

S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

SUPREME COURT
FILED

San Francisco Human Services Agency,
Plaintiff and Appellant,

DEC 12 2019

v.

Jorge Navarrete Clerk

Christina C. et al.,
Defendants and Respondents.

Deputy

Court of Appeal Case Nos. A153925, A154042 (First Dist., Div. One)
Superior Court Case No. JD153034 (County of San Francisco)
Hon. Monica F. Wiley

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND [PROPOSED] BRIEF OF CHILDREN'S LAW CENTER OF
CALIFORNIA, LEGAL ADVOCATES FOR CHILDREN AND
YOUTH, AND CHILDREN'S LEGAL SERVICES OF SAN
DIEGO

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF ON BEHALF OF CHILDREN’S LAW CENTER OF
CALIFORNIA, LEGAL ADVOCATES FOR CHILDREN AND
YOUTH, AND CHILDREN’S LEGAL SERVICES OF SAN
DIEGO

Children’s Law Center of California, Legal Advocates for Children and Youth, and Children’s Legal Services of San Diego respectfully request leave to file the attached brief as *amici curiae*. (Cal. Rules of Court, rule 8.520(f).)

Amicus Children’s Law Center of California is a non-profit public interest law firm that serves as appointed counsel for the over 33,000 abused and neglected children under the jurisdiction of the juvenile dependency courts in Los Angeles, Placer, and Sacramento counties. Children’s Law Center of California’s goal is to ensure that our clients have an effective voice and ability to actively participate in all aspects of the legal process, while viewing children within the context of their families and the desire for all children to have loving permanent relationships.

As the largest legal services organization in the nation representing children in dependency proceedings, Children’s Law Center of California has a substantial interest in protecting and

promoting the safety, permanency, and wellbeing of children in foster care. Children’s Law Center of California employs over 400 attorneys, paralegals, and social work investigators committed to advocating for the rights and interests of children in the juvenile dependency system. In addition, CLCCAL represents foster youth as minor or non-minor parents in the dependency cases involving their children.

Children’s Law Center of California also engages in legislative and administrative advocacy at the federal, state, and county levels to promote reforms in the laws, policies, and public agencies affecting children, youth, and families in the foster care system. Children’s Law Center’s systemic advocacy efforts are founded in the day-to-day challenges and experiences of the thousands of individual clients spanning the twenty-nine years that the Center has represented children in foster care.

Amicus Legal Advocates for Children and Youth (“LACY”) is a program of the Law Foundation of Silicon Valley, the largest nonprofit legal services provider in Santa Clara County. LACY provides free and confidential legal services to children and youth in a variety of matters, including juvenile dependency and family

law. LACY's mission is to advance the legal rights of children and youth, empowering them to lead healthy and productive lives. We listen to, advise, and advocate for disadvantaged children and youth to ensure their voices are heard and their rights are protected.

LACY provides legal services through a multi-disciplinary model that employs over 30 attorneys and social workers. LACY serves approximately 2500 clients on an annual basis and represents approximately 90% of the youth in Santa Clara's juvenile dependency system. Resolution of the questions at issue in this case is relevant to our work as children's attorneys and important to our clients.

Amicus Children's Legal Services of San Diego ("CLSSD") is a non-profit interdisciplinary legal organization that represents abused and neglected children in San Diego County in their dependency proceedings before the juvenile court. CLSSD protects and defends the rights of children and youth in the child welfare system through high-quality and compassionate legal representation. CLSSD employs a client-centered holistic approach to zealously advocate for our clients' interests. CLSSD

works collaboratively with others inside and outside of the San Diego juvenile court system to achieve long term stability either by family reunification or legal permanence with substitute caregivers.

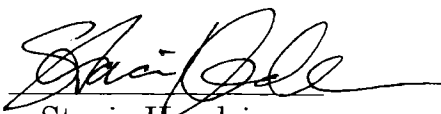
This case raises important questions regarding which standard of review governs appellate review of the beneficial parental relationship exception to adoption under Welfare and Institutions Code section 366.26 and the relevance that parental efforts at rehabilitation bear to the application of the exception. Therefore, the proper resolution of this matter is of significant concern to the clients of Children's Law Center of California, Legal Advocates for Children and Youth, and Children's Legal Services of San Diego. Based on *amici's* day-to-day advocacy for children in foster care in five separate counties across California, and their advocacy regarding policy at a systemic level, *amici* can provide a valuable and unparalleled child-centered perspective that would be helpful to this Court in deciding the important issues presented in this case.

