IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CADEN C., A Person Coming Under the Juvenile Court Law. SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Appellant, v. CHRISTINE C. et al., Defendants and Respondents; CADEN C., a Minor, Appellant.	No. S255839 Court of Appeal Nos. A153925 consolidated with A154042 San Francisco No. JD153034 .

CHRISTINE C.'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

After the Published Decision by the Court of Appeal
First District, Division One
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	)	Court of Appeal Nos. A153925 consolidated with A154042
SAN FRANCISCO HUMAN SERVICES AGENCY,	)	
Plaintiff and Appellant,	)	San Francisco No. JD153034
v.	)	
CHRISTINE C. et al.,	)	
Defendants and Respondents;	)	
CADEN C., a Minor,	)	
Appellant.	)	

CHRISTINE C.'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f)(7), Christine C. (Mother) respectfully submits this Consolidated Answer Brief to the Amicus Brief filed on behalf of Advokids, East Bay Children's Law Office and Legal Services for Children (hereinafter Advokids) and the Amicus Brief filed on behalf of the California State Association of Counties (hereinafter CSAC). In this Answer, Christine C. will respond only to those points addressing the legal issues on review which require clarification

and/or elucidation. To the extent any points made in the Amicus Briefs filed by Advokids and CSAC[1] are not addressed herein, the failure to respond should not be considered a concession of those points.

ARGUMENT

I.

CONTRARY TO THE POSITION ASSERTED BY ADVOKIDS, A PARENT DOES NOT HAVE TO "MEET THE CHILD'S NEEDS FOR A PARENT" IN ORDER TO SATISFY THE BENEFICIAL PARENT-CHILD RELATIONSHIP EXCEPTION TO ADOPTION.

In its Amicus Brief, Advokids contends that the beneficial parent-child relationship exception to adoption cannot even be triggered, let alone

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[1] Amicus Briefs have been filed by California Dependency Trial Counsel (hereinafter CDTC) and Professors of Family and Clinical Law (hereinafter Professors). As those Amicus Briefs make arguments in support of Christine, Christine will not present an Answer to those briefs and, instead, joins in and adopts as her own the arguments presented in those Amicus Briefs. An Amicus Brief has also been filed by Children's Law Center of California, Legal Advocates for Children and Children's Legal Services of San Diego (hereinafter CLC). Because the legal arguments presented in that Amicus Brief are consistent with the legal arguments made by Christine, she again will not present an answer to that brief and, instead, joins in and adopts as her own Arguments I and II of that brief. However, Christine disagrees with CLC's position in Argument III of its Amicus Brief, namely that reversal is not required despite the Court of Appeal's erroneous over-emphasis of Christine's lack of progress in rehabilitation in the third prong of the exception. (*Continental Ins. Co. v. Superior Court* (1995) 32 Cal.App.4th 94, 108 [an act that transgresses the confines of the applicable principles of law is an abuse of discretion requiring reversal].)

found to apply, "unless the court also finds that the parent actually meets the child's needs for a parent." (Advokids Amicus pp. 18-19.) Advokids' position misconstrues jurisprudence on the issue of the beneficial parent-child relationship exception to adoption.[2]

In the seminal decision regarding the beneficial parent-child relationship exception to adoption, *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575, Division One of the Fourth District Court of Appeal held that "[t]he exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." The Court did not hold that the exception applies only where the parent meets "the child's needs for a parent." (Advokids Amicus pp. 18-19.)

For many years, Courts of Appeal throughout the state cited the language in *In re Autumn H.* to explain the type of parent-child relationship required for application of the beneficial parent-child relationship exception to adoption. (See, e.g., *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) However, during those years, the Courts of

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[2] Arguments I.B. and I.C. in the Advokids Amicus Brief are not relevant to the issues before this Court. Thus, Christine presents no answer to those arguments.

Appeal also began to insert a requirement that the parent "prove that he or she occupies a parental role in the child's life[.]" (See, e.g., *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007; *In re Derek W., supra,* 73 Cal.App.4th at p. 827; *In re Beatrice M., supra,* 29 Cal.App.4th at pp. 1418-1419.)

