



## In re Julia V.

2005 | Cited 0 times | California Court of Appeal | October 19, 2005

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Kathleen P. appeals from an order terminating her parental rights to her daughters Julia V. and Mariah V. and selecting adoption as the permanent plan. (Welf. & Inst. Code, §§ 395, 366.26.)<sup>1</sup> She contends the juvenile court erred in failing to find that she came within the statutory exception to termination of parental rights in section 366.26, subdivision (c)(1)(A), demonstrating a benefit to the child from continuing the parent/child relationship. We disagree and affirm.

### BACKGROUND

On May 9, 2003, protective custody warrants were issued for the four-year-old girls, after their mother was arrested for an outstanding warrant and for being under the influence of a controlled substance. Mother had failed in her agreed participation in informal supervision services. In December 2002, she had agreed to a drug program assessment, random drug testing, a parenting class and counseling. She did not have a drug program assessment, she failed to appear at least 16 times for drug testing and her drug tests were positive on at least three occasions. In April 2003, mother's brother called the social worker to report that mother was a "big time methamphetamines and crank addict" and that she was neglecting her daughters. By the time of the detention hearing on May 14, 2003, mother was in custody due to her drug problems.

On May 13, 2003, the Santa Clara County Department of Family and Children's Services (DFCS or Department) filed juvenile dependency petitions asserting juvenile court jurisdiction under section 300 on behalf of the children. The petitions alleged that the children came within the provisions of section 300, subdivision (b) [Failure to Protect]. The petitions included allegations concerning both the mother's and the alleged father's histories of arrests and convictions for possession and being under the influence of controlled substances. Other allegations detailed the December 2002 referral to Child Protective Services for mother's neglect of the children due to drug use and an earlier referral in August 2002, as well as reported concerns from family members.

The children were detained on May 14, 2003.



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At the jurisdiction hearing on June 5, 2003, the juvenile court found the amended petitions were true, removed the children from mother's custody and temporarily placed them with the maternal grandfather and his wife, and ordered reunification services to both parents.

Mother was ordered into an inpatient rehabilitation program by the criminal court. She had an extensive drug history, and according to the report of the social worker, had been abusing drugs since she was 16. Mother entered a residential treatment program, Heaven's Gate Recovery Home, and was drug-tested weekly.

In July 2003, a family conference was held to develop a support plan for the parents and a permanent placement for the children if reunification failed.

The report prepared by the social worker for the six-month review hearing in December 2003 noted that mother was doing well in her residential program-she was enrolled in a parenting class, she was participating in a women's support group and her drug tests were negative. She had progressed to weekly unsupervised visits. The children were happy and excited to see her, and, according to the step-grandmother, they sometimes cried when mother brought them back home. At the six-month review hearing on December 11, 2003, father waived further reunification services. The court ordered continued services for mother.

In January 2004, mother had started to miss regular drug testing appointments. By March, she had relapsed at least once, testing positive for methamphetamines on March 9. Mother was going through a difficult time, due in part to her mother's death in February and her father's serious illness. Mother acknowledged that using drugs was the wrong choice, but the social worker recommended that unsupervised visits be suspended for 30 days, until mother consistently tested negative for drugs. Around May 1, the maternal grandfather died unexpectedly. The maternal step-grandmother was unable to take care of the children by herself, so Gina V., the maternal aunt, who had three children, agreed to take the children until the end of May. On May 26, the children were placed in a foster home. This required a supplemental petition pursuant to section 387 for change of placement, with a new jurisdiction/disposition hearing set.

In the report prepared for the combined 12-month review and supplemental petition, originally set for July 15, 2004, the Department recommended termination of mother's reunification services. Mother then requested a trial, which was eventually held in September 2004. The social worker's report detailed the mother's failure to make progress and the children's well-being. Although mother had taken some positive steps during her residential treatment, after she left that program, her drug tests were inconsistent, with many missed tests and dilute specimens from March to May 2004. Mother admitted she had been smoking marijuana to deal with the death of her mother and father, and she had not been attending her support group, Alcoholics Anonymous meetings, or parenting classes. The children were doing well in their foster family placement. They attended preschool and were healthy with no developmental or emotional problems. They had supervised visits with mother



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twice per week for two hours.<sup>2</sup> The social worker concluded that it was doubtful whether mother could regain custody of the girls even with more services. In describing mother's relapse, the social worker commented that during the recent adversity in mother's life from the death of her parents, she "failed to seek the help and appropriate ways to deal with the stresses." The social worker acknowledged the strong bond and love mother shared with the children, but recommended termination of reunification services.

