PERMANENCY PLAN HEARING

ADOPTABILITY
PARENT-CHILD EXCEPTION
SIBLING EXCEPTION
PRIVATE ADOPTION
GUARDIANSHIP
MISCELLANEOUS

ADOPTABILITY:

Under the due process clause, "a mother and a presumed father must consent to an adoption absent a showing by clear and convincing evidence of that parent's unfitness." (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 825; see also *Stanley v. Illinois* (1972) 405 U.S. 645, 657; *In re T.G.* (2013) 215 Cal.App.4th 1, 14-23; *In re Z.K.* (2011) 201 Cal.App.4th 51, 69-70; *In re Frank B.* (2011) 192 Cal.App.4th 532, 539; *In re K.B.* (2009) 173 Cal.App.4th 1275, 1292 ["Although a finding of adoptability must be supported by clear and convincing evidence, it is nonetheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time."]; but see *Quilloin v. Walcott* (1978) 434 U.S. 246, 251-252 [can terminate parental rights from noncustodian parent without showing unfitness]; *Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1537-1541 [can terminate parental rights in order to permit a guardian to adopt without showing parental unfitness].) "Parental unfitness is considerably more difficult to show than that the child's best interest is served by adoptions. (*Id.* at p. 848.) However, when there is a biological father who is not the presumed father, "his parental rights may be terminated . . . merely by showing that termination would be in the child's best interest. No showing of . . . unfitness is requires under the statutes." (*Id.* at p. 831; see also *In re A.S.* (2009) 180 Cal.App.4th 351, 362.) "But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." (*Santosky v. Kramer* (1982) 455 U.S. 745, 760; *In re Gladys L.* (2006) 141 Cal.App.4th 845, 848, internal quotation marks omitted; but see *In re P.A.* (2007) 155 Cal.App.4th 1197, 1212.) Unfitness means custody would be detrimental to the minor. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 63.)

The court could not terminate parental rights when there was no finding that one of the parents was unfit. (*In re P.C.* (2008) 165 Cal.App.4th 98, 107; *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210-1213 [lack of housing]; *In re Gladys L.* (2006) 141 Cal.App.4th 845, 847, 848; but see *In re A.S.* (2009) 180 Cal.App.4th 351, 363 [a finding of detriment in a § 387 petition of returning the minor was a finding of unfitness]; but see *In re P.A.* (2007) 155 Cal.App.4th 1197, 1212 [noncustodial parent was impliedly found

unfit when the court found there would be detriment placing the minor with the parent].)

Waiver: The parent invited the error and thus could not claim this on appeal when he asked the court not to make a detriment finding at the dispositional hearing. (*In re G.P.* (2014) 227 Cal.App.4th 1180, 1192-1197.)

Termination of parental rights is "relatively automatic" after termination of reunification services. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249; *In re Arturo A.* (1992) 8 Cal.App.4th 229, 239.)

The termination of parental rights is "a drastic remedy to be resorted bo only in extreme cases." (*In re Terry E.* (1986) 180 Cal.App.3d 932, 949; *In re Angelia P.* (1981) 28 Cal.3d 908, 916; *In re Baby Girl M.* (2006) 135 Cal.App.4th 1528, 1535, internal quotation marks omitted.)

"The Legislature has thus determined that, where possible, adoption is the first choice. 'Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.' (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) 'Guardianship, which is a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.' (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.)" (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) "The statutory exceptions merely permit the court, in exceptional circumstances [citation], to chooses an option other than the norm, which remains adoption." (*Ibid.*)

" 'At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child.... *The permanent plan preferred by the Legislature is adoption*. [Citation.]' (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1416, italics added, citing § 366.26, subd. (b)(1)-(4).) If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child. (29 Cal. Cal. App. 4th at p. 1416.) A guardianship 'is "not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature." [Citation.]' (*In re Taneka W.* (1995) 37 Cal.App.4th 721, 728.)" (*In re Ronnell A.* (1996) 44 Cal.App.4th 1352, 1368.) Federal law discourages long-term foster care. (*In re Gabriel G.* (2005) 134 Cal.App.4th 1428, 1437, citing 42 U.S.C. § 675(5)(C).)

Prefer termination of parental rights; if adoptable by clear and convincing evidence, must terminate parental rights unless parent shows detriment. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164; *In re Jose V.* (1998) 50 Cal.App.4th 1792, 1798-1799; *In re Heather B.* (1992) 9 Cal.App.4th 535, 546; but see *In re Elise K.* (1982) 33 Cal.3d 138, 148-150 [wish not have a legal orphan].)

Tribal customary adoption (TCA) is the preferred plan for an Indian child if it is recommended by the child's Indian tribe. (*In re H.R.* (2012) 208 Cal.App.4th 751, 761-764; cf. *In re A.M.* (2013) 215 Cal.App.4th 339, 349-351; see also *In re G.C.* (2013) 216 Cal.App.4th 1391, 1399-1401.)

Waiver: Failure to follow the procedure for considering TCA is forfeited without an objection below. (*In re I.P.* (2014) 226 Cal.App.4th 1516, 1526; *In re G.C.* (2013) 216 Cal.App.4th 1391, 1397-1339.)

Standard of review: Review the denial of a tribal customary adoption for abuse of discretion. (*In re H.R.* (2012) 208 Cal.App.4th 751, 764-767.)

Prejudice: Failure to follow procedure for considering TCA is harmless when no tribe requested TCA. (*In re I.P.* (2014) 226 Cal.App.4th 1516, 1528.)

The juvenile court must find evidence of adoptability by clear and convincing. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574; *In re Jennillee T.* (1992) 3 Cal.App.4th 212, 224-225.) "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." (*Santosky v. Kramer* (1982) 455 U.S. 745, 747-748.)

The court shall terminate parental rights only if it is likely the minor will be adopted within a reasonable time. (Welf. & Inst. Code, § 366.26, subd. (c)(1); *In re Brian P.* (2002) 99 Cal.App.4th 616, 624; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Jennillee T.* (1992) 3 Cal.App.4th 212, 224 [within the foreseeable future]; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

Consider the minor's age, physical condition, emotional state. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400 [minor adoptable because he is an "attractive boy . . . who had no major physical or mental problems" and caretaker aware of his problems and committed to him]; *In re Michael G.* (2012) 203 Cal.App.4th 580, 591-593 [minor was adoptable despite tantrums, aggressiveness, and instability because he was bright, endearing, and could be improving]; *In re Jose C.* (2010) 188 Cal.App.4th 147, 158-160 [minor was adoptable despite bond with mother and maternal grandfather]; *In re R.C.* (2008) 169 Cal.App.4th 486, 492, 493-495 [minor generally adoptable though tested positive at birth and there were possible future problems]; *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1409 [minor not generally adoptable when had mental and physical delays and parents had mental health problems]; *In re Y.R.* (2007) 152 Cal.App.4th 99, 113-114, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5 [minor adoptable despite behavioral problems]; *In re Helen W.* (2007) 150 Cal.App.4th 71, 74-76, 79-80 ["cute" minor with severe developmental delays with parents who wish to adopt was generally adoptable]; *In re Gabriel G.* (2005) 134 Cal.App.4th 1428, 1438

[minors who had temper tantrums and failed placement were likely to be adopted because they were 3 and 5 years old and healthy]; *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1563 [minor adoptable though had ADHD and in counseling when relative caretaker wish to adopt]; *In re J. I.* (2003) 108 Cal.App.4th 903, 911 [minor adoptable because healthy, sense of humor, bright, excited to start kindergarten, though having nightmares and potential parents working with new counselor though wish to adopt]; *In re Brian P.* (2002) 99 Cal.App.4th 616, 624; *In re Jennillee T.* (1992) 3 Cal.App.4th 212, 224-225; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065; see also *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, 1651.) "A child's young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.)