Fourteen years later, Division One of the Fourth District Court of Appeal revisited the beneficial parent-child relationship exception to adoption in *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301. There, the San Diego County Health and Human Services Agency argued that the beneficial parent-child relationship exception to adoption did not and could not apply because the father "did not have a parental relationship with [the child] because she did not look to him for day-to-day nurturing, stability, encouragement and support." (*Id.* at p. 296.) The Court of Appeal rejected this argument. In doing so, it reviewed its prior analysis from *In re Autumn H.* and reiterated that a parent could maintain a parent-child relationship despite the child's removal from parental custody:

> "According to the 1973 work of psychoanalytic theory central to *Autumn H.*, a child could not develop such a significant attachment to a parent without the parent's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. (See *Goldstein et al., Beyond the Best Interests of the Child, supra,* pp. 6, 17 (Goldstein).) As we recognized in *Autumn H.*, this type of relationship typically arises from day-to-day interaction, companionship

> and shared experiences, *and may be continued or developed by consistent and regular visitation after the child has been removed from parental custody*. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575, 32 Cal.Rptr.2d 535, citing Goldstein at p. 19.)"

(*Id.* at pp. 298-299.) The Court of Appeal similarly rejected the Agency's argument that the beneficial parent-child relationship exception to adoption should not be applied because any detriment the child would suffer would be ameliorated over time due to the strong relationship she shared with her grandmother, who was the proposed adoptive parent. In so doing, the Court of Appeal aptly recognized that "[w]hen a child cannot be returned to the physical custody of a parent, we expect the child has developed or will develop a secure parental relationship with his or her primary caregiver." (*Id.* at pp. 299-300.) Moreover, the Court of Appeal noted that it was "a self-evident proposition that at any one time a child may have more than one parent or person acting as a parent." (*Id.* at p. 300.) The Court of Appeal then confirmed that the type of relationship necessary for application of the beneficial parent-child relationship exception to adoption is one where the child has a "significant, positive, emotional relationship" with the parent. (*Ibid.*) In other words, the fact that a dependent child has a parent-child like relationship with his or her caregiver does not mean that the child cannot also have a beneficial parent-child relationship with the

parent or that the beneficial parent-child relationship exception to adoption does not apply.

The Court of Appeal's reasoning in *In re S.B.* is compelling. Obviously, by the time a Welfare and Institutions Code section 366.26 hearing occurs, because the child is living with a substitute caregiver, the parent is not filling a traditional parental role in the child's life and cannot necessarily meet the child's daily needs. Nevertheless, if the child has a significant, positive emotional attachment to the parent and the child would suffer from the loss of his or her relationship with that parent, then the relationship must be preserved. Anything else would completely eliminate the beneficial parent-child relationship exception to adoption. (*In re S.B., supra,* 164 Cal.App.4th at p. 300 [requiring the parent of a child removed from parental custody to prove the child has a "primary attachment" to the parent would cause the rule to "swallow the exception"].) Therefore, contrary to the position asserted by Advokids, there is not and cannot be a requirement that the parent be meeting "the child's needs of a parent" for the beneficial parent-child relationship exception to adoption to apply.

II.

CONTRARY TO THE POSITION ADVOCATED BY CSAC, A PARENT'S PROGRESS IN ADDRESSING ISSUES THAT LED TO DEPENDENCY IS RELEVANT ONLY TO THE SECOND PRONG OF THE EXCEPTION.

In its brief, Amicus CSAC takes the position[3] that although a parent is not *required* to show progress in addressing the issues leading to the dependency in order for the beneficial parent-child relationship exception to adoption to apply, consideration of such progress or lack thereof can be considered in evaluating both whether a beneficial parent-child relationship exists *and* whether the existence of such a relationship constitutes a compelling reason for foregoing adoption for an otherwise adoptable child. (CSAC Amicus pp. 9-10, 16-42.) In light of the statutory history of the beneficial parent-child relationship exception to adoption and case law interpreting that exception, CSAC's position is untenable. Evaluating a parent's progress in addressing issues leading to the dependency in the third prong of the exception, where the juvenile court must balance the benefits of maintaining the parent-child relationship and the detrimental effect that

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[3] CASC takes the position that the hybrid substantial evidence and abuse of discretion standard of review applies. (CSAC Amicus 8-9, 13-16.) This position is consistent with the position taken by Christine as well as the San Francisco Human Services Agency and Caden and, therefore, does not require any answer.

cessation of the relationship would have on the child against the amorphous benefits of adoption, would render the exception meaningless.