In August 2004, mother failed to make a criminal court appearance, and a bench warrant was issued. At the time of the combined 12-month review/supplemental petition hearing in September 2004, she was in custody. At the hearing, the court adopted the social worker's recommendations, authorizing foster home placement for the children, terminating mother's reunification services, ordering supervised visitation once per week for two hours, and setting a hearing to select a permanent plan.

The permanency planning hearing, scheduled for November, was postponed to allow for another family conference and then set for trial in January 2005. The social worker prepared reports in November and December 2004 recommending a plan of adoption. The report described the children as healthy, mentally and emotionally stable, and developmentally on target. They were enjoying kindergarten and appeared to be very attached to their foster parents, who planned to adopt them. Although the children enjoyed their visits with mother, with whom they shared a parent-child relationship, according to the social worker, they were also very attached to the foster parents and called them mommy and daddy. When the social worker asked if they understood what adoption meant, one of the children said it meant they wouldn't get to see their mommy and daddy anymore. The children's therapist had reported to the social worker that the children were more bonded to each other than to their birth mother, and they were also attached to the foster parents. The social worker concluded that a permanent plan of adoption would better serve the children's best interests, because their birth parents could not offer them a stable and secure home.

The permanency planning hearing began on January 25, 2005. Mother was not present. The social worker's reports, as well as a report from Michael Gammino, the district attorney's licensed clinical social worker, were admitted into evidence. Three witnesses testified: all were social workers, qualified as experts in child development or assessment of permanent plans. All recommended a plan of adoption.

Tammy Greer was the social worker for the foster family agency, and in that role, had regular contact with the children in their foster family placement. She was recognized as an expert in child development. Greer testified that she observed a growing attachment between the children and the foster parents, including the children's statements of distress when they were told the foster mother needed to be away for a few days. When Greer discussed the possibility of the foster home being their "forever home," the children thought that was a good idea, even though they expressed some desire to live with their mother. Greer described a recent visit between the children and mother, after she had been released from jail, where mother's constant movements, intense behavior and rapid speech



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apparently caused some concern to the children. Greer feared mother was under the influence of drugs. Describing the children as attached to both their mother and the foster parents, Greer acknowledged it would be difficult, sad and painful for the girls to be permanently separated from their mother. But she believed their healthy attachment could be transferred to the new caretakers. She described the children as resilient and needing stability. Greer concluded that although terminating the girls' relationship with their mother would be difficult, there would be a long term positive result.

Lettie Ordone was the Department social worker who had prepared the reports for the hearing and, as the social worker for the children since June 2003, most of the previous reports. She also was qualified as an expert witness in the field of child development. Ordone testified that the children had made a positive adjustment to the foster home and had developed a parental bond with the foster parents. She believed that the children craved having a family relationship, and in the foster home, they were receiving the love, stability and trust that they needed. When Ordone talked to the children about being adopted, she noticed that they seemed to be focused on what they would be gaining rather than what they would be losing. She acknowledged that the children were attached to their mother and had a parent-child relationship with her. And she acknowledged there would be sadness and hurt if parental rights were terminated. But Ordone believed the children already had parental bonds with the foster parents and they would not suffer substantial harm if parental rights were terminated.

Michael Gammino, licensed clinical social worker for the district attorney's office, testified as an expert in assessment of permanent plans for dependent children. He had observed the children with their mother and with the foster parents. He testified that the children had a healthy attachment to their mother, but had an equal attachment to the foster parents. He believed that the "burgeoning relationship with the foster-adopt parents will compensate for the loss of the parental relationship with [mother]." He believed that the children would experience a significant amount of loss and grief, but with the support of their foster parents and counseling help for their emotions, there would not be long term difficulties. It was Gammino's opinion that the stability, structure, and reliability offered by the foster parents through adoption outweighed the detriment of terminating parental rights.