The social worker report must contain relevant information, including contacts between the child and the parents during the dependency; (3) an evaluation of the child's medical, developmental, scholastic, and emotional status; (4) a preliminary assessment of the eligibility of any prospective adoptive parent or guardian, particularly the caretaker; (5) a description of the child's relationship with such person; and (6) an analysis of the likelihood that the child will be adopted. (Welf. & Inst. Code, §§ 366.21, subd. (i)(3), 366.22, subd. (b)(3); *In re David H.* (1995) 33 Cal.App.4th 368, 379.)

"The issue of adoptability requires the court to focus on the child, and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citations.] It is not necessary that the child already be placed in a pre-adoptive home, or that a proposed adoptive parent be waiting. [Citation.] However, there must be clear and convincing evidence of the likelihood that adoption will take place within a reasonable time. [Citation.]" (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.)

Suitability of the foster parent is irrelevant if the minor is generally adoptable. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1231-1232; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061-1062; *In re T.S.* (2004) 113 Cal.App.4th 1323, 1326, 1328-1329; *In re Scott M.* (1993) 13 Cal.App.4th 839, 843-844; see also *In re Jose G.* (2003) 106 Cal.App.4th 725, 732 [minor adoptable though lived the entire two and half years with the same couple who would probably die before the minor became a teen]; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065; *In re Tracy X.* (1993) 18 Cal.App.4th 1460; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 [that foster parent wishes to adopt is not enough without an assessment of fitness].) The court can rely on other evidence if the social worker report fails to report on the suitability of the foster parents. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 504-505; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 413.)

A minor who is specifically adoptable is adoptable. (*In re I.W.* (2010) 180 Cal.App.4th 1517, 1526-1527 [because parents failed to present evidence to the contrary]; *In re I.I.* (2008) 168 Cal.App.4th 857, 869-871.) If the minor is specifically adoptable in that an otherwise unadoptable child would be adopted by the caretakers, their suitability becomes an issue. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1412-1415 [though did not complete a home study on the caretakers]; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1231-1234 [family's "interest" in adopting insufficient]; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062, 1064; compare *In re K.B.* (2009) 173 Cal.App.4th 1275, 1290-1293 [a special needs minor was adoptable when the caretaker expressed an interest in adoption].) But the caretaker's decision on how to raise the child is irrelevant. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1063, 1065-1067 [whether to home school].) That foster parents were merely considering adoption alone is not substantial evidence of adoptability. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1351-1352 [two placements failed, social worker only hoped to find a home, that family members were volunteering last minute was not surprising or significant]; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065; *In re Asia L.* (2003) 107 Cal.App.4th 498, 512 [in special placement for emotional problems and caretakers give only vague interest in adoption]; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 [that foster parent wishes to adopt is not enough without an assessment of fitness].) The court can consider legal impediments to adoption (Fam. Code, §§ 8601-8603), but the court is not required to consider them sua sponte. (*In re G.M.* (2010) 181 Cal.App.4th 552, 561-562.)

"Usually the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.)" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650, italics omitted; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 525, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; accord, *In re Valerie M.* (2008) 162 Cal.App.4th 1, 13-16 [insufficient evidence when social worker failed to disclose whether there were legal impediments to adoption]; *In re Marina S.* (2005) 132 Cal.App.4th 158, 165 [caretaker grandparents' willingness to adopt supplies substantial evidence the minor is adoptable]; *In re T.S.* (2003) 113 Cal.App.4th 1323, 1329 [58 and 61 year old grandparents are suitable adoptive caretakers]; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, s1154; *In re Jennillee T.* (1992) 3 Cal.App.4th 212, 223-224; cf. *In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1298 [no error coram vobis to reverse termination of parental rights when it was later learned that social worker pressured the grandparents into saying they would adopt; this did not amount to extrinsic fraud].)

"We must next deal with a relatively disturbing point made by county counsel at oral argument, namely that if the failure of an adoptive placement post-appeal were to be grounds for reversal of a termination of parental rights, there would be more reversal than there are now because plenty of adoptive placements do not work." (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 89, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) "Nowhere has the Legislature said that the Court of Appeal (or the Supreme Court for that matter) are potted plants whose job it is to rubber-stamp every order terminating parental rights in some kind of pantomine of due process." (*Ibid.*; see also *Jackson v. Fitzgibbons* (2005) 127 Cal.App.4th 329, 332 [terminated parental rights on Oct. 18, 1999 but not adopted until July 11, 2001].) "Legal orphanage is a consequence the law abhors." (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062; accord *In re Elise K.* (1982) 33 Cal.3d 138, 148-150; but see *In re I.I.* (2008) 168 Cal.App.4th 857, 871 [risk of legal orphanage is less of a problem with Welf. & Inst. Code, § 366.26, subd. (i)(2) enacted in 2005].)

Example of minor never adopted, though there were prospective adoptive parents waiting in the wings, when the minor was not otherwise adoptable. (*In re Cody B.* (2007) 153 Cal.App.4th 1004, 1009-1013; *In re Jerred H.* (2004) 121 Cal.App.4th 793, 795-796, 799; *In re J. I.* (2003) 108 Cal.App.4th 903, 909, 911 [minors were generally adoptable when caretakers expressed an interest in adopting them but subsequent evidence showed the placement failed and no one was willing to adopt them].) Decision to remove after termination of parental rights after the court found the removal would be detrimental "borders on callousness." (*Fresno County Dept. of Children and Family Services v. Superior Court* (2004) 122 Cal.App.4th 626.)

Need not have adoptive parents waiting in the wings. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 956; *In re Brian P.* (2002) 99 Cal.App.4th 616, 624; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 522 [must terminate parental rights though minor has medical problems and current caretakers wish not to adopt], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

A 'special needs child' is one whose adoption without financial assistance would be unlikely because of adverse parental background, ethnicity, a sibling group, mental or physical or emotional handicap, or the child is older than 3 years. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292, fn. 14, citing Family Code, § 8545.)

"A social worker's opinion, by itself, is not sufficient to support a finding of adoptability." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624 [social worker says minor adoptable and chance of adoption was "very good" when no reason for the conclusion given]; accord, *In re Asia L.* (2003) 107 Cal.App.4th 498, 512 ["the social worker's

conclusion alone is insufficient to support a finding of adoptability"]; see, e.g., *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1063-1065; see *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1228 ["establishing that the return of the child would create a substantial risk of detriment, given all of the favorable evidence, would require more than the mere conclusion and recommendation on the part of the social worker that such substantial risk of detriment existed."]; but see *In re Megan S.* (2002) 104 Cal.App.4th 247, 253, fn. 7 [may infer the juvenile court found the social worker credible when it terminated parental rights].)

Courts shall consider the wishes of the minor to the extent they are ascertainable. (Welf. & Inst. Code, § 366.26, subd. (h); *In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591; *In re Juan H.* (1992) 11 Cal.App.4th 169, 173 not when child too young to fully understand]; *In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480; *In re Julian L.* (1998) 67 Cal.App.4th 204, 208-209 [should at least attempt to determine the minor's feelings toward the biological parents and the current caretakers because it is the minor's destiny on the balance]; see *In re Amber M.* (2002) 103 Cal.App.4th 681, 687-688 [social worker should have had minor's wishes, but need not have direct statement from minor if could be detrimental; court can exclude minor from testifying if there is evidence it would be detrimental]; but see *In re Amanda D.* (1997) 55 Cal.App.4th 813, 820 [waived and indirect statements sufficient]; *In re Michelle M.* (1992) 4 Cal.App.4th 1024, 1034-1035.)