Granting leave to file the attached *amicus* brief would not delay or complicate the proceedings in this case. The parties

would have ample time to respond to the points discussed in this brief before oral argument. No party or counsel for any party has authored the attached proposed *amicus* brief in whole or in part or funded the preparation of the brief.

Dated: November 22, 2019

Respectfully Submitted,

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ISSUES PRESENTED

1. What standard of review governs appellate review of the beneficial parental relationship exception to adoption?
2. Is a showing that a parent has made progress in addressing the issues that led to dependency necessary to meet the beneficial parental relationship exception?

INTRODUCTION

The central question this case presents is how best to evaluate a child's relationship with his or her natural parent, giving due weight to the importance of the parent-child bond while maintaining focus on the child's right to a safe, stable, permanent home. Where those two interests intersect is the core of the beneficial parental relationship exception to adoption, which provides, in exceptional circumstances, a way to continue a parent-child relationship if it is vital to the child's well-being.

This brief argues that the hybrid standard of review most accurately captures how a reviewing court should consider a trial court's findings and orders regarding the exception. This *amicus* brief further explains the important legislative history and majority of case law that show that the heart of the beneficial relationship exception is the strength of the relationship and not what progress, if any, a parent has made toward reunification. Finally, this brief argues that the Court of Appeal centered its ruling on whether the relationship between Caden and his mother provided a compelling reason to forego the life-long benefits of his adoption.

ARGUMENT

I) THE HYBRID ANALYSIS OF THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION TO ADOPTION IS THE MOST APPROPRIATE STANDARD OF REVIEW.

The primary objective of the dependency court system is to protect abused or neglected children, to preserve and strengthen family ties, and to provide stable and permanent homes for children who are unable to return home within the statutorily prescribed time periods. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; Welf. & Inst. Code § 202, subd. (a).) At the Welfare and Institutions Code¹ section 366.26 hearing, the juvenile court must choose a permanent plan for a child. (§ 366.26, subd. (b)(1).) It is the section 366.26 hearing that is specifically designed to protect a child's compelling right to a stable and permanent placement. (*In re Celine R.* (2003) 31 Cal.4th 45, 53-54; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 306.) The Legislature has directed that, unless one of the enumerated exceptions applies, the juvenile court shall terminate parental rights and order the child placed for adoption if it finds, by clear and convincing evidence, that "it is likely that the child will be adopted." (§ 366.26, subd. (c)(1).)

The beneficial parental relationship exception to adoption requires the juvenile court to find that (1) a parent has "maintained regular visitation and contact with the child", (2) the child would benefit from continuing the relationship with the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

parent and (3) there is a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B)(i).) In 1994, the Fourth Appellate District of the California Court of Appeal first developed a test for the application of the beneficial parental relationship exception with the publication of *In re Autumn H.* (1994) 27 Cal.App.4th 567 (“*Autumn H.*”). The *Autumn H.* court held once the trial court made findings of fact with regard to regular visitation and the existence of a beneficial relationship, the test required the trial court to balance the benefit and strength of the parental relationship against the benefits of a permanent home through adoption. (*Id.* at 575.) Most courts have followed what is known as the “*Autumn H.* test” when analyzing the beneficial parental relationship exception. (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2019) § 2.171[5][b][ii], pp. 2-634 - 2-641.) The *Autumn H.* court reviewed each prong of the test for substantial evidence. (*Id.* at pp. 575-576.)

A) The Standards Of Review Defined.

The substantial evidence standard involves a thorough review of the facts supporting a trial court’s decision and requires more inquiry into the trial court’s factual findings. For example, due to the extensive factual findings underpinning jurisdictional and dispositional orders, those orders are commonly reviewed for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1160-1161.) An appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the

findings or orders of the trial court. (*Id.* at p. 1162.) The Court of Appeal reviews to determine whether there was evidence that was “reasonable, credible, and of solid value” as the basis for the trial court’s decision. (*Id.* at p. 1161.) The reviewing court cannot pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or re-weigh the evidence; the court simply must draw all reasonable inferences in support of the findings and views the record in favor of the juvenile court’s order. (*Id.* at pp. 1161-1162.) Even if there is contrary evidence, if substantial evidence supports the juvenile court’s order, the reviewing court must affirm. (*Id.* at p. 1162; *In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

Abuse of discretion is considered the most deferential standard of review. It requires the reviewing court to determine whether the trial court “exceeded the bounds of reason.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*Ibid.*) Abuse of discretion has often been used when reviewing custody determinations. (*Ibid.*; see also *In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1288 [granting custody to non-custodial parent under section 361.2]; *In re A.R.* (2015) 235 Cal.App.4th 1102, 1117 [removal pursuant to section 388 motion].) In determining whether a trial court abused its discretion, Courts of Appeal must review the court’s decision within the statutory context in which the court’s decision was made. (*In re Jaden E., supra*, 229 Cal.App.4th at pp. 1288-1289

[terminating mother's services was not an abuse of discretion when viewed in light of section 361.2 because the child was residing safely with his non-custodial father].)

