brief. Caden also adopts the factual and procedural history summarized in the "Background" section of the Court of Appeal opinion. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 92–103.)

Portions of the record were especially important to the court of appeal's analysis, particularly Caden's unique psychological

vulnerabilities and his history of frequent moves due to Mother's interference in his foster placement. The parents' briefs omit or give short shrift to some of these aspects of the record. ²Thus, Caden provides the following short summary of the record.

Caden's Early Years.

Caden's mother, Christine C. ("Mother") gave birth to five children before Caden and was unable to raise any of them. (1CT 318–319, 335.) Caden's father, B.C. ("Father") disappeared from Caden's life in his early years.³

² Mother's opening brief on the Merits is cited as "MOBM" and Father's opening brief on the merits as "FOBM." This brief adopts Mother's citation format. (MOBM 8, fn. 2.) Mother's "Statement of Facts/Procedural History" appears at MOBM 8-26. Father adopts that section of Mother's brief. (FOBM 5.) The parents' briefs omit to mention that Caden's five half-siblings did not grow up in Mother's care, and omit many facts pertaining to family background, early childhood trauma, and Caden's exposure to family dysfunction. Among facts omitted: Caden witnessed domestic violence, Father disappeared from Caden's life and from the dependency proceedings, and Mother had a nearly 40-year child welfare history (1CT 335 ["37 years"]; 1CT 319-320 [criminal history]; 2CT 631-632 [summarizing child welfare histories of Caden's siblings prior to his birth and Mother's inability to raise any of them]; 4CT 1050-51, 1052, 1091, 1133, 1143-1143;1216; 1/29/18 RT 483-484, 489; 1/31/18 RT 603, 604, 606, 649, 651, 653, 654, 655, 678-679, 711, 713, 723, 724, 731-732, 735.)

³ Father is not mentioned in the parents' briefs summaries of the facts. He was convicted on domestic violence charges after assaulting Mother in young Caden's presence, went to prison, moved to Arizona and called his trial counsel a few days before the final hearing, to say he hoped to come to court (but did not).

By the time the first juvenile dependency petition concerning Caden was filed in 2013, when he was four years old, there had already been 12 child welfare referrals about him. (1CT 312–317.)⁴ The referrals began in 2010 when Caden was 16-months old, continued into 2012 when Mother and Caden were sleeping on the ground outside Macy’s, and culminated in a referral in 2013 with the discovery that Caden and Mother were homeless and living in a filthy car in Marin County. (1CT 315–317, 322–323, 378; 2CT 631.) Caden could not recall when he last ate or if he had clothes in the car, and he talked about having seen Mother’s ex-husband physically hurt Mother. (*Id.* at p. 321.) Mother was emaciated and disheveled, her speech and behavior were erratic, and she said she had been using methamphetamines and felt suicidal. (1 CT 378–380. 381.) Mother refused to undergo a psychological evaluation. (*Id.* at 182–183.) She said preferred to self-medicate rather than take

(1/29/18 RT 404-405; 1/31/18 RT 601-602, 647, 653, 656-666, 724, 735; 2CT 602-607.) He received no reunification services and did not visit Caden. (See 1/29/19 RT 405.)

⁴ Caden’s history of referrals, his periodic homelessness, early exposure to parental dysfunction as a baby and toddler, including moving from streets to shelters to cars, are not mentioned in the parents’ briefs, though these early childhood experiences help account for the fact that Caden was already an especially vulnerable and traumatized child when he entered the foster care system. At age 3, Caden already had multiple diagnoses: speech-delay, “Disruptive Behavior Disorder and PTSD” and he was aggressive, emotionally dysregulated, and regressive. (1CT 329.) None of this appears in the parents’ briefs, but the court of appeal’s opinion referenced Caden’s unique vulnerabilities and his family’s “significant history of dysfunction.” (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 92, 100.)

her prescribed psychotropic medication, as she believed methamphetamines made her a “better” parent. (1CT 325–326.) She was overheard saying she wanted to get rid of Caden because he was driving her crazy, and she wanted to get high. (1CT 378.)

Caden Enters the Foster Care System.

At only three years of age, Caden already exhibited symptoms of post-traumatic stress syndrome (PTSD). (1CT 328–329.) He had been exposed since infancy to so much chaos, erratic behavior, domestic violence and homelessness that he was a traumatized and vulnerable child by the time he was first placed into a foster home at age four. The foster mother said Caden initially cried and asked for Mother when he arrived at the foster home but was otherwise “happy,” playing well with other children, enjoying a park outing, and sleeping well. ⁵(1CT 321, 332.) Then, Mother cried during a telephone call with Caden, which reduced Caden to tears. (*Id.* at p. 332.) This experience would be the first of many in which Mother could not control her emotions and language when communicating with Caden while he was in foster care. (2CT 636,713; 3CT 717–718, 794.)

In 2013, Mother had difficulty engaging in the various services offered to her. She was unable to stay clean and sober, missed visits with Caden, and dropped out of a treatment program, but in December of 2013, she entered a program called Walden House

⁵ This very first foster mother was Ms. H., a woman who stayed in touch with Caden for years. (3CT 875; 4CT 1143.) She became his caregiver again toward the end of the record and Caden continues to live with her today.

HealthRight 360. (1CT 183.) The juvenile court on January 14, 2014 ordered the Agency to provide Mother with reunification services. The case plan ordered for Mother included a psychiatric/psychological evaluation, inpatient substance abuse treatment, and drug testing. (*Id.* at pp. 221–222.)

By the time Caden turned five, his therapist described him as exhausted, worried and anxious. (2CT 577, 635.)

Caden’s Unstable Placements and Periodic Returns to Mother.

Caden’s case was transferred from Marin County to San Francisco in January 2015. (1CT 1–12.)

After ten months in foster care, Caden was allowed to live with Mother again from ages five to seven years, but Mother only remained sober for the first 13 months of this period, relapsing with methamphetamine in June 2015 when Caden was six. (2CT 522, 526.)

While Caden struggled in kindergarten and tended to become “easily overwhelmed” and to have difficulty making friends, Mother completed a treatment program and moved with Caden into “supportive housing.” (2CT 473, 480, 521.) She then moved into permanent housing with the help of a non-profit program, but soon became overwhelmed by parenting Caden. (2CT 521–522.) She threatened Caden’s teacher with harm, threatened to spank Caden, and disclosed in August of 2015 that she had relapsed and was using methamphetamine. (*Id.* at pp. 522.)