Americans with Disabilities Act does not apply. (*In re Anthony P.* (2000) 84 Cal.App.4th 1112, 1116.)

Parent's reunification efforts irrelevant. "By the time of a section 366.26 hearing, the parent's interest in reunification is no longer an issue and the child's interest in a stable and permanent placement is paramount. (*In re Marilyn H.* (1993) 5 Cal.4th [295] at p. 309; *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195-1196)." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) "Because section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*Id.* at p. 1350.)

Substantial evidence of adoptability when social worker reported that the minor "was adoptable because she was female, in good health, developing normally, and had a sociable personality." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 956.) Because the minor was "in good health, young, well behaved, socially dong well . . . and happy." (*In re T.S.* (2003) 113 Cal.App.4th 1327, 1329.)

Under 42 U.S.C. § 675(5)(C) and 45 C.F.R. § 1356.21(h)(3), could have a

permanent plan of long-term foster care if a teen requests emancipation, there is a significant bond between the parent, and the caretaker is willing to keep the minor until 18 years old; or if a tribe identifies long-term foster care as a permanent plan; but a group home does not qualify. (*In re Stuart S.* (2002) 103 Cal.App.4th 203, 208-209.)

2004 amendment to subdivision (c)(3) of section 366.26 now prevents the court from considering long-term foster care after continue the hearing six months after identifying adoption as the permanent plan without filing a section 388 petition. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1349-1350; see *In re S.B.* (2009) 46 Cal.4th 529, 536-537.) The court is required to find adoptability by clear and convincing evidence. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1350-1351.) But one court had held that whether adoption is "probable" within 180 days is not the same as whether adoption is "likely" for termination of parental rights. (*In re Y.R.* (2007) 152 Cal.App.4th 99, 108-110, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5.) That the social worker was attempting to place the minors together makes them a sibling group under subdivision (c)(3) of section 366.26. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1238-1239; *In re Gabriel G.* (2005) 134 Cal.App.4th 1428, 1438.)

Appealability: Must file notice of appeal within 60 days. (Welf. & Inst. Code, § 366.26, subd. (i); *In re S.B.* (2009) 46 Cal.4th 529, 537 [must appeal 180 day attempted adoption immediately]; *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1349-1350; *In re Gabriel G.* (2005) 134 Cal.App.4th 1428, 1433-1438; *In re Edward H.* (1996) 43 Cal.App.4th 584, 590-591 [should appeal 180 day attempted adoption immediately]; *In re Isaac J.* (1992) 4 Cal.4th 525, 531 [no relief from default].)

Appealability: Arguably one cannot petition for writ the termination of parental rights without a timely appeal. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 [could not allege ineffective assistance of counsel in a writ petition filed concurrently with an appeal]; see *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 862, 866-868; but see *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667; *In re David H.* (1995) 33 Cal.App.4th 368, 380-385; *In re Carrie M.* (2001) 90 Cal.App.4th 530, 534-535 & fn. 4 [can appeal termination of parental rights just to file habeas corpus petition]; *In re David H.* (1995) 33 Cal.App.4th 368, 380-385; *In re Darlace C.* (2003) 105 Cal.App.4th 459, 465-466 [*Meranda P.* conflicts with Cal. Const., art. VI, § 10 and distinguished *Alexander S.* in which there was no appeal].)

Mootness: Cannot present a motion for new trial after terminating parental rights in a private adoption case. (*In re Isaac J.* (1992) 4 Cal.App.4th 525.)

An appeal from the permanency plan does not become moot when the minor turns 18 years old. (*In re Ruth M.* (1991) 229 Cal.App.3d 475, 480, fn. 4.)

Mootness: A parent's death makes the appeal from the termination of parental rights moot. (*In re A.Z.* (2010) 190]ca41177, 1180-1181.)

Remedy/Standing: If the court reverses termination of parental rights for one parent, it must reverse for the other parent. (See Welf. & Inst. Code, § 366.26, subd. (j); Cal. Rules of Court, rule 5.725(a)(2); *In re Mary G.* (2007) 151 Cal.App.4th 184, 208; *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1263, overruled on another point in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re De John B.* (2000) 84 Cal.App.4th 100, 110; but see *In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1195; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1343, fn. 3.)

If the court reversed termination of parental rights to one parent, the parental rights of the other parent who did not appeal is not reinstated. (*Los Angeles County DCFS v. Superior Court* (2000) 83 Cal.App.4th 947, 949; contra *In re A.L.* (2010) 190 Cal.App.4th 75, 78-80 [reversed denial of the other parent's modification petition before the termination of parental rights].)

Trial court erred when it terminated parental rights of one parent before considering whether to terminate the rights of the other. (*In re Vincent S.* (2001) 92 Cal.App.4th 1090, 1093.)

Standing: Cannot contest termination of parental rights of the other parent. (*In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1194; *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806-1808 [sibling's relationship]; *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-877 [grandmother].)

Standing: "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 238 [a parent could not challenge placement at the section 366.26 hearing when termination of parental rights was not challenged].)

Standing: Cannot contest anything after parental rights have been terminated. (*Los Angeles County DCFS v. Superior Court* (1998) 62 Cal.App.4th 1, 11 [placement].)

Standing: Sibling lacked standing to challenge adoptability. (*In re D.M.* (2012) 205 Cal.App.4th 283, 293-294.)

Waiver: A parent does not waive claiming the juvenile court could not terminate parental rights without a finding that the parent was unfit, though there was no appeal from the dispositional hearing. (*In re Gladys L.* (2006) 141 Cal.App.4th 845, 849.)

Waiver: Failing to object to adoptability does not waive issue for appeal. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561; *In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400; *In re Brian P.* (2002) 99 Cal.App.4th 616, 623.)

"Generally, issues not raised in the trial court cannot be raised on appeal. 'The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.' (*Tahoe National Bank v. Philips* (191) 4 Cal.3d 11, 23, fn. 17.) In other words, when the merits of a case are contested, a parent is not required to object to the agency's failure to carry its burden of proof. [Citations.]" (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464 [including submissions to the social worker report].)

Waiver: Failure to object to not obtaining minor's wish waived without objection. (*In re Asia L.* (2003) 107 Cal.App.4th 498, 513.)

Waiver: Failure to argue below that there might be impediments to the caretakers adopting the child waives the claim on appeal. (*In re R.C.* (2008) 169 Cal.App.4th 486, 493, fn. 2.)

Waiver: Failure to object to setting a permanent plan hearing waives the argument there was clear and convincing evidence at the termination of services that long term foster care was the appropriate permanent plan. (*Victoria S. v. Superior Court* (2004) 118 Cal.App.4th 729, 732.)

Ripeness: Do not consider adoptability when court continues permanent plan hearing for 180 days to seek adoptive placement. (*In re Cody C.* (2004) 121 Cal.App.4th 1297, 1300-1301, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1019, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5; but see *In re Edward H.* (1996) 43 Cal.App.4th 584, 590.)

Standard of review: Review for substantial evidence. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292; *In re Erik P.* (2002) 104 Cal.App.4th 395, 400; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576 [and (c)(1)(A) exception]; *In re Heather B.* (1992) 9 Cal.App.4th 535, 563; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Fernando M.* (2006) 138 Cal.App.4th 529, 535; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; but see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [abuse of discretion standard].)

Remedy: If reverse the erroneous placement of the child, reverse the subsequent termination of parental rights. (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1061.)

Remedy: If reverse the termination of parental rights, the court on remand can consider new evidence since the last hearing. (*In re S.B.* (2008) 164 Cal.App.4th 289, 303-304.)