The hybrid standard of review, as employed in the context of the beneficial parental relationship exception to adoption, combines the substantial evidence standard and the abuse of discretion standard. Under the hybrid standard, the Court of Appeal reviews whether the parent has regularly visited and the existence of a beneficial relationship for substantial evidence because both are primarily quantifiable, factual issues. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315 (“*Bailey J.*”); *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re E.T.* (2018) 31 Cal.App.5th 68, 76; *In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, No. S255839, 249 Cal.Rptr.3d 520.) The third prong of the test is reviewed for abuse of discretion. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

The *Bailey J.* court reasoned that the first two prongs of the *Autumn H.* test are fact-based inquiries and thus the substantial evidence standard is most appropriate. (*Ibid.*) “[A] challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts establish the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Id.* at p. 1314; citing to *In re I.W.* (2009) 180 Cal.App.4th 1517, 1529.) The last prong of the test, whether there is a compelling reason to not terminate

parental rights due to the beneficial relationship, is, as the *Bailey J.* court described, a “quintessentially discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child in adoption.” (*Ibid*; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.)

B) The Predominate Standard Of Review For Section 366.26 Hearings By The California Courts of Appeal Before 2010 Was The Substantial Evidence Standard.

Courts of Appeal across California have differed in their application of the standard of review for a beneficial parental relationship exception to adoption. Most of the early cases favored the substantial evidence standard, while others selected the abuse of discretion standard.

The First, Third, and Sixth Districts rarely published cases regarding the beneficial relationship exception to adoption before 2010. In the First District, there was no clear early trend. (See *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1198 [denial of bonding study to prove parent-child bond was not an abuse of discretion]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1342 [abuse of discretion is appropriate standard of review for a section 366.26 hearing].)² No published cases could be found

² The Court of Appeal chose abuse of discretion as the standard of review because, in its view, the Court was deciding “custody,” a matter that is typically reviewed for abuse of discretion. (*In re In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 342.) As explained

before 2010 in the Third District. The Sixth District cases primarily used the substantial evidence standard. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418; *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.)

The Second District relied almost exclusively on the substantial evidence standard from 1992 until approximately 2012. (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 851; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1533-1534; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642); but see *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1155-1156 [substantial evidence supported court's finding of adoptability but court "did not err" in finding the beneficial parental relationship exception did not apply]; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449 [abuse of discretion].)

Likewise, the Fourth District used substantial evidence as the appropriate standard from approximately 1994 to 2010. (*Autumn H., supra*, 27 Cal.App.4th at p. 575; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811-812; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207; *In re L.Y.L., supra*, 101 Cal.App.4th at p. 947; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; *In re Christopher L.* (2006) 143 Cal.App.4th 1346, 1333-1334; *In re Mary G.* (2007) 151 Cal.App.4th 184, 206; *In re Helen W.* (2007) 150 Cal.App.4th 71,

below in Section II of this *amicus* brief, section 366.26 hearings do not determine custody of a dependent child and therefore the comparison to custody cases is misplaced. (See also Seiser & Kumli, *supra*, § 2.171[5][b][ii][A], p. 2-632.)

81; *In re S.B.*, *supra*, 164 Cal.App.4th at pp. 297-298; *In re Jason J.* (2009) 175 Cal.App.4th 922, 938.)

The Fifth District analyzed the beneficial relationship exception in 1992 and appears to have used both substantial evidence and abuse of discretion. (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 851 [“The issue on review will then become whether this implicit finding is supported by substantial evidence; that is, whether the juvenile court abused its discretion”].) However, the opinion cites to *In re Albert B.* (1989) 215 Cal.App.3rd 361, 375 in support of the chosen standard of review, a case that uses substantial evidence as the standard of review. (*In re Jesse B.*, *supra*, 8 Cal.App.4th at p. 851.) Later, the Fifth District used the abuse of discretion standard in *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, holding the juvenile court did not abuse its discretion because there was “no evidence” the child would benefit from continuing the relationship and thus, no court could have reasonably made a different decision than termination of parental rights. (*Id.* at pp. 1342-1343.)