Caden was placed in foster care for his second time in June 2016, one week after his 7th birthday, because Mother was

testing positive for drugs, missing drug tests, and kept a bottle of vodka in Caden's presence, which he sipped. (2CT 372, 572, 575, 638–644; 714.)

In second grade, Caden distrusted adults and was fearful of social workers, due to what the social worker called Mother's "improper boundaries" and the fears she instilled in him. (2CT 572–573.)

In January 2016, the Agency reported to the juvenile court that its previous dispositional orders had failed to protect Caden, and new orders were required to detain him keep him safe from the effects of Mother's substance abuse (both drugs and alcohol). (2CT 372, 565, 572, 638–644.)

By mid-2016, Mother's extreme anxiety and paranoia were overwhelming her and she frequently said she wanted to kill herself but did not want to take her medication. (2CT 574–575.) Caden too wanted to kill himself, he said, because he was separated from Mother. (2CT 573–574.) Mother refused to agree to a mental health assessment for Caden, and the Agency had to obtain a court order. (*Ibid.*) Caden appeared more and more anxious. (2CT 577.) He could not focus in the classroom, was aggressive, and had been taught by Mother not to trust others. (2CT 573, 577.)

In September 2017, the Agency obtained orders reducing visitation, to protect Caden from anxiety caused by Mother and to prevent her from de-stabilizing his foster placement. (3CT 717–718.)

As the years passed, Mother's conduct perpetually undermined Caden's relationship with his foster parents, and, as the court of appeal noted, Caden's various caregivers found

Mother's poor boundaries and her impulsive behaviors "emotional[ly] exhausting." (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 96–98 [alteration in original]; 4CT 1091, 1129, 1132, 1216; 1/31/18 RT 619, 620, 623, 624, 637, 638, 640, 651, 653–654, 658, 659, 707–708, 721, 728–729.) Caden's Court Appointed Special Advocate ("C.A.S.A.") reported that Caden began directing angry, "mean" words at his foster family upon returning from visits. (*Id.* at p. 121.) By the end of the record Caden would move five times without ever escaping the legal limbo of foster care.

Caden was subjected throughout his childhood to Mother's emotional outbursts about the fact he was separated from her. Mother frequently said she would kill herself if Caden were removed from her, and Caden's negative and "self-harming behaviors" increased after Mother spoke that way. (2CT 574.) She told Caden she would "fight" for him in court, criticized him for not reacting to the court proceedings as she wanted him to, and lodged complaints against his foster parents upon learning they were interested in adopting Caden. (2CT 664; 3CT 717–718; 3CT 901, 911; 4CT 963; 1/22/18 RT 241–242.)

Keeping Caden stable in foster placements and identifying a possible permanent family for him proved to be a nearly impossible challenge for social workers and Caden's counsel. Caden's dependency court counsel, who has represented Caden continuously since 2013, sought a court order in July 2016 admonishing Mother's counsel from contacting Ms. H.'s foster home. (2CT 660–661, 664 711; 3CT 711.) In an unsuccessful effort to save Caden's foster placement from disrupting, counsel also requested the court suspend Mother's telephone and texting

communications with the foster parent because Mother’s “incessant contact” and demands had led Ms. H. to ask the Agency to move Caden from her care. (2CT 660–661, 662, 664 711; 3CT 711.)

In September 2016, the Agency requested a court order reducing Mother’s visitation and prohibiting Mother from calling or texting Caden or his current foster parent without the social worker’s approval. (3CT 717–718.) The Agency made this request after Mother had promised Caden during visits that he would be returning to her by Christmas, then became verbally abusive when advised to stop making such promises. (2CT 714; 3CT 718.) Mother continually called the foster home and failed to abide by the court-ordered visitation schedule. (2CT 711.)

In January 2017, Caden’s then-foster parent, who had initially expressed an interest in being Caden’s permanent placement, changed her mind about providing permanent care for Caden due to Mother’s behaviors. (3CT 794.) The Agency informed the court that Mother “sabotag[ed]” the placement. (3CT 794.) Mother had quizzed Caden about his foster mother, Maggie, and complained about Maggie during a visit. (3CT 814.) When he was seven, Caden was so preoccupied with Mother and was so engaged in unrealistic hopes to return to her, that he said he wanted to kill or harm himself because he was separated from her. (2CT 573.) At age 8, Caden purportedly told his therapist (who wrote down in words in the form of a letter that Mother gave the court) he would rather “torture” himself than be separated from Mother. (Aug CT 91.)

The Agency struggled to identify a permanent placement for Caden, and asked Ms. H.—one of his former caregivers—if she

would consider adoption or legal guardianship, but she said no. (3CT 794.) Caden’s maternal and paternal relatives were contacted, but they declined long-term placement due to the negative behaviors of Mother and Father. (3CT 794.)

Caden Achieves Fragile Stability in Second Placement with Ms. H.

Caden moved again to Ms. H.’s home on February 17, 2017. (3CT 875.) He had, from 2013 to 2017, endured a series of failed foster placements— failures related entirely to Mother’s repeated substance abuse relapses, her untreated psychiatric problems that keep her in a state of denial about how her conduct affects Caden, and her campaign to destabilize any relationship Caden managed to form with foster caregivers. When he moved in with Ms. H., it was the second placement change since only June 2016 that “involved mother tampering with the home’s stability” and causing the need to move. (3CT 900.)

The juvenile court held a hearing in February and April 2017, on Mother’s section 388 petition asking that she be given another opportunity to reunify with Caden. (3CT 803, 862, 892–895.) When her request was denied, she filed a writ, which was denied. (See, *C.C. v. Superior Court* (Aug. 28, 2017, A151400)[nonpub. Opn.] 2017 Cal.App. Unpub. 5986.⁶

⁶ The parents’ briefs make no reference to Mother’s several previous unsuccessful trips to the Court of Appeal in Caden’s dependency case, a procedural history expressly noted in the appellate court’s most recent opinion. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 97–98, fn. 4.)

Caden asked Ms. H. to adopt him if he could not return to Mother. (3CT 875.) By that point, return to Mother was no longer a legal option, but Caden’s “constant state of arousal leading up to visits made it difficult for him to settle in a permanent home.” (4CT 963.)

