

***Caden C.* – Its Interpretation and Application in the Courts**

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Thursday, October 19, 2023

Section 366.26 (c)(1)(B)(i)

(c)(1) If the court determines, ... , by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. ... the court shall terminate parental rights unless either of the following applies:

(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

***In re Caden C.* (2021) 11 Cal.5th 614**

Clarified the three elements of the beneficial parent-child relationship exception:

1. Parent must show they maintained regular visitation and contact with the child, taking into account the extent of visitation permitted.
2. Parent must show that that the child has a substantial, positive, emotional attachment to the parent – the kind of attachment implying that the child would benefit from continuing the relationship.
3. Parent must show that terminating that attachment would be detrimental to the child even when balanced against the countervailing benefit of a new adoptive home. (*Id.* at p. 632.)

Compliance with case plan/failure to reunify:

“A parent’s continued struggles with the issues leading to dependency are not a categorical bar to applying the exception.” However, “[a] parent’s struggles may mean that interaction between parent and child at least sometimes has a “negative’ effect” on the child. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576).” (*Id.* at p. 637.)

Hybrid standard of review:

A substantial evidence standard of review applies to the first two elements. The determination that the parent has visited and maintained contact with the child “consistently,” taking into account “the extent permitted by the court’s orders” [citation omitted] is essentially a factual determination. It’s likewise essentially a factual determination whether the relationship is such that the child would benefit from continuing it....For the third element, the ultimate decision — whether termination of parental rights would be detrimental to the child due to the child’s relationship with his parent — is discretionary and properly reviewed for abuse of discretion.” (*Id.* at pp. 639-640.)

Standard of Review

In re Caden C. (2021) 11 Cal.5th 614, 639-640

In re Bailey J. (2010) 189 Cal.App.4th 1308, 1314-1315

In re I.W. (2009) 180 Cal.App.4th 1517, 1528

Seminal cases

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

Sets forth factors for discussing/analyzing second element.

The relationship may be shaped by a “slew of factors” such as “[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.” (*Id.* at p. 576.)

In re S.B. (2008) 164 Cal.App.4th 289

“We do not believe it is reasonable to require the parent of a child removed from parental custody to prove the child has a ‘primary attachment’ to the parent, or to show the parent and the child have maintained day-to-day contact. If that were the standard, the rule would swallow the exception.” (*Id.* at p. 300.)

“We do not believe a parent should be deprived of a legal relationship with his or her child on the basis of an unenforceable promise of future visitation by the child's prospective adoptive parents.” (*Ibid.*)

Bonding study

In *Caden C.*, the California Supreme Court instructed juvenile courts to “seriously consider, where requested and appropriate, allowing for a bonding study or other relevant expert testimony.” (*Caden C.*, at p. 633, fn. 4.)

In re M.V. (2023) 87 Cal.App.5th 1155

Bonding study that did not address whether child would benefit from continuing the relationship with his parents. An updated study was required. (*Id.* at pp. 1180-1182.)

Bonding study included detailed assessment of parents but barely referenced child and reported only that it appeared child had been cared for mostly by paternal grandparents and “may be most attached to her grandmother,” which was irrelevant to inquiry. Expert opined on other areas beyond scope of assigned assessment, and he failed to consider child’s age, portion of life spent in parents’ custody, effects of child’s interactions with parents, and child’s particular needs. (*Id.* at pp. 1174-1178.)

Post-*Caden C.* opinions analyzing the beneficial relationship exception

1. *In re B.D.* (2021) 66 Cal.App.5th 1218 4/1 - REVERSAL

- The juvenile court improperly relied on parent’s failure to complete family reunification services without considering the

impact on the parent/child relationship (amount of visits, nature of contact, negative effects). (*Id.* at pp. 1222, 1228.)