C) In 2010 An Emerging Trend Among The Courts Of Appeal Was The Hybrid Standard Of Review.

The first Court of Appeal to clearly recognize a hybrid standard of review was the Sixth District. (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315 [observing that the ways in which a court analyzes the test enumerated in *Autumn H.* logically requires a mix of both the substantial evidence standard and the abuse of discretion standard].) Within days of the *Bailey J.*

decision, another Sixth District Court of Appeal case identified the abuse of discretion standard as the correct standard of review but employed a substantial evidence standard for review of the juvenile court's "findings of fact." (*In re C.B.* (2010) 190 Cal.App.4th 102, 122-123.)

Thereafter, courts in various districts began using the hybrid approach to cases involving the beneficial relationship exception to adoption. Following the reasoning in *Bailey J.*, Courts of Appeal in the First, Second, and Fourth districts favored the hybrid approach for reviewing the beneficial parental relationship exception. (*In re E.T.*, *supra*, 31 Cal.App.5th at p. 76 (First Dist.); *Caden C.*, *supra*, 34 Cal.App.5th at pp. 106-107 (First Dist.); *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622 (Second Dist.); *In re J.C.* (2014) 226 Cal.App.4th 503, 530-531 (Fourth Dist.); *In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 (Fourth Dist.); *In re Collin E.* (2018) 25 Cal.App.5th 647, 663 (Fourth Dist.); see also *In re J.S.* (2017) 10 Cal.App.5th 1071, 1080 (Fourth Dist.) [finding the hybrid standard appropriate for review of a sibling bond exception case under § 366.26, subd. (c)(1)(B)(v)].)

However, during the same period some Courts of Appeal continued to use the substantial evidence standard. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642 (Second Dist.); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 and fn.7 (Second Dist.); *In re I.R.* (2014) 226 Cal.App.4th 201, 211 (Third Dist.)) Other opinions did not choose a standard, but decided that based on any standard of review, the decision of the court would have been the

same. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 470 (Second Dist.); *In re C.F.* (2011) 193 Cal.App.4th 549, 557 (Fourth Dist.); *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300-1301 (Second Dist.).)

There are three outlier cases that used a different hybrid approach based who has the burden of proof for the beneficial parental relationship exception. The Courts of Appeal in these cases held that if the parent failed to prove the first two prongs of the *Autumn H.* test at trial, the Court of Appeal reviews only whether the evidence compels a finding in favor of the parent as a matter of law. (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 781-782 (Second Dist.), citing both *In re Breanna S.* (2017) 8 Cal.App.5th 636 (Second Dist.) and *In re I.W.*, *supra*, 180 Cal.App.4th 1517, 1528 (Sixth Dist.).) As to the third prong of the test, whether the benefit the child derives from preserving the parental relationship outweighs the benefits achieved by adoption, the Courts reviewed for abuse of discretion. (*In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 782; see also *In re J.S.*, *supra*, 10 Cal.App.5th at p. 1080; *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.)

D) The Hybrid Standard Is Most Appropriate In Light Of The Stage Of The Proceedings And The Purpose Of The Section 366.26 Hearing.

The section 366.26 hearing is a result of the juvenile court taking jurisdiction based on sustained allegations of abuse and/or

neglect, removing the child under a clear and convincing evidence standard of risk, providing reunification services that ultimately failed (or in some narrowly defined set of cases, denying reunification services at disposition), and setting a section 366.26 hearing to select a permanent plan for the child. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 247-250 (“*Cynthia D.*”) [reviewing the newly adopted statutory scheme from detention to selection and implementation of a permanent plan]; see §§ 360, 361, 361.5, 366.21, 366.22, 366.26.)

By the time of the section 366.26 hearing, the juvenile court should have a detailed understanding of the case, the child, the family, and the family dynamics leading up to the section 366.26 hearing. (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) The juvenile court receives reports at each hearing from the child welfare agency regarding the child’s well-being, as well as visits with parents. (See *id.* at p. 575; § 366.1.) Children’s counsel presents the wishes of the child and advocates for the child’s interest based on their requirements to conduct an independent investigation under section 317, subdivision (e). (*In re Josiah Z.* (2005) 36 Cal.4th 664, 675, citing *In re Zeth S.* (2003) 31 Cal.4th 396, 414; *In re Kristen B.* (2008) 163 Cal.App.4th 1535, 1541; § 317, subds. (c)(1) & (2); § 317, subds. (e)(1) – (3).) Lastly, the juvenile court observes the child and parent in court over the length of the case, assesses their demeanor, and evaluates the child’s bond with the parent first-hand. (*Autumn H., supra*, 27 Cal.App.4th at p.575.)