Gradually, with consistent caring support, Caden began to stabilize apart from Mother and he began doing better in school. (3CT 900, 902; 4CT 1049.) In late 2016 and 2017, Mother struggled during visits to stay focused on Caden even though she was only seeing him once a month. (2CT 636; 3CT 723, 814; 4CT 1133.) When Mother missed some visits in the spring and summer of 2017, Caden said he missed his mother but he did not fall apart as in the past. (3CT 902; 4CT 1049.)

By May 2017, the Agency’s 11-member team of professionals including Dr. Alicia Lieberman, a team that was convened to review Caden’s case determined that Caden’s unhealthy relationship with Mother was unhealthy and tended to continually undermine his stability in placement. (4CT 963.) The juvenile court agreed, and reduced Mother’s visitation. (4CT 982.) The court of appeal upheld that order, and expressly found that Mother, who at age 53 had never been able to maintain sobriety while living independently in the community, had fueled Caden’s unrealistic hopes for reunification, causing anxiety for Caden “that undermined placement after placement.” (*C.C. v. Superior Court* (Aug. 28, 2017, A151400) [nonpub. Opn.] 2017 WL 3700807 1, 10, and fn. 4, *infra*.)

Juvenile Court Declines to Terminate Parental Rights in 2018.

In 2018, Caden’s counsel urged the juvenile court to adopt the social worker’s strong recommendation that parental rights be terminated to free Caden for adoption, hoping to provide Caden with his last, best chance at permanency and stability—which Ms. H. was now offering in the form of adoption. (4CT 1055.) The evidence showed Caden was extremely bonded to Ms. H. and her family members, and Ms. H. supported Caden as he processed his grief about not being able to return to Mother. (4CT 1050, 1054, 1131, 1043.) Caden’s C.A.S.A. told the court Caden was very bonded to the H. family and he was doing very well in their home. (4CT 1148.)

In contrast, Mother and friends, relatives, a former social workers and a former nightshift “counselor” at a treatment program, whom Mother called as witnesses, testified the Caden loved Mother so deeply that he would be “torn apart” by losing his relationship to her; he would become angry and “defiant” and adoption would do “more harm than good.” (1/22/18 RT 303–306; 1/29/18 RT 413, 416; 1/31/19 RT 626, 698, 695, 696.) None of the friends and relatives who testified had seen Caden in years, however, and not surprisingly given their lack of recent knowledge of Caden, they did not testify on the central question of whether Caden was likely to be able to maintain stability in foster care placements if his legal relationship to Mother was maintained.⁷

⁷ Mother’s summary does not cite the entirety of the record concerning her witnesses. (MOBM 26.) Omitted is that none had

The juvenile court declined to terminate parental rights. (*Id.* at pp. 102–103.) Instead, and because family reunification with either or both biological parents was not a viable option, and Ms. H. declined to become Caden’s legal guardian (due to her concerns about Mother’s behaviors), and in light of Caden’s deep love for Mother, the juvenile court selected long-term foster care as Caden’s permanent plan, even though the evidence showed Caden had unique vulnerabilities, a long history of placement changes due to Mother’s behaviors, and despite the fact that Ms. H. was, and remains, able and willing to adopt him. (4CT 99–103, 115–116; Aug CT 77.)⁸

seen Caden for years before they testified in 2018. (1/22/18 RT 255, 259 [Aris last saw Caden in 2016] 1/22/18 RT 264, 266 [Brian last saw Caden once at Chucky Cheese in 2016]; 1/29/18 RT 409, 411, 416; 3CT 901 [Naomi lived with Caden for only 2 months and last saw Caden with Mother in 2016; Mother caused “massive anxiety” for Naomi; Mother told Caden that his sister Naomi was a “tramp”]; 1/31/RT 676-675 [Simonini only saw Caden with Mother 2 or 3 times several years ago]; 1/31/704, 707-709 [social worker Barnes had last seen Caden with Mother in either 2014 or 2015]; 1/31/18 RT 679, 683 [residential treatment counselor who worked the night shift last saw Caden 2 or 3 years ago].)

⁸ None of this evidence was disputed at trial. Mother’s expert, Dr. Molesworth, opined that Caden was a “vulnerable” child with learning disabilities and post-traumatic stress disorder. (Aug. CT 95.) He opined that Caden would have a “broken heart” and would experience more trauma if he lost contact with Mother. (*Ibid.*) He testified Caden had an “unusual” and “intense” preoccupation with Mother. (1/29/RT 497-498.) Crucially, Dr. Molesworth, unlike the Agency’s expert, Dr. Lieberman, did not form or state any opinion on the question of whether Mother had the “parenting capacity” to support placement stability

Caden and the Agency appealed and won. They prevailed on a single contention: that the juvenile court erred in finding Mother had successfully established the “beneficial relationship exception” to adoption. The court of appeal in a unanimous published opinion agreed with this assertion of error, reversed the judgment, and remanded the case to the juvenile court for further consideration of what permanent plan would be in Caden’s best interest. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 91–92, 115–116.)⁹

OVERVIEW OF THE RELEVANT STATUTORY SCHEME

This Court summarized California’s juvenile dependency system in its opinion in *In re W.B., Jr.* (2012) 55 Cal.4th 30, as follows:

throughout Caden’s childhood or could meet Caden’s needs should he remain in foster care rather than be adopted. (1/29/18 495.)

⁹ Just before Caden’s parents petitioned this Court for review, the juvenile court again assessed Caden’s situation. In light of then-existing evidence, the court scheduled a new hearing to consider whether to terminate parental rights so Caden could be adopted. When this Court granted the parents’ petition for review, however, the juvenile court took the hearing off calendar. Because Caden cannot obtain a new section 366.26 hearing while the case is being reviewed, not only does Caden continue to remain in the legal limbo of foster care but the juvenile court must periodically revisit the visitation orders and adjust them as needed, to protect Caden from Mother’s behaviors. While this case has been pending in this Court, visitation had to be reduced to two hours every other month. *See*, Letter from Minor’s Counsel (dated October 4, 2019) re: Post-Appeal Orders, filed simultaneously with this brief.