In making its statement of decision, the juvenile court acknowledged that this case presented a real issue in terms of the section 366.26, subdivision (c)(1)(A) exception. But the court also noted the case law reflects that the benefits, including stability and permanence, which come from adoption are considered paramount. In a lengthy explanation of its decision, the court stated: "All witnesses testified that the children do have a close relationship with their mother and are that they love her. They seem attached to her. And the court does not doubt that that relationship exists. And, in fact, despite the fact they visit her only two hours a week and have done so for quite a while, they seem to know who she is and they are excited to see her. They run up to her. They don't have trouble disengaging from her as happened very early when they were removed from her. So there is definitely



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a relationship there that the court has to give some weight to. [¶] But the weighing process that the court must engage in is whether the benefit to the children of maintaining that relationship in what is considered a tenuous-tenuous placement means a placement short of adoption. So is it beneficial for those children to maintain that relationship with their mother and placement that would not be an adoptive placement is that so important that it should prevent the children from having the stability and the permanence of adoption. [¶] And the court is going to find that the benefit to the children of maintaining their relationship with their mother is not [sic] outweighed by the benefit of permanency in an adoptive placement. . . . [T]his court takes very seriously the benefits of adoption for children, and especially given that these children have shown an ability to attach and have shown some real benefits since being placed in this permanent home after some very difficult change they had to go through. [¶] . . . The court is considering that the children will experience some grief and some sadness from termination of the relationship. I think all witnesses testified that that is in deed something we can expect. But with the assistance of counseling and with the nurturing and love they are receiving from the foster-adopt home . . . all of the witnesses agreed that the children would come out of that. . . . [T]he benefit of the relationship with their mother does not outweigh the tremendous benefit they will receive for the next 13 years in being in an adoptive home."

The court then followed the social worker's recommendations, terminated the parents' rights, and freed the children for adoption. Mother appeals.<sup>3</sup>

## DISCUSSION

Mother asserts that the trial court erred in terminating her parental rights because she came within the statutory exception provided in section 366.26, subdivision (c)(1)(A). Under that exception, if the court finds a compelling reason for determining that termination of parental rights would be detrimental to the child because the parent has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship, the court may avoid the statutory preference for adoption. (See § 366.26, subd. (c)(1)(A).)<sup>4</sup> Mother argues that even if the children cannot be returned to her custody, the parent-child bond she shared with them was significant enough to warrant not terminating parental rights. She also claims that the evidence the children would not benefit from continuing a relationship with her or would not be greatly harmed by the termination of that relationship was based on speculation, and thus was not sufficient.

The standards for our review of the juvenile court's order terminating parental rights are well established: "We review the factual basis of a termination order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find a factual basis for termination by clear and convincing evidence. [Citation.]" (In re Lukas B. (2000) 79 Cal.App.4th 1145, 1154.)<sup>5</sup> "[W]e presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]" (In re Autumn H., supra, 27 Cal.App.4th at p. 576.) Moreover, "[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve



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evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]" (In re L. Y. L. (2002) 101 Cal.App.4th 942, 947.)

To begin, "[a]doption, where possible, is the permanent plan preferred by the Legislature." (In re Autumn H., supra, 27 Cal.App.4th at p. 573.) As was noted by the court in In re Derek W. (1999) 73 Cal.App.4th 823, 826, "If the court finds that a child may not be returned to his or her parent and is likely to be adopted, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under one of four exceptions. [Citations.]" (See § 366.26, subd. (c)(1); see also In re Jose V. (1996) 50 Cal.App.4th 1792, 1798-1799.) The parent clearly has the burden to show that the statutory exception applies. (In re Tabatha G. (1996) 45 Cal.App.4th 1159, 1164.) In this case, mother has not been able to meet that burden.

Section 366.26, subdivision (c)(1)(A) provides an exception to the termination of parental rights if termination would be detrimental to the child because the parent has maintained regular visitation and contact and the child would benefit from continuing the relationship. The test for determining the applicability of this exception is whether "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., supra, 27 Cal.App.4th at p. 575.)

We have previously discussed this statutory exception in detail in In re Beatrice M.: "Although the kind of parent/child relationship which must exist in order to trigger the application of section 366.26, subdivision (c)(1)(A) is not defined in the statute, it must be sufficiently strong that the child would suffer detriment from its termination. In In re Autumn H., supra, 27 Cal.App.4th [at p.] 576 the Fourth Appellate District defined the 'benefit' from continuing such a relationship as follows: 'In the context of the dependency scheme prescribed by the Legislature, we interpret the "benefit from continuing the [parent/child] relationship" exception to mean 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., supra, 27 Cal.App.4th [at p.] 575.)" (In re Beatrice M. (1994) 29 Cal.App.4th 1411, 1418.)