Whether a parent has maintained regular contact and visitation is a measurable factual determination made by the trial court. Likewise, whether a beneficial relationship exists between the parent and child may be quantified by the evidence, looking at such evidence as the length of visits, the observed interaction between parent and child, the observed emotional state of the child(ren), and the documented statements of the children. All of these facts are reviewable evidence that the Court of Appeal can and should review for substantial evidence.

However, the last prong of the test, whether the beneficial relationship with the parent outweighs the benefits of a stable, adoptive home, calls for the trial court to weigh the *importance* of the parental relationship in that individual child's life, with all the past case history and personality of the child in mind. (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.) It is a discretionary decision based on facts that are difficult to quantify because they go to the intangible quality and strength of the relationship that only the trial court witnesses first-hand. The juvenile court is balancing this strength of bond between a parent and child who have been under the court's purview against the strength and benefit of a secure, stable, life-long home. The effect and amount of detriment a child may face should parental rights be terminated is difficult to quantify. The reviewing court should, therefore, utilize greater deference to the trial court when evaluating the juvenile court's findings on whether the parent-child relationship provides a compelling reason to decline to

terminate parental rights and order adoption as the permanent plan.

II) A PARENT'S PROGRESS IN ADDRESSING THE ISSUES LEADING TO ORIGINAL COURT JURISDICTION ARE NOT AN ISSUE AT THE SECTION 366.26 HEARING AND REQUIRING SUCH WOULD DESTROY THE VERY PURPOSE OF THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION.

In 1982, California adopted several new statutes designed to protect children and families, provide services to keep children in their homes, and to provide for permanency hearings if reunification efforts failed. (*Cynthia D.*, *supra*, 5 Cal.4th at p. 246.) This was in response to new federal laws mandating that states who receive foster care funding enact legislation that would ensure active efforts are made to maintain abused or neglected children in their family homes if possible, to reunify families if removal was needed to provide for children's safety, and to select a permanent plan in a timely fashion. (*Ibid.*)

One of these new statutes was section 366.25, which required the juvenile court to determine whether the child could be returned to a parent and if not, to select a permanent plan of adoption, legal guardianship, or long-term foster care. (*Ibid.*; *In re Jesse B.*, *supra*, 8 Cal.App.4th at p. 849 & fn.4.) This section of the statute required the juvenile court to select adoption if it was likely the child would be adopted, unless an exception applied, the first of which was that the "parent maintained regular

visitation and contact with the minor and the minor would benefit from that relationship.” (*In re Jesse B.*, *supra* 8 Cal.App.4th at p. 849, fn. 4.) At that time, a petition to terminate parental rights and order adoption was filed under Civil Code section 232 in an entirely separate proceeding, leading to lengthy delays in permanency. (*In re Micah S.* (1988) 198 Cal.App.3d 557, 564 (concurring opn.) [noting still lengthy delays in adoption proceedings because California had a separate civil code statute and process for initiating proceedings to terminate parental rights and complete the adoption process].)

Therefore, in response to growing concerns about inadequate efforts at reducing government intervention into families, inadequate family reunification efforts, and continued delays in permanency for children in foster care who could not reunify with their parents, the California Legislature ordered, in 1986, a task force to propose comprehensive changes to California child abuse reporting statutes, child welfare services, and dependency court proceedings. (*Cynthia D.*, *supra*, 5 Cal.4th at p. 246-47; see also, *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 303.) The Senate Select Committee on Children and Youth SB 1195 Task Force (“Senate Select Committee”) authored a comprehensive report and new statutory language to address problems in child welfare law: namely, to provide specific reasons a juvenile court may take jurisdiction and to provide for a swifter resolution of permanency for children who do not reunify. (Sen. Select Com. on Children and Youth SB 1195 Task Force Rpt. on Child Abuse

Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services (Jan. 1988) pp. ii, 2-7 (“Task Force Report”).)