A temporary or permanent foster care placement typically arises in the context of juvenile dependency proceedings, in which the court determines whether a child's home is unfit. If allegations of parental abuse or neglect are substantiated, the court assumes jurisdiction and removes the child from the family home for the child's own well-being. Such a child is adjudged to be a "dependent" of the court. When a dependent child is placed in a foster home, the family generally participates in reunification services, with the goal of the child's safe return to parental custody. Meanwhile, the dependency case proceeds through an intricate system of review hearings. Because family reunification is not always possible, child welfare workers also explore alternatives for a child's permanent placement outside the home through guardianship or adoption. The dependency process culminates in a permanency planning hearing, at which the court determines whether the child can be safely returned home or, if not, whether parental rights must be terminated and the child released to a permanent placement.

(*In re W.B., Jr., supra*, 55 Cal.4th at p. 43[footnotes and citations omitted].)

In selecting a permanent plan at a hearing held under Welfare and Institutions Code section 366.26, the statutory preference is for termination of parental rights and adoption.¹⁰(§ 366.26, subd. (b)(1).) The statutory scheme then lists various alternatives to adoption, in order of priority. (§ 366.26, subd. (b).) If adoption is not appropriate, given the factual circumstances and the child's wishes, the juvenile court then considers the other placement

¹⁰ All statutory references are to the California Welfare and Institutions Code unless otherwise noted.

alternatives listed in the statute. (§ 366.26.) The last of these alternatives, and therefore the least favorable option, is the one the juvenile court selected for Caden: placement in continued foster care. (Compare, § § 366.26, subds. (b)(1) & (7).)

A juvenile court considering the termination of parental rights and the selection of a permanent plan must take the child's wishes into account. (§ 366.26, subd. (h); *In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480–1481; *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1086 fn. 5.) Nevertheless, a child's wishes are not determinative of what is in that child's best interest. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087–1089.) Even when a child loves the parent deeply and desires contact, the juvenile court may terminate parental rights if doing so is best for the child. (§ 366.26, subd. (h)(1); *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 955.¹¹)

If the juvenile court determines by clear and convincing evidence at a section 366.26 hearing that a child will likely be adopted, the court generally must terminate parental rights. (§ 366.26, subd. (c)(1)(B).) However, the court should not terminate parental rights if the child resides with a relative able to serve as legal guardian, or if the termination of parental rights would prove detrimental to the child based on the existence of a statutorily enumerated condition or exception. (§ 366.26, subd. (c)(1)(B).)

The “beneficial parent-child relationship” asserted by the Mother in juvenile court is one such exception listed in section

¹¹ *In re L.Y.L.*, *supra*, was cited in the court of appeal's opinion. (*Caden C.*, *supra*, at p. 105.)

366.26.¹² (2RT 17.) Thus, the juvenile court was authorized to make the finding at issue in Caden’s case: that the termination of parental rights would be detrimental to Caden because of the existence of an established beneficial relationship with Mother. (§ 366.26, subd. (c)(1)(B)(i) [“[T]he court shall terminate parental rights unless . . . [t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship”].)

Recognition of the beneficial relationship exception means 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 with new, adoptive parents. In other words, 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. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.

(*In re Autumn H.* (1994) 27 Cal.App.4th 567, (1994) 27 Cal.App.4th 575.)

¹² This is commonly known as the “beneficial relationship exception” to adoption, the term used in the Court of Appeal’s opinion and this brief. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 92.)

Under the beneficial relationship exception, the juvenile court will not terminate parental rights if the parent has met her burden of proof with respect to each the three prongs of the exception: (1) the parent has maintained regular visitation with the child; (2) a beneficial parental relationship exists; and (3) the existence of that relationship constitutes a compelling reason to conclude that termination of parental rights would be detrimental to the child. (See *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646; *In re I.R.* (2014) 226 Cal.App.4th 201, 211–212; *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315–1317 [hereafter “*Bailey J.*”]; *In re Autumn H.*, *supra*, 27 Cal.App.4th 567; § 366.26, subd. (c)(1)(B)(i).)

The third prong of the beneficial relationship exception authorizes the juvenile court to conclude that a compelling reason exists not to free a child for adoption because the benefit of maintaining the parent-child legal relationship outweighs the benefit obtained from adoption. (§ 366.26, subd. (c)(1)(B)(i); *In re Logan B.* (2016) 3 Cal.App.5th 1000, 1009–1013; *In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–576.) The word “compelling” has a specific and important meaning within the context of the overall dependency statutory scheme. Permanency planning hearings are “designed to protect children’s ‘compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’” (*In re Celine R.* (2003) 31 Cal.4th 45, 52–53 [citations and internal quotation marks omitted].)

ARGUMENT

I. A HYBRID STANDARD OF REVIEW, WHICH REVIEWS THE JUVENILE COURT'S FACTUAL DETERMINATIONS FOR SUBSTANTIAL EVIDENCE AND ITS APPLICATION OF THE LAW TO THOSE FACTS FOR ABUSE OF DISCRETION, GOVERNS APPELLATE REVIEW OF THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION TO ADOPTION.

A. All Parties Agree the Hybrid Standard of Review Applies.

A hybrid standard of review, which combines the substantial evidence and abuse of discretion standards, governs appellate review of the beneficial relationship exception to adoption, though not all appellate courts have consistently utilized the hybrid approach. This Court has not previously addressed the issue.

The court of appeal's opinion noted there have been some divisions among courts regarding the standard of review. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 106.) The weight of court of appeal authority in recent years, however, favors the hybrid standard, which was the standard applied to Caden's case, and the parties agree that standard should be adopted by this Court.¹³

The Sixth District Court of Appeal discussed the hybrid standard at length in the 2010 case *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314–1315. The *Bailey J.* Court noted that while most courts had applied a substantial evidence standard in

¹³ MOB 35-36; FOB 6; Agency's Answering Brief on the Merits, at ARGUMENT, Sec. I.

the past (in those cases where the standard of review was discussed at all), the First District Court of Appeal had adopted the abuse of discretion standard. (*Id.* at p. 1314.) *Bailey J.* opted for a combination of the two. (*Ibid.*) The *Bailey J.* court held that the substantial evidence standard should apply to the factual component of the juvenile court’s determination, while the abuse of discretion standard governs the decision that a beneficial parent or sibling relationship is a compelling reason to deny adoption. (*Id.* at pp. 1314–1315.)