Remedy: If reverse termination of parental rights because of new evidence under Code Civil of Procedure section 909, remand for an updated review hearing where the trial court either summarily terminates parental rights or adopts a different permanent plan. (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 78, 91, disapproved on a related ground in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

PARENT-CHILD EXCEPTION:

"The 'benefit exception' found in section 366.26, subdivision (c)(1)(A) may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

Parent-child exception applies only in exceptional circumstances. (See *In re Celine R.* (2003) 31 Cal.4th 45, 53.) The parent-minor bond exception requires showing parent assumed a *parental role* which provides benefit to the minor such that *outweighs* the benefit of permanency. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573, 576 [balance benefit of parent's relationship, minor's age, proportion of time with parent, positive or negative effect of visits, and minor's particular needs]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 [frequent and loving contact is not enough without a significant positive emotional attachment by the child]; *In re Brittany C.* (1999) 76 Cal.App.4th 847; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1347-1350 [visits not enough], cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 53; see *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954 [extending *Autumn H.* to the (c)(1)(E) exception], cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 61.)

See also: *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642-643 [due to alcoholism there was past neglect and domestic violence]; *In re Jaime R.* (2001) 90 Cal.App.4th 766, 773-774 [despite minor's strong bond because visits created divided loyalties]; *In re Taneka W.* (1995) 37 Cal.App.4th 721, 728-729 [frequent and loving contact is not enough without a significant positive emotional attachment by the child]; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [regular visitation and whether (a) continuation of the relationship will promote the well being of the minor to outweigh termination of parental rights or (b) terminating parental rights would be detrimental to the minor]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530 [upheld court finding the exception, though limited visitation]; *In re Derek W.* (1999) 73 Cal.App.4th 825; *In re Andrea R.* (1999) 75 Cal.App.4th 1093; *In re Casey D.* (1999) 70 Cal.App.4th 38, 50-53 [arguably watered down *Autumn H.* balancing]; *In re Zachary G.* (1999) 77 Cal.App.4th

799; *In re Amanda D.* (1997) 55 Cal.App.4th 813; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523 [*Autumn H.* is correct], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342 [requires a substantial positive emotional attachment such that minor would be greatly harmed]; *In re Clifton B.* (2000) 81 Cal.App.4th 415; see *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 7 ["we decline to be so cynical as to presume that the Legislature actually never expected *any* parent to fit in the exception"], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; but see *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206-1209 [same *Autumn H.* factors and consider minor's best interests; bond exists when evidence of strong attachment after the 9 year-old lived with parent for 6½ years].)

Elements: The parent must show in the juvenile court by the preponderance of the evidence: (1) regular visitation, (2) creating a significant parent-child relationship, (3) such that on balance the detriment of discontinuing the relationship would outweigh the benefit of permanency. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573, 576; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

The parent has the burden of proof to show the exception applies; CPS need not show absence of the exception. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

There was insufficient evidence the parent-child exception did not apply when the court believed visitation should continue after adoption and was re-assured of an "unenforceable promise" to continue the visits, though the parent did not have day-to-day care of the minor and the minor had a "primary attachment" with the caretaker. (*In re C.B.* (2010) 190 Cal.App.4th 102, 126; *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301, limited in *In re C.F.* (2011) 193 Cal.App.4th 549, 558 and *In re Jason J.* (2009) 175 Cal.App.4th 922, 937; see also *In re J.C.* (2014) 226 Cal.App.4th 503, 529-530.)

[1] Regular contact

Regular visitation is the threshold requirement. (*In re Zeth S.* (2003) 31 Cal.4th 396, 412, fn. 9; *In re Aalyah R.* (2006) 136 Cal.App.4th 437, 450.)

[2] Significant relationship

Regular visitation and contact requires the parent to be in a "parental role." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1420 [as in "ongoing daily care"]; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827 ["The parent must do more than demonstrate, 'frequent' and loving contact, . . . an emotional bond with the child, or that parent and child find their visits pleasant . . . . Instead, the parent must show that he or she occupies a 'parental role' in the child's life."]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 ["a

relationship characteristically arising from day to day interaction, companionship and shared experiences . . . "] but see *ibid.* ["A strong and beneficial parent/child relationship might exist such that termination of parental rights would be detrimental to the child . . . despite a lack of day to day contact and interaction."].) "Interaction between natural parents and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 954 [the parent must show more than frequent contacts; parents did not assume parental role when not ask the school or go to activities and did not instruct or discipline the minors; the minors were upset when required to visit, did not say bye when they ended, refused to kiss parent voluntarily, and was irritable but stable after the visits].)

Must have more than enjoyable visits; must have some resemblance of the consistent, daily nurturing that marks a parental relationship. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) "[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, cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 53.) "[I]t would make no sense to forego adoption in order to preserve parental rights in the absence of a real parental relationship." (*Ibid.*)

"Even when the visits were consistent and frequent, the mother did not occupy a parental role. At best, she occupied a pleasant place in Elizabeth's life. This is insufficient to deny a child who cannot be returned to her parents the secure and permanent home decreed by the Legislature to be in her best interests. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1420.)" (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324; see *In re Jason J.* (2009) 175 Cal.App.4th 922, 938 [substantial evidence that the exception did not apply when the social worker opined the minor saw the parent as a friendly visitor].)

"We also interpret the statute as requiring that the parent must show that he or she has a parent/child relationship with the child, rather than a friendship. While friendships are important, a child needs at least one parent. Where a biological parent, such as appellant, is incapable to functioning in that role, the child should be given every opportunity to bond with and individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.)

A parent must show that severing the relationship would deprive the minor of a *substantial*, positive emotional attachment such that would be *greatly harmed* by termination of parental rights. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The parent cannot "derail" adoption by showing "some" benefit. (*Ibid.*)

But the statute itself "does not define the type of parent-child relationship which

will trigger the application of this exception." (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; accord, *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) "The benefit of continued contact between mother and children must be considered in the context of the very limited visitation mother was permitted to have. In this case, mother was not the boys' primary caretaker, and quantitative measurement of the specific amount of 'comfort, nourishment or physical care' she provided during her weekly visits is not necessary." (*Id.*, at pp. 1537-1538.) It is the quality of the interaction that mattered, and "it is DFCS which failed to provide information to the court about the quality of the visits during the year preceding the section 366.26 hearing. Its report consistently described the regularity of the visits, with no evaluation of their success." (*Id.*, at p. 1538; see also *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207-1208.)

The court in *Autumn H., supra,* 27 Cal.App.4th 567 also said "[t]he exception must be examined on a case-by-case basis. The age of the child, the portion of the child's life span spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*Id.*, at pp. 575-576.)

The court that decided *In re Autumn H.* (1994) 27 Cal.App.4th 567 also stated all that is required is "a relationship characteristically arising from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. 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 [but friendly visitor with a child parent never cared for not enough].)

The court that decided *Autumn H.* and *Casey D.* later said: "A parent must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) 'Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from the day-to-day interaction, companionship and shared experiences.' (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)[fn. 5] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Elizabeth M.*, *supra*, 52 Cal.App.4th at p. 324.) Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. (*In re Autumn H.*, *supra*, at p. 575.)" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) "However, as we clarified in *In re Casey D.* (1999) 70 Cal.App.4th 38, 51: 'Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. 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 C.F.* (2011) 193 Cal.App.4th 549, 555, fn. 5.)

A beneficial relationship could not be shown though there were unsupervised visits until the parent relapsed, followed by seldom attendant weekly visits for four months, then a resumption of visits which were "sporadic." (*In re C.F.* (2011) 193 Cal.App.4th 549, 554.) Though the minors had pleasant visits and sometimes sad to see them end, there was not a bonding study or other evidence the parent occupied a parental role; the minors looked to the caretakers to meet their emotional and physical needs. (*In re C.F.* (2011) 193 Cal.App.4th 549, 557.)