The Senate Select Committee authored SB 243, which created the current statutory scheme in both sections 300 and 366.26. (*Cynthia D.*, *supra*, 5 Cal.4th at p. 247; Task Force Report at p. i.) The new statutory scheme provided that petitions for termination of parental rights and orders for the commencement of adoption proceedings were to be heard by the juvenile dependency court under the new section 366.26 and would no longer be a separate proceeding under Civil Code section 232. (Stats. 1987, ch. 1485, p. 5598; *Cynthia D.*, *supra*, 5 Cal.4th at p. 247; Task Force Report at pp. 10-11.) The language of the new section 366.26 selection and implementation hearing mirrored the previous statutory language in section 366.25 regarding the beneficial parental relationship exception, and was then codified under section 366.26, subdivision (c)(1)(A):³

“[the prior findings denying or terminating reunification services] are a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the

³ Initially adopted in 1988, section 366.26, subdivision (c)(1)(A) was the designation for the beneficial parental relationship exception. (Stats. 1987, ch. 1485.) It remained under this statutory provision until 2007, when the Legislature amended the statute and renumbered the exceptions to adoption. (Stats. 2007, ch. 583.) The beneficial parental relationship exception was then renumbered under section 366.26, subd. (c)(1)(B)(i). There was no change in the statutory language at that time. (*Ibid.*)

minor would benefit from continuing the relationship.
[...]"
(Stats. 1987, ch. 1485 (SB 243).) The statutory language of the first part of the beneficial parental relationship exception was amended slightly by the Legislature in 1998. The change read, in relevant part, that the court shall terminate parental rights unless [...] the "court finds a compelling reason for determining that termination would be detrimental to the child" due to one of the enumerated circumstances. (Stats. 1998, ch. 1054; § 366.26, subd. (c)(1)(B)(i); Deering's California Codes Annotated, Cal. Wel. & Inst. Code § 366.26.) Courts interpreted this change as confirmation that the balancing test first espoused in *Autumn H.* was appropriate. (*In re Logan B.* (2016) 3 Cal.App.5th 1000, 1011-1013; *In re Jasmine D. supra*, 78 Cal.App.4th at p. 1349.) Thereafter, the statutory language remained unchanged. (Deering's California Codes Annotated, Cal. Wel. & Inst. Code § 366.26.)

Section 366.26, generally, was written to provide a more efficient means to reach permanency for children who would otherwise languish in foster care limbo, while providing procedural safeguards for parents given the intense intrusion into the constitutional rights of the family. (Task Force Report at pp. 3, 11.) While the new termination statute was intended to provide permanency in a timelier fashion, the committee reiterated its intent to recognize the need for some children to remain connected to their parents and to forgo termination of parental rights. (Task Force Report at p. 11.) Termination would be "impermissible" if it would be "detrimental to the child due to

the strength of the parent-child relationship.” (*Ibid.*) The Senate Select Committee wrote:

“There is substantial clinical evidence that some children in foster care retain very strong ties to their biological parents. Since termination in such situations is likely to be harmful to the child, courts should retain parental ties if desired by both the parents and the child[.]”

(Task Force Report at p. 11.) It is clear from the plain language of the statute and the Task Force Report that the focus is solely on the relationship between the parent and the child, and not the parent’s ability to rehabilitate or provide a safe home. (*In re Jesse B.*, *supra*, 8 Cal.App.4th at fn. 4; Task Force Report at p. 11.) Given this background, the Legislature clearly did not intend the beneficial parental relationship exception to contain a requirement of recent progress toward alleviating the causes of the dependency proceedings.

Furthermore, the current dependency scheme presumes that the parent’s problems that lead to the initial taking of jurisdiction have not been resolved by the parent by the time the child has a section 366.26 hearing. (*In re Edward R.* (1993) 12 Cal.App.4th 116, 125-126; Task Force Report at p. 1-2, 7, 10-11.) Once a child has been adjudged a dependent child, parents are afforded, under most circumstances, reunification services reasonably designed to allow for the safe return of the child to his or her parent. (§ 360, subd. (d); § 361.5, generally.) Review hearings were established to check the parent’s progress and give parents the presumption of return to the family home unless the

agency proves, by a preponderance of the evidence, that return would create a substantial danger to the child's physical or emotional well-being. (*Cynthia D.*, *supra*, 12 Cal.App.4th at pp. 247-250; §§ 366.21, subd. (e), 366.21, subd. (f), 366.22.) Thus, by the time of the selection and implementation hearing, parents' reunification efforts have already been deemed inadequate by the juvenile court and were terminated at a prior review hearing. (§ 366.26, subd. (c); *Cynthia D.*, *supra*, 12 Cal.App.4th at pp. 249.)

The plain language of the statute prohibits the contemplation of reunification, or a parent's progress, at the selection and implementation hearing. (§ 366.26, subd. (c)(1).) The statute explicitly states that a prior finding that reunification efforts have been terminated or denied is sufficient to proceed to termination of parental rights, and the court is to proceed with termination unless an exception applies. (§ 366.26, subd. (c)(1).) The job of the juvenile court at the section 366.26 hearing is to select a permanent plan and begin to implement it; a parent's progress remedying the issues that led to dependency are irrelevant to that goal. (*In re Edward R.*, *supra*, 12 Cal.App.4th at p. 126.)