The Second District Court of Appeal noted in 2016 that courts had applied various standards of review to the parental relationship exception in the past. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300.) The Second District noted that “[m]any” courts reviewed such cases for substantial evidence, others applied abuse of discretion and, recently, courts had begun applying both standards together. (*Ibid.*) The Second District concluded that “[n]o error occurred under any of these standards of review,” without seeming to adopt any of the three possibilities explicitly. (*Id.* at pp. 1300, 1304.) In *In re Breanna S.*, *supra*, 8 Cal.App.5th at page 647, Division Seven of the Second District utilized the hybrid standard of review.

In this case, the First District Court of Appeal applied the hybrid standard of review to the beneficial relationship exception. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 106.) The court held: “We join these appellate courts that have taken a hybrid approach. Underlying factual determinations—such as whether a parent has maintained regular visitation or whether a beneficial parental relationship exists—are properly reviewable for substantial evidence.” (*Ibid.*) The court went on to explain that a

decision whether such a relationship “provides a compelling justification for forgoing adoption” is a matter of discretion, “properly reviewed for abuse.” (*Ibid.*).¹⁴

The hybrid standard makes sense and should govern review of a juvenile court’s decision that the beneficial relationship exception applies. The first two prongs of the beneficial relationship exception involve fact-dependent, record-heavy determinations. In order to show the parent maintained regular visitation and that a beneficial parent-child relationship exists, a parent must present significant factual evidence that an appellate court should, accordingly, review for substantial evidence.

On the other hand, a juvenile court’s application of the law to the facts to determine whether an existing relationship is

¹⁴ Minor did not make any argument for or against the hybrid standard of review in his brief in the Court of Appeal. He argued, rather, that the evidence did not support the majority of the juvenile court’s factual findings. (Minor Appellant’s Opening Brief (“Minor’s COA Br.”) 51-52.). Minor conceded in the Court of Appeal that Mother did prove she visited regularly (the “first prong”). (Minor’s COA Br. at p. 51.) Minor then moved to the second prong, arguing Mother did not meet her burden of proving “that her relationship with Caden was parental in nature and of such sufficient strength and quality that the parent-child relationship outweighed the security and sense of belonging that a new adoptive parental relationship would confer” on Caden. (*Ibid.*) The brief concluded, “Mother did not meet her burden of proof under the second prong of the benefit exception. The court’s finding that the benefit exception had been proven by Mother by a preponderance of the evidence was not supported by substantial evidence.” (*Id.* at p. 57.) If this Court concludes that the substantial evidence standard of review governs, this Court should affirm for the reasons provided in the minor’s brief in the Court of Appeal. (*Ibid.*)

sufficiently compelling not to terminate parental rights (the third prong) involves a “quintessentially discretionary” function. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) When making a decision about what is best for the child by balancing interests as required by the third prong, the juvenile court must consider whether the relationship overcomes the child’s need for a stable, reliable, permanent home in which the caregiver is free “to make a full emotional commitment to the child.” (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 52–53 [citations and internal quotation marks omitted].) As the court of appeal observed when reviewing Caden’s case, intrinsic to that balancing of interests that a juvenile court must engage in when weighing the importance of the parental relationship against the benefits of adoption “is the exercise of the court’s discretion, properly reviewable for abuse.” (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 106 [citation omitted].)

The minor agrees with Mother’s observation that appellate courts considering which standard of review applies have followed the hybrid standard enunciated in *Bailey J.* in 2010 (following the decision one year before in *In re I.W.* (2009) 180 Cal.App.4th 1517), and the hybrid standard of review is the correct one. (MOBM 35.) The hybrid standard promotes the best judicial decision-making. It recognizes that “[a]pplication of the beneficial relationship exception is a case-specific endeavor. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–576.; *see, In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, [italics in original, citation omitted]; *see also In re J.C.* (2014) 226 Cal.App.4th 503, 530–531 [following *Bailey J.*]; *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621–622 [same].) The abuse of discretion standard of

review is commonly employed in a variety of contexts where a juvenile court is tasked with exercising its discretion to decide what is best for a dependent child. (*In re Jesse C.* (1999) 71 Cal.App.4th 1481, 1487 [appointment of counsel for child reviewed for abuse of discretion]; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157–1158 [court reviews summary denial of section 388 petition for abuse of discretion]; *In re Robert L.* (1993) 21 Cal.App.4th 1057 [order denying placement with relatives reviewed for abuse of discretion].)

Cases where appellate courts have applied the hybrid standard of review to appeals concerning the beneficial relationship exception, such as *In re Bailey J.*, *supra*, 189 Cal.App.4th 1308, and *In re I.W.*, *supra*, 180 Cal.App.4th 1517, involved challenges to orders terminating parental rights, whereas in Caden’s case the juvenile court did not terminate parental rights but, rather, found in favor of the parents who asserted that a compelling reason existed not to terminate parental rights. Nevertheless, the hybrid approach makes sense in this case. Caden’s appeal asserted Mother had not met her burden of proof to demonstrate that her relationship with him was parental in nature and so beneficial that he should not be adopted. He asserted there had been a failure of proof. Where “the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528, quoting *In re Luis H.* (2017) 14 Cal.App.5th 1223, 1226–1227.)

All parties agree that the court of appeal adopted and applied the correct standard of review. This Court should hold that the hybrid standard of review applies to juvenile court decisions regarding the beneficial relationship exception.

B. The Court of Appeal Correctly Applied the Abuse of Discretion Standard to the Third Prong of the Beneficial Relationship Exception.

This Court did not explicitly order the parties to brief whether the court of appeal properly applied the hybrid standard of review. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 87, 106.) Mother has briefed this issue however. She argues the court of appeal “aptly identified” the appropriate standard of review but incorrectly applied it. (MOBM at p. 36.)

Caden briefs the Court of Appeal’s application of the standard of review in order to respond to Mother’s arguments and because the court of appeal’s application of the standard of review is “fairly included” in the issues this Court has identified for briefing. (Cal. Rules of Court, rule 8.516(a)(1).)