- The juvenile court failed to consider relationship prior to the dependency and nature of visits during dependency which are critical to analysis on 3rd element. (*Id.* at p. 1228.)
- Improperly looked for a “parental relationship” and “parental role.” (*Id.* at pp. 1229-1230.)
- Reliance on improper factors in second element requires reversal. (*Id.* at p. 1230.)
- Reports should address whether or not there is a substantial, positive emotional attachment from child to parent, considering *Autumn H.* factors. (*Id.* at p. 1230, fn.5.)

2. *In re J.D.* (2021) 70 Cal.App.5th 833 1/2 - REVERSAL

- Agency’s reports should address:
 - whether or not there is a substantial, positive emotional attachment from child to parent, considering *Autumn H.* factors
 - the quality of the relationship and the nature of the interactions (*Id.* at p. 855.)
- Focus must be on *child’s* attachment to parent. (*Id.* at p. 857.)
- Parent not required to prove attachment is a “primary bond.” (*Id.* at p. 859.)
- Improper factors in second element
 - reliance on failure to complete services without considering the impact on the parent/child relationship
 - considering suitability of placement
 - required a “parental bond” (*Id.* at pp. 863-865.)
- For third element, juvenile court must assume termination means the end of the relationship. The “parent and child will be left as not just legal strangers to one another but also literal strangers.” (*Id.* at p. 866.)

3. *In re D.M.* (2021) 71 Cal. App.5th 261 2/8 – REVERSAL

- Agency’s reports should address whether or not there is a substantial, positive emotional attachment from child to parent, considering *Autumn H.* factors. (*Id.* at p. 271.)

- Improper focus on “parental role” – “...the beneficial relationship exception is not focused on a parent’s ability to care for a child or some narrow view of what a parent-child relationship should look like.” (*Id.* at p. 270.)
 - Reliance on improper factors in second element requires reversal.
4. *In re L.A.-O.* (2021) 73 Cal.App.5th 197 4/2 - REVERSAL
- Earlier reports must be admitted to evidence to be relied upon. (*Id.* at pp. 207-208.)
 - Improper to require that parents occupy a “parental role.” (*Id.* at pp. 208-210.)
 - A “parental role’ is defined largely in terms of what it is not. It is not merely frequent and loving contact; it is not merely pleasant visits; it is not being merely a friendly visitor; and it is not merely an emotional bond (as opposed to a significant, positive, emotional attachment). This list of “nots” is consistent with *Caden C.* However, it tells us nothing about the mysterious X factor that will boost the parent up from being merely a friendly visitor and into the requisite parental role. (*Id.* at p. 211.)
 - Reliance on improper factors in 2nd element requires reversal.
5. *In re Eli B.* (2022) 73 Cal.App.5th 1061 1/2
- As to the father, exception fails on first element – visitation. (*Id.* at p. 1070.)
 - The fact that the mother directed the bonding expert not to prepare a report creates an inference that the relationship was not a significant positive emotional attachment. (*Id.* at p. 1075.)
 - Mother’s interactions with the children had negative impacts on them, such as they would often not go near her during the visits or would physically lash out at her, and they expressed feelings of rejection/abandonment, especially during gaps of visitations. (*Id.* at pp.1073-74.)
 - Evidence showed children were better off in a stable placement. (*Id.* at p. 1075.)