The beneficial relationship exception is a child-centered inquiry focused on the bond the child feels and what benefit the *child* would derive from continuing the relationship. Accordingly, the case law overwhelmingly focuses on the frequency and quality of visits, level of attachment and bonding from child to parent, and evidence of detriment to the child if that relationship were discontinued. (See, e.g., *In re Ronell A.* (1996) 44

Cal.App.4th 1352, 1369 [father visited twice in two years and no evidence of benefit]; *In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548-1549 [inconsistent visitation, possible future benefit was not enough]; *In re Lorenzo C., supra*, 54 Cal.App.4th at p. 1330 [only some evidence of bonding]; *In re Casey D., supra*, 70 Cal.App.4th at p. 52 [child looked to caretakers as parent instead of mother]; *In re Derek W., supra*, 73 Cal.App.4th at pp. 826-827 [no parental relationship]; *In re Zachary G., supra*, 77 Cal.App.4th at pp. 811-812 [relationship not parental in nature]; *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1352 [no parental relationship]; *In re Lukas B., supra*, 79 Cal.App.4th at p. 1155 [visits of poor quality]; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1254 [irregular visitation]; *In re Angel B.* (2002) 97 Cal.App.4th 454, 467-468 [relationship not parental, lack of bonding]; *In re L.Y.L., supra*, 101 Cal.App.4th at pp. 954-955 [no parental role and child did not benefit from relationship]; *In re Helen W., supra*, 150 Cal.App.4th at p. 82 [no parental relationship and mother was bonded but the children were not]; *In re Michael G.* (2012) 203 Cal.App.4th 580, 595 [mother actively avoided bonding with her child].)

Proof of completion in programs, or lack of completion in addressing issues leading to dependency, are not a factor in a beneficial parental relationship analysis. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108-1109 (“*Andrea R.*”) [even though mother rehabilitated and had custody of her younger children, she did not regularly visit and her relationship to Andrea was not positive or beneficial]; *In re Scott B., supra*, 188 Cal.App.4th at pp. 471-473 (“*Scott B.*”) [strength of the relationship and mother’s

regular visits helped keep Scott emotionally stable].) The court in *Scott B.* focused on the beneficial relationship between Scott and his mother, including the positive influence mother held in Scott's life in spite of the fact that mother would never be able to provide a safe home for him and had not rehabilitated. (*Scott B., supra*, 188 Cal.App.4th at p. 471-472.) The Court of Appeal stated that even though it may never be in Scott's interest to resume living with his mother, she has provided emotional stability for him and he remains strongly bonded to her. (*Id.* at p. 471-472; see also *In re Jerome D., supra*, 84 Cal.App.4th at pp. 1207-1208 [even with mother's inadequacies as a parent, the strength of the relationship and the benefit the child derived from it emotionally provided a compelling reason to apply the exception].) Even in cases that have discussed a parent's progress, or lack thereof, the discussion focused on whether the parent's efforts at rehabilitation bore substantial relevance to the strength of the parent-child relationship and its effect on the child. (See, e.g., *In re Marcelo B., supra*, 209 Cal.App.4th at p. 642 [parents' ongoing severe alcohol abuse caused lack of regular visitation and negatively affected parents' bond with their child].)

Therefore, the Legislature and the majority of case law have clearly determined that a parent's progress in rehabilitation should not be a requirement or even a factor to be considered by the court in determining whether the beneficial parental relationship exception to adoption applies. *Amicus curiae* contends that *if* juvenile courts may incorporate a discussion of a parent's progress, or lack thereof, when evaluating a beneficial

parental relationship exception, it should be *only if* such facts related to a parent's progress are *substantially* related to the strength and effect of the parent-child relationship.

III) CADEN C.'S MOTHER'S EXTENSIVE SUBSTANCE ABUSE HISTORY AND HER ADVERSE TREATMENT OF CADEN DUE TO THAT SUBSTANCE ABUSE WAS JUST ONE OF THE REASONS THE FIRST DISTRICT FOUND THAT MOTHER'S RELATIONSHIP WITH CADEN DID NOT BENEFIT CADEN.