The court of appeal properly applied the abuse of discretion standard. In considering the juvenile court’s decision that the parental relationship was of such positive benefit to Caden that its preservation outweighed the benefit of adoption—a determination the court of appeal correctly identified as the “third prong” of the analysis required by law--the reviewing court lamented the lack of *any* basis in the evidence to support the juvenile court’s conclusion to the contrary. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 104, 113.) When two inferences can reasonably be deduced from the record, the reviewing court has

no authority to substitute its decision for that of the trial court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) But here, only one inference could be deduced from the record, because, as Caden explains below and as the court of appeal found, only one expert witness testified (and provided a written report) that addressed the issue the juvenile court needed to decide.

This is not a case involving a battle of experts, where the juvenile court agreed with one expert over the other expert, and then the appellate court disagreed with that choice. Rather, one expert gave that testimony that was pertinent to the issue before the juvenile court and the other expert did not. Mother's expert conceded on cross-examination he had not considered or formed any opinion about Mother's parenting capacity or her ability to meet Caden's needs if he remained in long-term foster care with periodic visits—*the critical question before the trial court*. This was expressly noted by the appellate court. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 101.)

One expert and one expert only (Lieberman) had carefully studied the question of how Caden's future development would be affected by maintaining a relationship with a parent in denial about the impact of her drug use on her child and whose behaviors continually undermined placement stability. (*Id.* at p. 114.) Only one expert had reviewed the entire case file with an eye to making this determination, had discussed this with a large team of child welfare professionals, and testified on the question. There was no other evidence bearing on that question. That was the heart of the court of appeal's analysis and why the court held there was an abuse of discretion. (*Id.* at p. 101.)

Mother's expert, Dr. Molesworth, provided his opinion that Mother and Caden shared a parental bond, but Dr. Molesworth "did not consider mother's parenting capacity, mother's psychological functioning, or Caden's relationship with others," the court of appeal noted. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 101.) Dr. Molesworth "did not consider the harm that would befall Caden if mother continued to abuse drugs and was unable to reunify with him, if Caden cycled through more foster homes, or if mother continued undermining his foster placements." (*Id.* at p. 114.) Dr. Molesworth also did not "opine on mother's parenting abilities, her psychological functioning or sobriety, or Caden's stability of placement with his current caregiver." (*Id.* at p. 114, fn. 6.)

Dr. Molesworth testified that loss of the parental relationship "would be a detriment" to Caden. (1/29/18 RT 498.) The juvenile court adopted this opinion wholesale. (02/8/18 RT 26.) But that aspect of Dr. Molesworth's opinion, and the juvenile court's adoption of it, missed the point.¹⁵ The question before the juvenile court was not whether loss of the legal parental relationship would harm Caden. (1/29/18 RT 498.) Instead, the juvenile court was tasked with considering whether Mother's parental relationship with Caden conferred such a positive benefit on Caden that he should not be freed for adoption, something the juvenile court failed to do. (See *In re Brandon C.* (1999) 71 Cal.App.4th 1530 [mother's visits and her "substantial progress"]

¹⁵ Dr. Molesworth admitted on the stand that he was not familiar with the legal elements of the beneficial relationship exception and he had never read the court case he cited in his written report, *In re Autumn H.* (1/29/2018 RT 483.)

toward rehabilitation, coupled with the close and “positive” bond her children had with her, sufficiently supported order declining to terminate parental rights].)

The appellate court also noted both that the juvenile court answered the wrong question and seemed to ignore the undisputed evidence about the impact of Mother’s behavior on Caden’s future ability to maintain placement stability and grow into healthy adulthood if his legal relationship to his parents remained intact and he stayed in foster care. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 113–114, fn. 6.)

As discussed, a juvenile court may find the parental benefit exists to prevent adoption “only . . . when the parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*In re E.T.* (2018) 31 Cal.App.5th 68, 76, citing *In re Anthony B.* (2015) 239 Cal.App.4th 389, 394–395 [italics in original].) Here, the court of appeal found that substantial evidence supported the juvenile court’s findings that Mother had maintained regular visitation and that a parent-child relationship existed that was beneficial to Caden. (*In re Caden C.*, *supra*, 34 Cal.App.5th at pp. 107–109.) As to the third and last prong of the analysis, however, the court of appeal found there was no evidence to support the juvenile court’s finding that the benefit to Caden provided a “compelling” reason to maintain him in foster care rather than free him for adoption. (*Id.* at pp. 110–113.) When a trial court makes a factual finding that is not supported by any evidence, the trial court has abused its discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057.)

Dr. Lieberman provided the only expert opinion on the singular question at issue during the last permanent placement hearing: how Caden would fare in long-term foster care if the juvenile court left parental rights intact, thereby preventing Caden's adoption. Only Dr. Lieberman, not any of Mother's witnesses, considered and evaluated the two permanency options, continued long-term foster care or adoption by Ms. H., offering an opinion on whether and to what extent Mother's relationship with Caden would "benefit" him in either scenario. Dr. Lieberman opined that, even accepting the strong love Caden felt for his mother, any placement other than adoption would pose an "unacceptable risk" to Caden's well-being due to his particular vulnerabilities and Mother's practice of sabotaging the stability of Caden's placements. (4CT 963.) Dr. Lieberman noted that Caden was a developmentally vulnerable child with a diagnosis of PTSD and exposure to traumatic events from an early age, and her testimony was explicitly identified by the court of appeal as having proven conclusively that Caden's needs for stability were unable to be met by the parents because Caden had "a mother with psychiatric problems and engaged in substance abuse; witnessing domestic violence; homelessness; instability of living arrangements; repeated and prolonged separation from mother; witnessing repeated episodes of maternal anger and emotional dysregulation; and lack of consistent access to protective factors such as reliable surrogate caregivers." (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 100.)

Nowhere in its opinion did the court of appeal say Caden should be freed for adoption because Mother failed to comply with her reunification service plan. The court of appeal appropriately

concluded the juvenile court abused its discretion in misunderstanding the question before it and improperly ignoring the only relevant expert evidence on the crucial issue in question. What the juvenile court failed to understand was that its duty was not to weigh the opinion of one expert testifying on the second prong (whether a beneficial relationship existed) against another expert testifying on the third prong (whether that relationship provided a compelling reason to prevent Caden's adoption). Instead, the juvenile court's duty was to weigh "the strength and quality of mother's relationship with Caden in a tenuous placement . . . against the security and sense of belonging adoption by Ms. H. would confer" (*In re Caden C., supra*, 34 Cal.App.5th at p. 105.) Only Dr. Lieberman offered an expert opinion on this issue, and the juvenile court completely ignored this evidence. The court of appeal thus did not err in concluding this case presented a very "rare" example of abuse of discretion. (*In re Caden C., supra*, 34 Cal.App.5th at p. 110.)