As we further noted in In re Beatrice M., when reunification has not been accomplished in the time period allowed by statute, the focus of the dependency proceeding shifts to selecting the best permanent plan for the child, which is adoption if possible and unless there are specified exceptional





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circumstances. "We do not agree that frequent and loving contact with the [child] is sufficient to establish the 'benefit from a continuing relationship' contemplated by the statute." (In re Beatrice M., supra, 29 Cal.App.4th at p. 1418; see also In re Angel B. (2002) 97 Cal.App.4th 454, 468 [positive interaction alone does not demonstrate the requisite parental relationship].)

Although daily nurturing is the usual foundation of a parental relationship (In re Brittany C., supra, 76 Cal.App.4th at p. 854), daily contact is not always required. "A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction." (In re Casey D. (1999) 70 Cal.App.4th 38, 51.)

For the statutory exception in section 366.26, subdivision (c)(1)(A) to apply, the parent must show three factors: (1) that he or she has maintained regular visitation and contact with the child, (2) that the relationship is a parent/child relationship, and (3) 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. (See In re Autumn H., supra, 27 Cal.App.4th at p. 575.) Here, the social worker's reports showed that the mother visited regularly with the children, even at one point progressing to unsupervised visits before her drug relapse. In addition, the three testifying social workers, all recognized as expert witnesses in the field of child development or assessment of permanent plans, acknowledged that mother and children had a parent/child relationship. But all three of the social workers concluded that adoption was the best plan for the children and that the detriment suffered from the loss of a positive relationship with mother did not outweigh the benefits of a permanent adoptive home. Greer, Ordone and Gammino all opined that the security and sense of belonging a permanent home and new adoptive family would confer outweighed the strength and quality of the natural parent/child relationship in an insecure placement. (See In re Autumn H., supra, 27 Cal.App.4th at p. 575.) The social workers agreed that the children would probably suffer grief and sadness, but all three believed that severing the natural parent/child relationship would not deprive the children of substantial, positive emotional attachments such that they would be "greatly harmed." (Ibid.)

Mother complains that the social workers' opinions, on which the juvenile court based its decision, were grounded in speculation as to the harm to the children if mother's rights were terminated, and thus cannot be the foundation for the determination that the statutory exception did not apply. She insists that the social workers' opinions underestimated the importance to the children of their mother with whom they shared a substantial, positive emotional attachment. She further points out that no evidence was offered to show that necessary counseling would be provided to the children, as such an order would be beyond the purview of the court after the children were adopted. (See In re Amber M. (2002) 103 Cal.App.4th 681, 690-691.) In addition, mother questions whether these particular children, who were emotionally dependent on her for their resilience during their various placements, would react in the same way as other children who did not have as strong a relationship with a birth parent, but flourished when they were placed for adoption.



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We understand mother's argument that predictions about the children's reaction to the loss of a relationship with her were in part speculative. But the task for all social workers and juvenile courts confronting issues of placement and permanent plans for dependent children is always fraught with speculation and predictions about future events, behavioral adaptability, and family and child development. Juvenile courts must make decisions about the future for the children involved no matter what permanent plan is selected. They receive guidance from qualified experts whose predictions are based on experience, expertise, and knowledge of the specific children and families involved. Here, the juvenile court heard extensive testimony from three qualified experts who all reached the same conclusion-that the detriment to these particular children of the loss of their parental relationship with their mother was outweighed by the well-being they would gain in a permanent, adoptive home.

As noted above, adoption is the permanent plan preferred by the legislature. (In re Autumn H., *supra*, 27 Cal.App.4th at p. 573.) We explained in the case of In re Brittany C.: "Where a biological parent, such as appellant, is incapable of functioning in that [parental] role, the child should be given every opportunity to bond with an individual who will assume the role of a parent. . . . [Citations.] To hold otherwise would deprive children of the protection that the Legislature seeks to provide. (§§ 300, 366.25, subd. (a), 366.26, subd. (b).)" (In re Brittany C., *supra*, 76 Cal.App.4th at p. 854.)