While the Court of Appeal's decision below over-emphasizes the importance of a parent's progress in relation to other beneficial parental relationship exception cases, the First District did not base its findings on the mother's lack of progress. Citing portions of *In re S.B.*, *In re Noah G.*, *In re Amber M.*, *In re Brandon C.*, and *In re E.T.*, the Court of Appeal asserts that in cases where the beneficial parental relationship has been found, "the parents were actively involved in maintaining their sobriety or complying substantially with their case plan." (*Caden C.*, *supra*, 34 Cal.App.5th at p. 112 [citing *In re S.B.*, *supra*, 164 Cal.App.4th at p. 298-301; *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1303; *In re E.T.*, *supra*, 31 Cal.App.5th at pp. 77-78; *In re Amber M.*, *supra*, 103 Cal.App.4th at pp. 686-687, 690-91; *In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1535.]) The Court of Appeal's interpretation of those cases as relying on a parent's progress is inapt. While the cases cited did discuss the parents' attempt to rehabilitate, the ultimate decision was based on the specific strength of each relationship and the balancing test

outlined in *Autumn H.* (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 298-301; *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1303; *In re E.T.*, *supra*, 31 Cal.App.5th at pp. 77-78; *In re Amber M.*, *supra*, 103 Cal.App.4th at pp. 686-687, 690-691; *In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1535.) The cases cited by the Court of Appeal maintained an overall focus on the child and the relationship with the parent.

Despite the Court of Appeal's decision to highlight the mother's lack of sobriety to show its effect on Caden, the thrust of the decision reiterates the last prong of the *Autumn H.* test: whether "the strength and quality of the natural parent/child relationship in a tenuous placement [outweighs the] security and sense of belonging a new family would confer." (*Caden C.*, *supra*, 34 Cal.App.5th at p. 113, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In concluding that it did not, the Court of Appeal highlighted two important pieces of evidence, testimony by an expert opining that any option other than adoption posed an "unacceptable risk" to Caden and evidence showing the ongoing visits with mother had an overall "toxic" effect on Caden's emotional well-being and endangered his stable placements. (*Caden C.*, *supra*, 34 Cal.App.5th at p. 113-115.) It was because of these essential facts that the Court of Appeal concluded that Caden's bond with his mother was not "such a positive influence on his young life that an uncertain future is an acceptable price to pay for maintaining it." (*Id.* at p. 113.)

CONCLUSION

For all of the foregoing reasons, *amici curiae* Children's Law Center of California respectfully requests that this Court find that the hybrid standard of review is the most appropriate standard of review when evaluating the application of the beneficial parental relationship exception. Further, *amici* request that the Court hold that a showing of progress toward addressing the issues that led to dependency is not required of a parent attempting to prove the beneficial parental relationship exception to adoption. Lastly, *amici curiae* request that this Court find that the Court of Appeal's decision primarily focused on the nature and strength of Caden's relationship to his mother and its effect on Caden.

Dated: November 22, 2019

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

In compliance with California Rules of Court, rule 8.520(c)(1), I hereby certify that the foregoing Brief of *Amici Curiae* Children's Law Center of California, Legal Advocates for Children and Youth, and Children's Legal Services of San Diego consists of 5,778 words, not including the cover sheet, the Application, the Tables of Contents and Authorities, the Certificate of Service, or this Certificate, as counted by Microsoft Word computer program used to generate this Brief.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, I am over the age of 18 years and not a party to the within action; my e-mail address is hendrixs@clcla.org; my facsimile number is (323) 980-8708; my business address is 101 Centre Plaza Drive, Monterey Park, California 91754-2175.

On November 22, 2019, I served the foregoing document described as APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF CHILDREN'S LAW CENTER OF CALIFORNIA, LEGAL ADVOCATES FOR CHILDREN AND YOUTH, AND CHILDREN'S LEGAL SERVICES OF SAN DIEGO on the Court and interested parties in this action according to the attached service list.

By facsimile transmission (fax). Per order of the court, other authority, or agreement of the parties to accept service via fax, I sent the documents to the person(s) at the fax number(s) listed on the attached service list. No error was reported by the fax machine used to transmit the document(s).

By electronic service. Per order of the court, other authority, or agreement of the parties to accept service via electronic transmission, I caused the documents to be sent to the person(s) at the electronic notification address(es) on the attached service list.

By placing a true copy of the document(s) above, enclosed in a sealed envelope(s), with postage fully paid in the United States mail at Monterey Park, California, addressed as follows on the attached service list.

By personal service. For service on the court, a copy was left with a counter clerk at the Office of the Clerk of the Superior Court.

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

Executed on November 22, 2019 at Monterey Park, California.



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