The court of appeal properly reviewed the juvenile court's decision for abuse of discretion. This Court should affirm the appellate court's determination that "no reasonable court could have concluded that a compelling justification had been made for forgoing adoption." (*In re Caden C., supra*, 34 Cal.App.5th at p. 115.)

II. TO MEET THE BENEFICIAL RELATIONSHIP EXCEPTION TO ADOPTION, A PARENT NEED NOT SHOW SHE HAS MADE PROGRESS IN ADDRESSING THE ISSUES THAT LED TO THE DEPENDENCY.

No case has held that a parent must show progress in addressing the problems that led to the dependency to establish the beneficial relationship exception. On this point, the caselaw is clear, and Caden agrees with his parents. Where Caden and the parents part company is on the question of what exactly the court of appeal held. The parents contend the court of appeal announced a new requirement: that a parent must demonstrate recent efforts to overcome the problems that led to the dependency in order to meet the parent's burden of proof to establish the beneficial relationship exception. (MOBM 45.) Mother asserts the court of appeal's decision, if affirmed, will render the beneficial relationship exception meaningless. (*Id.* at 58.) Caden disagrees.

The court of appeal did not add compliance with the reunification plan, or efforts to comply, as new requirements. The court of appeal merely pointed out, and correctly so, that the juvenile court's finding Mother was making efforts to comply was a finding wholly unsupported by the evidence. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 110.) No new requirement placing greater burdens on parents was enunciated. No such new rule is needed. Caden concurs with the parents that existing case law does not support such a new rule.

Beginning with the 1994 decision, *In re Autumn H.* (1994) 27 Cal.App.4th 567, no case has required a juvenile court to receive

evidence of a parent's successful efforts to reform her behavior in order to find the beneficial relationship exception to adoption applies. In other words, to defeat a recommendation that parental rights be terminated, the parent need not show compliance with a case service plan or success in overcoming problems, such as addiction, that led to the dependency. The beneficial relationship statute contains no such requirement, no case has construed the statute to necessitate such a showing, and the court of appeal did not require such evidence. (And as Mother points out, the fact that a child's case has progressed to the section 366.26 phase presumes the parent is unable to reunify.) (MOBM 56.)

Here, the court of appeal did *not* hold that a parent must show she has made progress overcoming her problems in order to meet her evidentiary burden of proof. Mother claims the court of appeal employed a "new philosophy" in Caden's case. (MOMB 45.) Mother identifies this new philosophy as having first been announced in *In re Michael G.* (2012) 203 Cal.App.4th 580 (hereafter (*Michael G.*) and *In re Noah G.*, *supra*, 247 Cal.App.4th 1292 (hereafter *Noah G.*) Mother interprets these cases as holding that a parent's "refusal" or "failure" to participate in reunification services or to complete a case plan prevented application of the beneficial relationship exception. (MOMB 44-45.) Mother asserts the First District in Caden's case "took this new philosophy that parental efforts at rehabilitation bear relevance to the applicability of the beneficial parent-child relationship exception to adoption one step further." (MOMB 45.)

Mother misreads the caselaw.

There was no “new philosophy” enunciated in *Michael G.* or *Noah G.* Neither case held that a parent’s progress on a case service plan is prerequisite for applying the beneficial relationship exception. Given that neither case enunciated that new approach, the court of appeal did not take an approach “one step further,” as Mother argues. (MOMB 45.) *Noah G.*, *supra*, did not hold that a parent’s ongoing substance abuse and failure to remedy the problems that led to the dependency are, in and of themselves, sufficient justification for finding the exception does not apply. Rather, it held the juvenile court may consider longstanding, unaddressed drug abuse as “evidence [that] continuing the parent-child relationship would not be *beneficial*.” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1304 (emphasis added).) Moreover, the case held that the juvenile court may conclude that “the evidence was insufficient to demonstrate [that] termination of the mother’s parental rights would be detrimental to the children.” (*Ibid.*)

In Caden’s case, the court of appeal’s decision did not hinge on Mother’s continued addiction or her noncompliance with the case plan. Rather, the court of appeal reasonably concluded that the evidence indisputably established that “the security and sense of belonging adoption by Ms. H. would confer” on Caden was in his best interest. Mother’s continued drug addiction and other behaviors spoke to “the strength and quality of mother’s relationship with Caden” as the opinion put it, but that did not impose any requirement that Mother show progress toward particular goals or reformed behavior. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 115.) The court of appeal considered the totality of the record, not just Mother’s unresolved addiction or her

untreated psychiatric problems, to determine whether Caden's overall relationship with Mother overcame the statutory presumption in favor of adoption.

Nothing suggests that the Legislature intended to restrict juvenile courts from considering the totality of the parent's current circumstances in evaluating whether to terminate parental rights. Common sense and universal human experience dictate that a parent's current drug addiction and untreated psychiatric illness interfere with parenting. These challenges can manifest as recent missed drug tests, refusal to enter treatment, failed treatment programs, and entrenched denial of drug addiction and mental health problems. These issues, combined with a pattern of conduct during visitation that derails a child's ability to settle into a stable foster home, are appropriate for consideration when deciding whether a relationship confers substantial benefit on a child.

Certainly, courts have permitted some parents to retain their parental rights, even though they are unable to overcome addiction, and rightfully so. The most hopelessly drug-addicted parent may still be able to visit a child in long-term foster care, as in a common scenario where a grandparent or extended family friend is raising the child.¹⁶ In that scenario, the parent can still "parent" the child during frequent and appropriate visits that are

¹⁶ Caden's caregiver, Ms. H., is a non-related extended family member ("NREFM") who has known Caden since he was four. Ms. H. was his original caregiver in Marin County at the start of the dependency, then became his caregiver again in 2014, then 2016, and visited Caden when he was returned for a time to Mother and during that period knew Caden's sister Naomi and two older brothers. (1CT 132, 2CT 578, 4CT 1043.)

appropriately conducted and that help maintain a child's stability and mental health. Such a parent may have continued involvement in a child's life in ways that support the child, despite the need to keep the child placed in a foster home. Such a parent may help the child grow to healthy adulthood. That is not Caden's parents. His parent continually acted in ways that undermined his placements. This fact, plus Mother's complete denial that her ongoing drug use made her an unfit parent, was central to the court of appeal opinion: Caden had no history of stabilizing in one continuous placement.¹⁷ (*In re Caden C., supra*, 34 Cal.App.5th at p. 114.)