[3] Benefit outweighs adoption

"[W]e 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. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child . . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953 ["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."].)

"The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the 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. [Citations.] When the benefits form a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption. [Citations.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811; *In re Megan S.* (2002) 104 Cal.App.4th 247, 254 [court examines the subdivision within the context of the best interests of the minor].)

A parent must show that severing the relationship would deprive the minor of a *substantial*, positive emotional attachment such that would be *greatly harmed* by termination of parental rights. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The

parent cannot "derail" adoption by showing "some" benefit. (*Ibid.*) "The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315 [although the minor was excited to see the mother every week, there was not a significant relationship when the minor was removed at birth]; accord, *In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938.) Positive and negative interaction are shown by; (a) comments by the minor that he or she does not want to see the parent, (b) unhappiness or acting out around the visits, (c) indifference to a parent, (d) anger or detachment. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, fn. 4.) [Then determine if greatly harmed by termination.] Here, the exception did not apply when (1) minor too young to understand who is biological parents were, (2) the minor spent only a few hours with the parent during visitation, (3) though a positive relationship, not a parent-child one, and (4) minor has no particular needs which cannot be met by the adoptive parents. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466-467.)

Although there was a bond between the minor and the parent, an autistic minor who would receive proper care from the current caretakers should be adopted. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229-230.)

Claim of the parent-child exception was "frivolous" when the mother had taken drugs, the minor was out of her home between the ages of six months and seven years, and the mother blamed the minor for the dependency. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 594-595.)

Exception applied when mother cared for 7, 5, and 3 year old for all but two years; bonding study says minors have 'primary attachment' to the mother and see her as their mother, and terminating parental rights would be detrimental; CASA worker recommended against adoption because they had difficulty separating from the mother; though social worker's testimony that mother was not fit and caretaker provided a good home. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689-690 [there is no guarantee caretaker would maintain visitation after terminating parental rights])

Error not to apply the exception applied when the minor as detained when nine years old, the section 366.26 hearing was when the minor was 11, there was consistent weekly visits, a very close relationship, and it would be detrimental to disrupt it; the minor was emotionally unstable but better with the mother visiting, and the minor wished to live with the mother. (*In re Taplett* (21010) 188 Cal.App.4th 440, 447-450.)

The court cannot assume the adoptive parent would continue visitation with the natural parent. The exception might apply if the minor needed to see the parent. (See *In*

re C.B. (2010) 190 Cal.App.4th 102, 128-129.)

Standard of review: "There is some dispute about the precise standard of review that applies to an appellate challenge to a juvenile court ruling rejecting a claim that one of the adoption exceptions applies. *In In re Jasmine D*. (2000) 78 Cal.App.4th 1339 (*Jasmine*), the First District Court of Appeal acknowledged that most courts had applied the substantial evidence standard of review to this determination. (*Jasmine*, at p. 1351.) However, the First District concluded that the abuse of discretion standard of review was 'a better fit' because the juvenile court was obligated to make 'a quintessentially discretionary determination.' (*Jasmine*, at p. 1351; but see *Pack v. Kings County Human Services Agency* (2001) 89 Cal.App.4th 821, 839–840 [disagreeing with Jasmine's standard of review choice but not in the context of a challenge to a ruling on an exception to adoption].) [¶] In our view, both standards of review come into play in evaluating a challenge to a juvenile court's determination as to whether the parental or sibling relationship exception to adoption applies in a particular case. Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination. Thus, as this court noted in *In re I.W*. (2009) 180 Cal.App.4th 1517, 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.' (*In re I.W.*, at p. 1529.) Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. [¶] The same is not true as to the other component of these adoption exceptions. The other component of both the parental relationship exception and the sibling relationship exception is the requirement that the juvenile court find that the existence of that relationship constitutes a '*compelling reason* for determining that termination would be detrimental.' (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a 'compelling reason' for finding detriment to the child is based on the facts but is not primarily a factual issue. It is, instead, a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*In re Bailey J.* (2010) 189 Cal. App. 4th 1308, 1314-1315.)

SIBLING EXCEPTION:

Policy: "Children are not community property to be divided equally for the benefit of their parents. . . . The children have not chosen to divorce each other. At a minimum,

the children have a right to the society and companionship of their siblings." (*Marriage of Williams* (2001) 88 Cal.App.4th 808, 814.) "There is a "strong polic[y] in California law" in "that the sibling bond should be preserved whenever possible . . . . " (*Marriage of Heath* (2004) 124 Cal.App.4th 444, 449.) "[M]aintaining sibling relationships, under the right circumstances, is imperative for the emotional well-being of the [dependent] child now and in the future. For children who will never be returned to their parents, siblings may be the only true family they will ever have." (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1003.)

The sibling exception only does not permit long-term foster care. (*In re I.R.* (2014) 226 Cal.App.4th 201, 210.)

Interests of siblings are irrelevant. (*In re Celine R.* (2003) 31 Cal.4th 45, 54; *In re I.R.* (2014) 226 Cal.App.4th 201, 213-215 [the mother's effort to reunify with a baby did not permit not terminating parental rights to the minor]; *In re I.I.* (2008) 168 Cal.App.4th 857, 872-873; see *In re E.S.* (2011) 196 Cal.App.4th 1329, 1335-1339 [sibling failed to show how the minor was bonded to the sibling]; *In re Clifton B.* (2000) 81 Cal.App.4th 415 [before subd. (c)(1)(E) was enacted].)

But a sibling's testimony can provide indirect evidence of the dependent child's best interests. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.)

The exception is not applied retroactively. (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 812; *In re Raymond E.* (2002) 97 Cal.App.4th 613, 616, 618.)

Analysis is similar to the parent-child exception, so follow *Autumn H.* (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951, cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 61.)

Siblings include biological siblings or half-siblings who have been adopted by others. (*In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1522-1524.)

First, the court determines if termination of parental rights would substantial interfere with a sibling relationship. Substantial interference requires a relationship that is so significant that it would be detrimental under the factors listed in subdivision (c)(1)(A). (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952 [no significant relationship between the siblings, though they loved each other, miss each other, would be said to not see each other; there was no evidence of any harm beyond short sadness], cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 61; *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293-294 [no relationship when no or little evidence of emotional attachment between the minors]; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1122 [there is

no sibling relationship when removed from birth]; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251-254 [first of three, whether severing the sibling relationship would be detrimental]; *id.* at p. 252 [parent has the burden of proof and CPS need not show an absence of detriment]; *In re Erik P.* (2002) 104 Cal.App.4th 395, 403 [consider the nature and extent of the sibling relationship, including (1) whether they were raised in the same home; (2) whether shared significant common experiences, and (3) whether there was a close bond]; *id.* at p. 404 [there must be a substantial sibling relationship]; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5 [must be sufficiently detrimental, then weight against the benefit of permanency from adoption]; *id.* at pp. 1017-1018 [some sadness, just playmates not enough].)

Second, if there would be substantial interference, the court must weigh the minor's best interests in continuing the relationship with the benefit of permanence of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-953 [the value of the sibling relationship is low when the parents' chance of reunification is low; the sibling relationship would deprive the minor of stability], cited with approval in *In re Celine R.* (2003) 31 Cal.4th 45, 61; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251-254 [second of three, whether the sibling relationship outweighs the benefit of adoption; the court examines the subdivision within the context of the minor's best interests]; *In re Erik P.* (2002) 104 Cal.App.4th 395, 401, 403 [this is a prerequisite; not met if they are in the same home]; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 [sibling relationship when 8 and 10 year-olds depend on each other for support and security, ask for each other]; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017-1048, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5 [detriment must outweigh the benefit of permanence from adoption].)