A. The Opinion In *Caden C.* Erroneously Expanded An Interpretation Of The Beneficial Parent-Child Relationship Exception To Adoption, Which Is Inconsistent With *Autumn H.* And Its Progeny As Well As Legislative History.

CSAC contends that the opinion in *In re Caden C.* (2019) 34 Cal.App.5th 87 "did not create a new rule that the parent must show progress in addressing the issues that led to dependency to prove application of the exception." (CSAC Amicus p. 10.) According to CSAC, the decision in *In re Autumn H., supra,* 27 Cal.App.4th 567, issued just over 25 years ago, has always authorized the juvenile court to consider the parent's progress in addressing the issues leading to the dependency when assessing applicability of the beneficial parent-child relationship exception to adoption. (CSAC Amicus pp. 10-11, 26-27, 28-30.) This is not so.

In *In re Autumn H., supra,* 27 Cal.App.4th at p. 576, the Court of Appeal did acknowledge that the father had not made any progress toward the goals set at the original selection and implementation hearing where Autumn was permanently placed in long-term foster care in that his visitation had not increased, he had not taken a more active role in parenting the child, and he continued to have issues with the suitability of his housing. However, nowhere in the opinion did the court imply, let alone hold, that

the juvenile court could properly consider whether the parent had addressed the issues leading to the dependency when assessing application of the beneficial parent-child relationship exception to adoption. (CSAC Amicus p. 29-30; *In re Autumn H., supra,* 27 Cal.App.4th at pp. 567-576.) Indeed, the father's current circumstances were noted *only* as part of the Court of Appeal's discussion of why, in light of the lack of changed circumstances, it was appropriate for the juvenile court to consider a change to the child's permanent plan from long-term foster care to adoption. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 576.) Hence, *In re Autumn H.,* does not now, and never did, authorize the juvenile court to consider the parent's progress in addressing the issues leading to the dependency when determining whether the parent has established that the beneficial parent-child relationship exception to adoption applies.

Moreover, contrary to CSAC's assertion, the opinion in *In re Edward R.* (1993) 12 Cal.App.4th 116, 127, also did not authorize the juvenile court to consider the parent's current circumstances and efforts at rehabilitation when determining whether the parent had established the beneficial parent-child relationship exception to adoption applied. Rather, the Court of Appeal in *Edward R.* suggested that the parent's present circumstances were "relevant in resolving whether the parent has

maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship[,]" i.e., whether the first and second prongs of the exception were established. (*Ibid.*)

Indeed, only recently did the appellant courts in *In re Noah G.* (2014) 247 Cal.App.4th 1292, 1299-1304 and *In re E.T.* (2018) 31 Cal.App.5th 68, 75-78, begin applying the approach employed in 1993 by the *Edward R.* court, i.e., that the juvenile court might be able to consider a parent's efforts to address the issues leading to the dependency when assessing the beneficial parent-child relationship exception to adoption, but only as to the beneficial nature of the parent-child relationship and, therefore, the second prong of the exception. In *In re Noah G., supra,* 247 Cal. App.4th at p. 1304, the Court of Appeal specifically noted that the mother's continued drug abuse was "evidence [that] continuing the parent-child relationship would not be *beneficial*[]" to the children; i.e., that the mother's drug use prevented her from establishing the *second* prong of the exception. Likewise, in *In re E.T., supra,* 31 Cal.App.5th at pp. 76-77, the Court of Appeal specifically noted that the mother's efforts at rehabilitation favored a finding that her children would benefit from continuing their relationships with her; i.e., that the mother's efforts assisted her in proving the *second* prong of the exception.