The juvenile court had no factual basis for finding that Mother was making efforts to address her problems. Regardless, the law does not require a parent seeking to invoke the beneficial relationship exception to show any progress toward addressing the circumstances that led to the dependency. The court of appeal did not impose any such requirement. This Court should affirm the Court of Appeal's decision reversing the judgment of the juvenile court.

CONCLUSION

The court of appeal used the correct standard of review. The court properly reviewed for substantial evidence the juvenile court's factual findings as to visitation and the existence of a beneficial relationship. The court of appeal then correctly applied

¹⁷ The opinion quoted Mother's testimony at a hearing in 2017: "I don't get the fact that anyone can show me to be unfit because I use meth." (*In re Caden C., supra*, 34 Cal.App.5th at p. 112.)

the abuse of discretion standard to the juvenile court's decision to invoke the beneficial relationship exception and properly concluded that the juvenile court abused its discretion. The court of appeal properly refrained from requiring Mother to demonstrate she had made progress in overcoming the problems that led to Caden's removal, but correctly observed that there was no evidence placed before the juvenile court that supported its factual finding that Mother was making efforts to address her problems. This Court should hold that the hybrid standard of review applies to the beneficial relationship exception. The Court may wish to clarify that a parent need not demonstrate compliance with a case service plan to establish the beneficial relationship exception, while affirming the court of appeal's decision that the juvenile court abused its discretion.

Caden needs a prompt resolution of this appeal so he can obtain a new permanency hearing in juvenile court. He is now ten years old, has been the subject of child welfare investigations since he was 16 months old. He has been in foster care since he was four and has never known stability. At the end of the record, he was significantly behind academically and was in "special ed" classes. (1/22/18 220.)

No one disputes that Mother and Caden love one another. Caden has expressed his love for Mother, his longing to be with her and his preoccupation with Mother and her well-being. But love is not enough to keep Caden safe. Their unstable relationship over the course of many years has caused Caden anxiety, academic problems, and a diminished ability to form healthy attachments to foster caregivers because Mother aggressively criticizes his caregivers and social workers,

interferes with foster family life, and continually promises Caden he will be returning to her. (2CT 635–636, 711–714, 3CT 718, 814, 900; 4CT 963.) At the final hearing, Mother’s profound lack of insight was on full display. She testified she had never put Caden in harm’s way, she had been a good parent, she had conducted her well during visitation, she had not interfered in Caden’s foster placement instability (instead, she said, he had been abused by foster parents and she had tried to protect him from that abuse), and she said she had no mental health problems that had been a factor in Caden’s dependency status. (1/31/18 RT 648–649, 654, 656-658.) Unfortunately, Mother’s degree of denial and her history of disrupting Caden’s past foster placements predicts there is a high risk she will continue to undermine Caden’s future foster placements.

As Caden argued in the Court of Appeal, a substance abuser may have a very loving relationship with her child, but that does not mean the parent has the ability to provide the child “over the long term with a stable, safe and loving home environment.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 645; Minor’s COA Br. at p.51.) As the juvenile court was informed by the expert’s report, research has shown that early childhood exposure to the very adversities Caden experienced put children at “exponentially higher” risk for future psychiatric and medical problems, and for children exposed to such risk, safe and predictable caregiving is recommended. (Aug CT 77.)¹⁸

¹⁸ See, David E. Arredondo, M.D. and Hon. Leonard P. Edwards (ret.). *Attachment, Bonding, and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court*, 2 J. Center for Families, Child & Courts 109, at p. 6 (2000)

Caden at age seven described his Mother as “perfectly fine.” (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 101.) Children in foster care do not get to decide whether their parents are fine. The Court of Appeal got it right. Caden and Mother love one another, but their relationship is toxic. (*Id.* at p. 110.) Caden, now age ten, is finally stabilizing and thriving in a home that wants to adopt him.

Caden and the Agency join in asking this Court to reject the parents’ contentions that Mother established a beneficial relationship with Caden sufficient to justify a permanent long-term plan of foster care. This Court should swiftly affirm the Court of Appeal’s decision, so the juvenile court can hold a new hearing as soon as practicable, to determine what permanent plan best serves Caden’s needs in light of current evidence.

[“The developing cerebral cortex is exquisitely sensitive to external experiences. In other words, early childhood experiences in interaction with the outside world will, in part, determine the child’s subsequent capacities in the higher human faculties.”].

If this Court determines that the Court of Appeal erred by incorrectly articulating or applying the standard of review or by referring to evidence of Mother's lack of progress in overcoming her problems, this Court should transfer the case to the Court of Appeal with orders to modify its opinion pursuant to California Rules of Court, rule 8.500(b)(4).

Law Office of Deborah
Dentler

Respectfully submitted,

Dated: October 4, 2019

By: /s/_____

Deborah Dentler

Caden C., Minor Respondent

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **8,611** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.504(d) or by Order of this Court.

Dated: October 4, 2019

By: /s/ _____

PROOF OF SERVICE

In re Caden C., S255839

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the Law Office of Deborah Dentler in the County of Los Angeles, State of California. The business address is 510 So. Marengo Ave., Pasadena, California 91101. I am over the age of eighteen and not a party to the within action. On October 4, 2019, I served the foregoing document described as

RESPONDENT MINOR’S BRIEF ON THE MERITS

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows and/or by e-mailing a digital copy to the recipient’s authorized e-service address as follows:

[SEE SERVICE LIST, ATTACHED]

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the mail on October 4, 2019 at Pasadena, California.

(By EMAIL) I e-mailed an electronic copy on October 4, 2019 to the authorized e-service addresses shown.

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

By _____ /s/ _____

DEBORAH DENTLER

SERVICE LIST

In re Caden C. S255839

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San Francisco, CA 94102

Court of Appeal, First District, Division One
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