In determining whether the exception to apply, the court's consideration is not limited to " 'whether the child was raised by a sibling in the same home [and] [¶] whether the child shared significant common experience *or* has existing close and strong bonds with a sibling [*and*] whether ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.' (§ 366.26, subd. (c)(1)(E), italic added.)" A strong bond without shared experience is enough. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1008.)

Minor being adopted by grandparent is sufficient reason for rejecting the exception. (*In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1422.)

Minor in adoptive home is reason enough for rejecting the exception. (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813; *In re Megan S.* (2002) 104 Cal.App.4th 247,

251-254 [third, whether adoption would interfere with the sibling relationship]; *In re Erik P.* (2002) 104 Cal.App.4th 395, 401, 403.)

It is proper to reject the exception when removing the minor from siblings and placing him with a nonrelative caretaker will lead to his adoption. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1068-1071.)

There was not a substantial relationship when the minor never lived with the sibling. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1317-1318.)

There was not a substantial relationship when the social worker said the minor would not be harmed by severing ties with the sibling. (*In re C.B.* (2010) 190 Cal.App.4th 102, 129-131.)

Evidence of the sibling's closeness to the minor was relevant to whether the minor had a close relationship with the sibling. So was evidence of the minor's relationship with the extended family. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822-824 [finding there was substantial evidence to support the sibling exception].)

There can be a post-adoption visitation agreement for continued sibling contact under Family Code section 8616.5 and Welfare and Institutions Code sections 366.26, subdivision (a), 366.29, subdivision (a). (See *In re C.B.* (2010) 190 Cal.App.4th 102, 131, fn. 8.)

Standing: Parent has standing to contest the sibling exception. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 999; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402; *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951; accord, *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1016, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5.)

Standing: A sibling does not have standing to assert the sibling exception. (*In re J.T.* (2011) 195 Cal.App.4th 7407, 717-720.)

Standard of review: Substantial evidence test. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5.)

Waiver: Parent waives (c)(1)(E) exception when it was not raised in the juvenile court. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 291-292; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.)

PRIVATE ADOPTION:

"The right to adopt a child, and the right of a person to be adopted as a child of another, are wholly statutory." (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 424-

425.)

"[S]trict and literal adherence to the letter and form" of adoption statutes is not required. (*Sharon S v. Superior Court* (2003) 31 Cal.4th 417, 433-434; *In re Johnson* (1893) 98 Cal. 531, 539; accord, *Adoption of Baby Girl B.* (1999) 74 Cal.App.4th 43, 54.)

"The Legislature has established three methods for adopting an unmarried minor: (1) an agency adoption ([Fam. Code,] § 8700 et seq.); (2) an independent adoption (§ 8800 et seq.); and (3) a stepparent adoption (§ 9000)." (*In re Michael R.* (2006) 137 Cal.App.4th 126, 135.)

Independent adoptions under Family Code section 8800 et seq. requires (1) that the person adopting is ten years older than the child, (2) that all the parties whose consent is required do consent fully and freely to the adoption contract, and (3) that the adoption be in the child's best interest. (*Sharon S v. Superior Court* (2003) 31 Cal.4th 417, 428 [p. 432-433: California permits adoption by unmarried parents, even if they are of the same gender]; *Estate of Sharon* (1918) 179 Cal. 447, 454.)

Before the court can permit adoption, the court must terminate the parental rights of any alleged or presumed parent.

Relinquishment requires knowing and intelligent waiver of parental rights. (*In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1506; see *Teresa J. v. Superior Court* (2002) 102 Cal.App.4th 366, 375-376 [parent can relinquish to a private adoption agency under Family Code section 8700 a minor in the dependency system unless the juvenile court finds it would not be in the minor's best interest]; *Adoption of Baby Boy D.* (2001) 83 Cal.App.4th 1, 10; but see *id.* at p. 13 [substantial compliance with the waiver form sufficient to show knowing and intelligible waiver even though CPS rejected the relinquishment]; *Tyler v. Childrens' Home Society* (1994) 29 Cal.App.4th 511, 529 [parent must show would not have relinquished if properly advised].) "[O]ne parent may not place a child for adoption without the other parent's consent unless the other parent's has been terminated or some other exception to the consent requirement applied" under Family Code section 8604, subdivision (a) or 8605. (*In re Michael R.* (2006) 137 Cal.App.4th 126, 142.)

When a parent voluntarily relinquishes the minor to a public agency under Welfare and Institutions Code section 361, subdivision (b) which is final before the section 366.26 hearing, the juvenile court cannot change it. (*In re R.S.* (2009) 179 Cal.App.4th 1137, 1147-1155.) The court abused its discretion in continuing the section 366.26 hearing to give the parent an opportunity to relinquish the minor. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143-146.) Family Code section 8700, subdivision (f) permits the parent to designate an adoptive parent, but the relinquishment is not valid if the agency determines the placement is inappropriate. (*In re R.S.* (2009) 179 Cal.App.4th 1137,

1149.) The juvenile court can overrule the agency's decision only if it concludes the decision was patently absurd or unquestionably not in the minor's best interests. (*In re B.C.* (2011) 192 Cal.App.4th 129, 146-151.)

"The elements of abandonment for purposes of section 7822 are delineated as follows: (1) the child must be 'left' by a parent in the care and custody of another person for a period of six months; (2) the child must be left without any provision for support or without communication from the parent; and (3) the parent must have acted with the intent to abandon the child." (*In re Jacklyn F.* (2003) 114 Cal.App.4th 747, 754 ["leaving" the minor by court order was not a voluntary abandonment].) "The . . . failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent … ha[s] made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent … ." (Fam. Code, § 7822, subd. (b); see also *Marriage of Jill and Victor D.* (2010) 185 Cal.App.4th 491, 503-506 [father abandoned minor when mother received custody by court order and father had virtually no contact or support afterward]; *Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1009-1015 [father abandoned minor when "left" him with the mother without support after committing domestic violence, and he was in and out of custody for six years]; *In re Michael R.* (2006) 137 Cal.App.4th 126, 143-144 [it concerns the intent to abandon "in general, not an intent to abandon to a specific person or couple," but there is no abandonment when the parent gives up custody pursuant to a court order]; *In re Amy A.* (2005) 132 Cal.App.4th 63, 69-72 [the father "left" the child with the mother who moved away with the child and the father did not pay child support]; *In re Daniel M.* (1993) 16 Cal.App.4th 878, 883-886 [the parent only need to intend to abandon the minor during a one year period]; *In re Baby Boy M.* (1990) 221 Cal.App.3d 475, 482 [failure to pay support when none was demanded and parent changing her mind concerning adoption did not indicate abandonment]; *In re Randi D.* (1989) 209 Cal.App.3d 624, 630 [failure to pay child support and no communication indicates abandonment]; *In re Brittany H.* (1988) 198 Cal.App.3d 533, 548 [the statute concerns intent to abandon in general, not intent to leave the minor with a particular person]; *In re George G.* (1977) 68 Cal.App.3d 146, 159 [there is no evidence of abandonment when the parent was unable to pay child support]; *In re Oukes* (1971) 14 Cal.App.3d 459, 467 [financial inability may excuse the failure to provide support, but lack of communication showed intent to abandon]; *In re Cattalini* (1946) 72 Cal.App.2d 662, 665 [there is no intent to abandon when the child is placed with another under a court order]; *In re Barton* (1959) 168 Cal.App.2d 584, 588; *In re Maxwell* (1953) 117 Cal.App.2d 156, 162-165.)