However, in *In re Breanna S.* (2017) 8 Cal.App.5th 636, 648, the Court of Appeal did opine that the mother's continuing issues with a domestic violence plagued relationship was properly considered when balancing the detriment to the children from ending their relationship with the mother against the benefits of adoption under the third prong of the exception. That statement is pure dicta because the mother did not even establish the critical first prong of the exception. (*Ibid.*) Hence, contrary to CSAC's assertion, it is only *In re Caden C., supra,* 35 Cal.App.5th at p. 112, which takes this new approach, i.e., that efforts at rehabilitation can be considered under the beneficial relationship exception to adoption, one step further, and distinctly holds that the parent's failure to address the problems leading to the dependency not only can be considered under the third prong of the beneficial parent-child relationship exception to adoption, but also can prevent application of the exception to adoption. This creates a new rule that was not anticipated by either the Legislature or *In re Autumn H.*

CSAC further contends that this Court should not depart from *In re Autumn H.* and its "well-established approach," which CSAC interprets as authorizing the juvenile courts to consider a parent's efforts at rehabilitation when assessing applicability of the beneficial parent-child relationship exception to adoption. (CSAC Amicus p. 11.) As described above, there is

no such approach established by *In re Autumn H.* Indeed, such an approach was first advanced in 2014, twenty years after *In re Autumn H.* was decided, and was expanded and given additional force by the opinion in *In re Caden C., supra.* Thus, what Christine is asking is for this Court to return to and adhere to *In re Autumn H.* and its early progeny, and not depart from those cases as suggested by the San Francisco Human Services Agency and the minor. Instead, Christine asks this Court to hold that the juvenile court may consider the parent's efforts at rehabilitation when assessing the nature of the parent-child relationship and the degree of benefit to the child from the relationship, but cannot consider those efforts when balancing the benefits of maintaining the parent-child relationship and the detriment the child will suffer from the loss of the relationship against the benefits of adoption to determine whether compelling circumstances exist such that the preference for a permanent plan of adoption has been overcome.

B. A Review Of The Legislative And Decisional History Presented In The Amicus Briefs Conclusively Establishes That A Parent's Progress In Addressing The Issues Leading To The Dependency Is Only Relevant When Assessing The Second Prong Of The Beneficial Parent-Child Relationship Exception To Adoption and Specifically When Determining The Strength And Beneficial Nature Of The Parent-Child Relationship.

As CSAC notes, section 366.26 has been amended many times in the 25 years since the decision in *In re Autumn H.* was issued. (CSAC Amicus

pp. 30-31 and fn. 11.) The most significant amendment to the beneficial parent-child relationship exception to adoption, then section 366.26, subdivisions (c)(1)(A) and now section 366.26, subdivision (c)(1)(B)(i), occurred in 1998. (See CLC Amicus pp. 27-28.) Prior to 1998, the beneficial parent-child relationship exception to adoption provided that the juvenile court should terminate parental rights for an adoptable child "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 minor would benefit from continuing the relationship." (Stats. 1987, ch. 1485 [former § 366.26, subd. (c)(1)(A)].) Then, in 1998, the beneficial parent-parent child relationship was amended to provide that the juvenile court should terminate parental rights for an adoptable child unless "the court finds a compelling reason for determining that termination would be detrimental to the child [because] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (Stats. 1998, ch. 1054 [former § 366.26, subd. (c)(1)(A)]; § 366.26, subd. (c)(l)(B)(i).) Indeed, as Division Three of the First District Court of Appeal recognized twenty years ago, the 1998 amendment to section 366.26, which requires a compelling reason to find

termination of parental rights detrimental to an adoptable child, codified the *In re Autumn H.* balancing test as a new third prong of the exception. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349; accord *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315 [Sixth District].)

Thus, contrary to CSAC's assertion, the *In re Autumn H,* court was not addressing the second and third prongs of the exception together in 1994 because at that time there existed only two prongs to the exception. (CSAC Amicus pp. 28-29.) Instead, the *In re Autumn H.* court actually developed the third prong of the exception which was then later codified by the Legislature.