It bears emphasizing that the Legislature requires the court "to find not only that one of the listed circumstances [in section 366.26, subdivision (c)(1)] exists, but also that it provide `a compelling reason for determining that termination would be detrimental to the child.'" (Stat. 1998, ch. 1054, § 36.6.) This amendment . . . makes it plain that a parent may not claim entitlement to the exception provided by subdivision (c)(1)(A) simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (In re Jasmine D. (2000) 78 Cal.App.4th 1339, 1349.) "[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (Id. at p. 1348.) "Thus, a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." (Id. at p. 1350.)

Mother supports her position with the recent case of In re Amber M., *supra*, 103 Cal.App.4th 681, where the reviewing court reversed the juvenile court order terminating parental rights. The Amber M. court concluded that the juvenile court erred by declining to apply the section 366.26, subdivision (c)(1)(A) exception where the mother maintained regular visitation and contact with the children and the children would benefit from continuing the relationship. But in Amber, the mother presented specific evidence from the children's therapist, from a bonding expert and from the court-appointed special advocate (CASA), who all opined it would be detrimental to terminate parental rights. The mother in Amber had successfully completed a residential substance abuse program and other





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programs, and had remained clean and sober for nearly a year. (In re Amber M., supra, 103 Cal.App.4th at pp. 685, 690.)

In the present case, mother presented no evidence apart from the testimony of the social workers, who all agreed that she had a parental bond with the children but who all concluded that the benefits of adoption outweighed the harm from termination of parental rights. Moreover, mother had not completed her reunification plan nor solved her substance abuse problems.

In her reply brief, mother cites two cases to establish the legal inadequacy of an unsupported opinion of a social worker for adoption as the best plan. But those cases are readily distinguishable: in In re Brian P. (2002) 99 Cal.App.4th 616, the Department submitted no adoption assessment report, so the court had little information as to why a child facing many difficult challenges was considered adoptable. In In re Asia L. (2003) 107 Cal.App.4th 498, the social worker identified no adoptive family nor offered any evidence in support of the recommendation of adoptability for children with recognized problems who would require special placement.

We also reject mother's assertion that the juvenile court improperly justified termination of her parental rights by her inability to reunify and regain custody of her children and by the foster parents' suitability and their rejection of a plan of guardianship. The "juvenile court must engage in a balancing test, juxtaposing the quality of the relationship and the detriment involved in terminating it against the potential benefit of an adoptive family." (In re Clifton B. (2000) 81 Cal.App.4th 415, 424-425.) Moreover, "The Legislature has decreed . . . that guardianship is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most permanent and secure alternative that can be afforded them." (In re Beatrice M., supra, 29 Cal.App.4th at p. 1419.)

In this case, mother failed to prove that the statutory exception should apply. It was acknowledged that she had a parent/child relationship with the children. But she offered no separate evidence in opposition to the social workers' conclusions that the detriment the children would suffer was outweighed by the benefits of adoption. "[E]ven if a child loves his or her parents, the court may nonetheless terminate parental rights if doing so is in the child's best interests. (§ 366.26, subd. (h).)" (In re L. Y. L., supra, 101 Cal.App.4th 942, 955.)

The juvenile court appropriately considered the benefits to the children of the more stable, secure placement and concluded they outweighed any detriment from the termination of parental rights.

At this point in the proceedings, the children's need for stability and a functioning parent as well as their entitlement to a permanent secure home are paramount. (See In re Beatrice M., supra, 29 Cal.App.4th at p. 1419.) Moreover, mother has failed to prove a compelling reason for determining that termination of parental rights would be detrimental to the children. (§ 366.26, subd. (c)(1)(A).) In these circumstances, we find no error.



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As a final argument, mother asserts that the termination of her parental rights without substantial evidence violates due process. (See *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242.) As we have concluded that substantial evidence supports the juvenile court's determination, we find no due process violation.

### DISPOSITION

The order appealed from is affirmed.

WE CONCUR: Bamattre-Manoukian, Acting, P.J., McAdams, J.

1. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.
2. It was noted that mother brought the girls' father to one of the visits.
3. The district attorney has filed a separate respondent's brief on behalf of the children, supporting the juvenile court's decision.
4. Section 366.26, subdivision (c)(1) reads in pertinent part: "If the court determines . . . that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding . . . that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."
5. A juvenile court's decision on placement is reviewed under the abuse of discretion standard. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) However, when considering the applicability of the beneficial parental relationship exception, courts generally use the substantial evidence review standard. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, *In re Brittany C.* (1999) 76 Cal.App.4th 847.) In this particular context, "evaluating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. [Citations.]" (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