"[N]umerous appellate cases have concluded that the leaving requirement for abandonment may be satisfied by evidence of parental nonaction. (See, e.g., *In re Jack H.* (1980) 106 Cal. App. 3d 257, 264; *In re Jacqueline H.* (1979) 94 Cal. App. 3d 808, 816; *In re Morrow* (1970) 9 Cal. App. 3d 39, 52, disapproved on other grounds in *Hollister*

Convalescent Hosp., Inc. v. Rico (1975) 15 Cal.3d 660, 673–674; *In re Conrich* (1963) 221 Cal. App. 2d 662, 666–667; *In re Barton* (1959) 168 Cal. App. 2d 584, 588; *In re Maxwell* (1953) 117 Cal. App. 2d 156, 162–165.) However, none of these cases provide any analysis or rationale for this conclusion, and they rely on evidence that the parent has failed to communicate with or support the child for the requisite 'leaving' period to establish such 'parental nonaction.' We do not agree that evidence of a failure to communicate or support for the statutory period of time can, in itself, satisfy the separate statutory requirement that the child be 'left' for a prescribed period of time. [¶] Section 7822, subdivision (b), states that the failure to communicate with or support a child is presumptive evidence of the intent to abandon. However, intent is only one of the statutory elements that must be proved to establish abandonment. The statute also requires that the child be 'left' for a specified period. (*Id*., subd. (a).) Were we to construe the statute as permitting evidence of a failure to communicate or support to establish that the child has been 'left,' this would render some of the statutory language surplusage, because it would not matter how the child came to be in the care of another if the parent failed to communicate with or support the child." (*In re Jacklyn F.* (2003) 114 Cal.App.4th 747, 754, 755.)

Standard of review: Substantial evidence. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1010; *In re Amy A.* (2005) 132 Cal.App.4th 63, 67.)

Family Code section 8604 prevents a father from objecting to adoption when he has not seen the minor or provided support for a year, even if there is not an intent to abandon. (*Adoption of I.M.* (2014) 232 Cal.App.4th 40, 46-47.)

Family Code section 7825 concerning termination of parental rights for someone convicted of a felony permits it only if the felony makes the parent unfit. (*In re Baby Girl M.* (2006) 135 Cal.App.4th 1528, 1542.)

Family Code section 7827 concerning termination of parental rights because of mental disability does not require a social worker report. (*Marriage of Stephen E. and P.* (2013) 213 Cal.App.4th 983, 993-994.) The court should consider less drastic alternatives. (*In re Cody W*. (1994) 31 Cal.App.4th 221, 228-229.)

A private adoption can be reversed within three year for fraud, but not afterward even for extrinsic fraud. (Fam. Code, § 9102, subd. (b); *Adoption of B.C.* (2011) 195 Cal.App.4th 913, 917-918, 924-930; *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228-1232.)

Equitable adoption for intestate succession under Probate Code section 6455 when a parent intended to adopt a foster child or step-child. (*Estate of Ford* (2004) 32 Cal.4th

160; *Estate of Bauer* (1980) 111 Cal.App.3d 554, 559-560; *Estate v. Wilson* (1980) 111 Cal.App.3d 242; *Estate v. Rivolo* (1961) 194 Cal.App.2d 773, 777-778; see *Estate of Radovich* (1957) 48 Cal.2d 116, 130 (dis. opn. of Schauer, J.)

Waiver: Failure to object to the social worker report forfeits a claim it was deficient. (*Marriage of Stephen E. and P.* (2013) 213 Cal.App.4th 983, 991-993.)

GUARDIANSHIP:

Under subdivision (c)(1)(D), the court need not terminate parental rights if there are exceptional circumstances to permit a caretaker grandparent to assume guardianship. Exceptional circumstances does not include a preference for guardianship or a family antipathy to termination of parental rights. (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1298; *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1800-1801; see also *In re K.H.* (2011) 201 Cal.App.4th 406, 414-419; *In re Fernando M.* (2006) 138 Cal.App.4th 529, 535-538 [exception applied when grandparents were willing to adopt only after CPS threatened to remove the minors if they did not]; but *In re Xavier G.* (2007) 157 Cal.App.4th 208, 214 [terminating parental rights when the grandparent preferred guardianship was proper].) But the exception does not apply when the grandparent is willing to adopt. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 810.) The court properly determined it was not in the minor's best interest to end guardianship and return minor to the mother, though she successfully completed reunification services and her twins were returned to her. (*In re Jacob P.* (2007) 157 Cal.App.4th 819, 832-833.)

Must have assessment of prospective guardian before ordering legal guardianship. (*In re Lisa D.* (1990) 227 Cal.App.3d 613, 614-616; but see *Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1533-1537 [short social worker report was sufficient when the parents stipulated to guardianship].) A parent retains due process rights in the proceeding to appoint a guardian. (*Tracy A. v. Superior Court (Pauline I.)* (2004) 117 Cal.App.4th 1309, 1318-1319.) The guardian cannot be from out of state. (*In re K.D.* (2004) 124 Cal.App.4th 1013, 1018.) The juvenile court has the power to order services to the guardian under Welfare and Institutions Code section 366.3, subdivision (b). (*In re Z.C.* (2009) 178 Cal.App.4th 1271, 1280-1281.)

"[E]ven though the juvenile court terminates dependency jurisdiction in the case, the juvenile court still retains jurisdiction over the guardianship. . . ." (*In re D.R.* (2007) 155 Cal.App.4th 480, 486-487.) Section 366.3, subdivision (f) provides that parents whose rights have not been terminated may participate in a guardianship termination hearing, and may be considered as custodians for the child, and the child returned to them if they establish, by a preponderance of the evidence, that reunification is in the child's best interests. If such a finding is made, reunification services may be provided to the parent for up to six months. (§ 366.3, subd. (f).)

In order to appoint a guardian at the dispositional hearing, (1) the court must find jurisdiction, (2) the parents must decline reunification services, (3) the guardianship must be in the minor's best interests, (4) the minor and the parents agree to the appointment of the guardian, (5) the court properly advises the parents and minor, and (6) the court orders an assessment which has certain requirements under Welfare and Institutions Code section 360, subdivision (a). (*In re G.W.* (2009) 173 Cal.App.4th 1428, 1437-1438.) The option of appointing a legal guardian does not apply at the dispositional hearing of a supplemental petition when the parents no longer qualify for reunification services. (*In re G.W.* (2009) 173 Cal.App.4th 1428, 1440-1443.) The court can order guardianship at the dispositional hearing when the custodial parent waives reunification services, even if the noncustodial parent does not. (*In re L.A.* (2009) 180 Cal.App.4th 413, 427-428.)

Need not bifurcate periodic review hearing (to terminate legal guardianship) and permanent plan hearing. (*Barbara A. v. Superior Court* (2005) 129 Cal.App.4th 1408, 1418 [can terminate dependency guardianship with a § 388 petition and terminate parental rights at the same hearing]; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 253-254 [Probate guardianship can be terminated at the detention hearing]; *In re Carrie W.* (2003) 110 Cal.App.4th 746, 754, 757-758 [probate guardianship can be terminated without jurisdictional hearing; cannot place ward of guardian in long-term foster care]; *In re Andrea R.* (1999) 75 Cal.App.4th 1093; *In re Nino P.* (1994) 26 Cal.App.4th 615; see *San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882.) Need not have a modification petition to hold a section 366.26 hearing to convert the guardians to adoptive parents. (*David L. v. Superior Court* (2008) 166 Cal.App.4th 387, 392-394.) If the dependency has been dismissed after establishing a dependency guardianship, modify previous orders by filing a section 388 petition in the juvenile court. (*In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1357-1359.) The court can terminate guardianship through a section 388 petition, but it must still consider whether to provide services or custody with the parents under section 361.3, subdivision (f). (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1550-1556; *In re R.N.* (2009) 178 Cal.App.4th 557, 565-566.)