With this legislative and decisional history in mind, it becomes readily apparent how *In re Autumn H.* and the second and third prongs of the beneficial parent-child relationship exception must be interpreted today. The test set forth in *In re Autumn H., supra,* 27 Cal.App.4th at pp. 575-576, must be parsed out to ensure that the beneficial parent-child relationship exception to adoption remains relevant. First, the portion of the test requiring that the exception "be examined on a case-by-case basis, taking into account the many variables which affect a parent[-]child bond" must become the test for the second prong of the exception. (*Id.* at p.576.) Thus, to determine the degree to which the parent-child relationship is beneficial

to the child, i.e., whether the child has a "significant, positive, emotional attachment to the parent[,]" the juvenile court must consider "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs" along with any other relevant variables "which logically affect a parent[-]child bond." (*Ibid.*) This determination would logically include a consideration of the parent's efforts to address the problems leading to the dependency, but only as to how those efforts, or lack thereof, bear on the beneficial nature of the parent-child relationship. (See *In re Edward R., supra,* 12 Cal.App.4th at p. 127.) Then, the portion of the test that requires the juvenile court to "balance[] 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[]" must become the test for the third prong of the exception. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.) This balancing would require the court to determine whether "severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed" or whether the benefits to the child that flow from being adopted and provided stability and permanency outweigh any harm that may result from severance of the

beneficial parent-child relationship. (*Ibid; In re Bailey J., supra,* 189 Cal.App.4th 1308, 1315 ["A juvenile court finding that the relationship is a 'compelling reason' for finding detriment to the child . . . calls for the juvenile court to determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption."].) By the time the juvenile court reaches this balancing test it has already determined whether or not a beneficial parent-child relationship exists and to what degree that relationship is beneficial to the child and it is simply weighing the benefits of maintaining that parent-child relationship against the benefits of adoption. (*In re Bailey J., supra,* 189 Cal.App.4th at p. 1315 [A juvenile court finding that a "compelling reason" to forgo adoption exists is based on the facts but is not primarily a factual issue; it is a "'quintessentially'" discretionary decision."].) Therefore, there is no place for consideration of parental shortcomings, including the parent's efforts, or lack thereof, to address the problems leading to the dependency when conducting this balancing test.

Christine is not suggesting that every time a juvenile court finds that a beneficial parent-child relationship exists it is required to also find that the parent-child relationship constitutes a compelling reason to forgo adoption.

(CSAC Amicus pp. 41-42.) Instead, Christine is suggesting that the juvenile court must be tasked with first determining, based upon all relevant and admissible evidence and the *In re Autumn H.* factors, whether a beneficial parent-child relationship exists and the degree to which that relationship is beneficial to the child. Then, if the juvenile court finds that a beneficial parent-child relationship exists, it must balance both the benefits of maintaining the existing parent-child relationship and the detriment to the child that cessation of that relationship will cause against the benefits of adoption based upon its initial assessment of that relationship. In other words, while the juvenile court may properly consider the parent's efforts at rehabilitation when assessing the second prong of the exception, it may not do so when assessing the third prong. Furthermore, the juvenile court certainly may not rely on parental inadequacies alone to find that a beneficial parent-child relationship, from which the dependent child derives a significant level of benefit and the cessation of which would cause the dependent child to suffer serious detriment, has been outweighed by the amorphous benefits of adoption.

CONCLUSION

It is well-established that some children in foster care retain very strong ties to their biological parents. When those ties are sufficiently

strong, ability to preserve the parent-child relationship is a must. To accept the reasoning of Amici CSAC and Advokids would prevent these important relationships from ever being preserved because it will allow inevitable parental shortcomings to prevent application of the beneficial parent-child relationship exception to adoption. On the other hand, to interpret the exception as Christine suggests would allow the juvenile courts to preserve important relationships where appropriate for the dependent child and to still provide the stability and permanency of adoption for dependent children where preservation of their parent-child relationships is inapt.

Dated: January 13, 2020

Respectfully submitted,

LESLIE A. BARRY
Attorney for Respondent, Christine C.

CERTIFICATE OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.520(c) and contains 4,777 words, including footnotes, according to the word count feature of Corel Word Perfect X8, the computer program used to prepare this brief.

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In re Caden C.
Supreme Court No. S255839
Court of Appeal Nos.
A153925 c/w AA154042

DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of Orange, and not a party to the instant action. My business address is listed above and my e-service address is barry212303@gmail.com. On January 13, 2020, I served the attached **CHRISTINE C.'S CONSOLIDTED ANSWER TO AMICUS BRIEFS** by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses:

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Christine C.
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On January 13, 2020, I also transmitted a PDF version of this document, via email, to each of the following using the email address(es) indicated:

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

Executed on January 13, 2020, at Huntington Beach, California.

LESLIE A. BARRY