6. *In re A.L.* (2022) 73 Cal.App.5th 1131 6th
 - Juvenile court is not required to state specific findings when it concludes that termination of parental rights *would not* be detrimental. (*Id.* at p. 1156.)
 - It was proper for the juvenile court to consider whether, and the extent to which, the caregivers and father occupied parental roles with the child when assessing detriment in the third element. (*Id.* at p. 1157.)
7. *In re Katherine J.* (2022) 75 Cal.App.5th 303 2/1
 - *Caden C.* requires the juvenile court to do more than state the parent does not occupy a parental role. (*Id.* at p. 309.)
 - However, use of term parental role was not fatal error because court explained that the father’s issues with substance abuse and violence prevented him from maintaining a positive emotional attachment with the child and diminished the benefit flowing from the relationship. (*Id.* at pp. 319-320.)
8. *In re D.P.* (2022) 76 Cal.App.5th 153 3rd - REVERSAL
 - The juvenile court’s ruling that there was inadequate evidence to support the exception was an abuse of discretion. The “juvenile court here performed no specific analysis on the beneficial parental relationship exception, instead finding only that the parents presented inadequate evidence to justify any exception. The juvenile court’s ruling does not comport with the requirements established in *Caden C.*” (*Id.* at p. 166.)
 - Juvenile court may have considered the following improper factors
 - parents’ ongoing issues without looking at the effects on the parent/child relationship
 - the bond with the caregivers
 - promise of future visitation (*Id.* at pp. 167-169.)
9. *In re M.G.* (2022) 80 Cal.App.5th 836 2/8 - REVERSAL
 - Inapt bonding study was not substantial evidence there was no substantial positive emotional attachment between child and parents. (*Id.* at pp. 849-850.)

- Bonding study expert improperly compared caregivers and parents
- “Inexplicably terse and analytically uninformative” given disabilities of all family members, child’s tender age and inability to verbalize, constraints of video-only contact. (*Id.* at p. 850.)
- Error with respect to 2nd element requires reversal
- COA instructed juvenile court on remand that “[t]he focus is not on whether M.G.’s parents can assume their parental roles; as Caden C. reminded us, that ship sailed when reunification services were terminated” (*Id.* at p. 852.)

10. *In re M.M.* (2022) 81 Cal.App.5th 61 2/8

- Although adoption assessment did not address the nature of the relationship or the nature of visits, any error was forfeited and there was no prejudice because the parent did not regularly visit. (*Id.* at pp. 67-68.)
- There was no abuse of discretion in denying mother's belated request for a bonding study and continuance, on the day of the section 366.26 hearing that had been pending for several months. (*Id.* at p. 69.)

11. *In re J.R.* (2022) 82 Cal.App.5th 526 1/2

- Error in considering improper factors can be deemed harmless where the record would not support a finding that the exception applied even where parent’s evidence is credited. (*Id.* at pp. 533-534.)
- “When . . . the proper legal standard is already established and a party has had a full and fair opportunity to present all of their evidence on a contested issue, and yet in the end there is simply no evidence that could support a favorable finding for them, then any legal error in the court’s reasoning or basis for its decision quite obviously is harmless” (*Id.* at p. 529.)

12. *In re G.H.* (2022) 84 Cal.App.5th 15 4/3

- The elements of the exception are interrelated and naturally inform and lead into each other (*Id.* at p. 26.)

- No error in juvenile court using term parental relationship/role. (*Id.* at p. 27.)

13. *In re M.V.* (2023) 87 Cal.App.5th 1155 2/8 - REVERSAL

- Second element is not “is there a bond?” The COA determined the juvenile court reduced element two down to a “bond” and did not evaluate “the quality of the parent-child relationships.” Because of this lack of analysis, the juvenile court could not have properly weighed “whether it would be detrimental to sever M.V.’s relationship with her parents.” (*Id.* at p. 1185.)
- Error not to consider *Autumn H.* factors and to not evaluate the quality of the parent/child relationship in the second element. (*Id.* at pp. 1184-1185.)
- Improper to compare the pros and cons of adoption in third element. Focus must be on whether termination would be detrimental. (*Id.* at p. 1186.)
 - Also, improper to rely on promise of future visitation. (*Ibid.*)
- Bonding study that did not address *Autumn H.* factors and nature of parent/child relationship necessitated granting request for updated study. (*Id.* at pp. 1180-1182.)

14. *In re I.E.* (2023) 91 Cal.App.5th 683 4/2

- Substantial evidence argument failed based on child’s “consistent and compelling” statements in the record that she wanted foster home to be her “forever home.” (*Id.* at pp. 687, 693.)