A Probate Code guardian has more rights than a guardianship established under the Welfare and Institutions Code. (*Barbara A. v. Superior Court* (2005) 129 Cal.App.4th 1408, 1420-1421 [a dependency guardian is not entitled to reunification services, only a probate guardian is]; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 249-250; see *In re Carrie W.* (2003) 110 Cal.App.4th 746, 758.) A guardianship under Probate Code 1601 cannot be terminated unless it is in the minor's best interest; the parents cannot just end the guardianship when ready. (*Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 488.) Terminate a Probate Code guardianship under Welfare and Institutions Code section 728, subdivision (a), not under section 388. (*A.H. v. Superior Court* (2013) 219 Cal.App.4th

1379, 1386-1392 [minor's counsel can file the petition]; *In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1413-1417; *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1206-1207.)

When there is a petition to terminate guardianship, the court can (1) deny the petition, (2) deny the petition and request that services be provided, or (3) grant the petition. (*In re Jessica C.* (2007) 151 Cal.App.4th 474 [the court abused its discretion in terminating guardianship when it failed to consider if services could have remedied the problem].) When terminate guardianship, the court must consider placing the minor with the parents under family maintenance unless it is shown they are unfit. (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1501-1506; *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1288, 1290, 1292.)

Once the (Probate Code) guardianship is terminated, the court need not place the minor with the former guardian or offer reunification services. (*A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1392-1394.)

Probate Code 1516.5 permitting a Probate guardian to adopt after two years generally complies with due process; the parents' inability to parent for two years is sufficient evidence of unfitness. (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1130.) *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 does not prohibit terminating parental rights for a father who permitted a Probate Code guardianship more than two years ago. (*In re Charlotte D.* (2009) 45 Cal.4th 1140, 1149; *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1373-1376.)

A nonminor former dependent can receive AFDC-FC until 21 years old. When the guardianship is terminated, the court can appoint a successor guardian. (*In re A.F.* (2013) 219 Cal.App.4th 51, 54-60.)

MISCELLANEOUS:

Under subdivision (c)(1)(B), a minor over 12 vetoing adoption, the minor did not unequivocally object to adoption when said did not wish to be adopted if would result in never seeing the parents again. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1334.) The court should not follow the minor's objection if it would not be in the minor's best interests. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1336.)

Standing: A parent cannot complain of lack of notice to a minor who is at least 12 years old. (*In re Desiree M.* (2010) 181 Cal.App.4th 329, 333-334.)

Waiver: Failure to object to lack of notice to a child at least 12 years old forfeits the claim. (*In re Desiree M.* (2010) 181 Cal.App.4th 329, 334.)

Prejudice: Failure to give notice to a child at least 12 years old is subject to harmless error. (*In re Desiree M.* (2010) 181 Cal.App.4th 329, 335.)

There is an exception to terminating parental rights because the minor is an Indian child. The court of appeal reviews the juvenile court's decision on this matter based on the evidence presented below. (*In re C.B.* (2010) 190 Cal.App.4th 102, 133.)

Best interests of the minor exception no longer exists. (*In re Jose G.* (2003) 106 Cal.App.4th 725, 734; *In re Jaime R.* (2001) 90 Cal.App.4th 766, 774; *In re Jose V.* (1996) 50 Cal.App.4th 1792; but see *In re Jessie G.* (1997) 58 Cal.App.4th 1; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164 ["consideration of the child's best interests is inherent in the legislative procedure for selecting and implementing a permanent plan"].) "No separate, general best interests exception to adoption exists under section 366.26. [Citation.] However, as this court has stated, 'consideration of the child's best interests is inherently in the legislative process for selection and implementing a permanent plan.' (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165.)" (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1336.)

The juvenile court cannot reverse its decision to terminate parental rights. (Welf. & Inst. Code, § 366.26, subd. (i)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 407, fn. 4; *In re L.J.* (2013) 216 Cal.App.4th 1125, 1139-1140; *Amber R. v. Superior Court* (2006) 139 Cal.App.4th 897, 900-902 [a parent does not have standing under § 366.3, subds. (e)(2) & (f)(3) to file a § 388 petition]; *In re David H.* (1995) 33 Cal.App.4th 368, 385; *In re Ronald V.* (1993) 13 Cal.App.4th 1803, 1806; *In re Isaac J.* (1992) 4 Cal.4th 525, 531; but see *Marriage of Jackson* (2006) 136 Cal.App.4th 980, 989 [collateral attack on order terminating parental rights by family court is permissible when the order was void].) With an order terminating parental rights, "the parents were parents no longer. As a result of the order terminating parental rights, the court permanently terminated all parental rights and obligations of the child to the parent." (*Frazier v. Velkura* (2001) 91 Cal.App.4th 942, 946.) An order terminating parental rights "represents the total and irrevocable severance of the bond between the parent and child." (*County of Ventura v. Gonzales* (2001) 88 Cal.App.4th 1120, 1123.) The court cannot order visitation for an alleged father after terminated parental rights. (*In re Jarred H.* (2004) 121 Cal.App.4th 793, 796-799; see also *In re Jacob E.* (2004) 121 Cal.App.4th 909, 924-925 [mother could not participate in dependency proceedings or receive visitation after termination of parental rights].) The court cannot permit the biological parent to adopt or be declared a presumed parent. (*In re Cody B.* (2007) 153 Cal.App.4th 1004, 1009-1013.) The court cannot order visitation with the parent. (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1390-1393.)

Cannot terminate parental rights without adoption being the long-term plan. (*In re Amelia S.* (1991) 229 Cal.App.3d 1060.)

Must have proper notice under Welfare and Institutions Code section 366.23. (*In re Marissa T.* (1998) 62 Cal.App.4th 1320 [notice to attorney insufficient if CPS knows where parent is]; *In re Anna M.* (1997) 54 Cal.App.4th 463; but see *In re J. I.* (2003) 108 Cal.App.4th 903, 908, 910 [need not give new notice when hearing 'continued' for six months for trial adoption].)

Rights at hearing described in Welfare and Institutions Code section 355 do not apply at permanency plan hearings; only due process requirements apply. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816.)

Grandparent still has visitation rights after termination of parental rights (at least until the minor is actually adopted). (*Frazier v. Ventura* (2001) 91 Cal.App.4th 942, 947.)

Can order visitation after adoption to non-relative. (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 518 [lesbian former partner].)

"The Legislature determined that in limited circumstances the goal of providing stable homes to children may be fostered by allowing relatives of the child who are the prospective adoptive parent or parents, the birth relatives (including the birth parent or parents), and the child to enter into an agreement providing for visitation, future contact, and/or sharing of information. Such an agreement is known as a kinship adoption agreement." (*In re Kimberly S.* (1999) 71 Cal.App.4th 405, 409.)

Standing: Statute requires notice to grandparent if parent did not appear at hearing setting permanent plan hearing. Parent has standing to contest lack of such notice to grandparent. (*In re Steven H.* (2001) 86 Cal.App.4th 1023, 1031-1033.)

Standard of review: Review the (c)(1)(B) exception for substantial evidence. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.)

Remedy: Denial of contested section 388 hearing at permanent plan hearing requires reversal of the permanent plan order as well. (*In re Clifton V.* (2001) 93 Cal.App.4th 1400, 1406.)