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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re D.D., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

TRAVIS D.,

Defendant and Appellant.

B286868

(Los Angeles County
Super. Ct. No. DK08853)

APPEAL from a judgment of the Superior Court of
Los Angeles County. S. Patricia Spear, Judge. Affirmed.

Maryann M. Goode, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Shante Sylvester, Deputy County
Counsel for Plaintiff and Respondent.

Travis D. (father) appeals from an order terminating his parental rights over his child, D.D. Father argues that the trial court erred in failing to apply the beneficial parent-child relationship exception to termination of parental rights under Welfare & Institutions Code section 366.26, subd. (c)(1)(B)(i).¹ Father has failed to establish error, therefore we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family

D. (born Jan. 2006) is the child of father and Jeanette R.² Shortly after D.'s birth, father and Jeanette separated, and father was awarded sole physical and legal custody of D. In 2011, father met and married Alexandria (stepmother), and together they had two more children, Luca and Dante.³ At the time the petition was filed in this proceeding, the family consisted of father, stepmother, D., Luca and Dante.

The first referral and detention

On December 12, 2014, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging general neglect and physical abuse of then eight-year-old D. by father and stepmother. D. had arrived at school with a five-inch scratch and bruise on his face and reported that he had been slapped, although he did not specify who slapped him. D. told the reporter not to tell stepmother.

On the same date, a social worker went to the family home and met with stepmother, D. and D.'s two brothers, aged two and

¹ All further statutory references are to the Welfare & Institutions Code.

² D.'s mother, Jeanette R., is not a party to this appeal.

³ Stepmother, Luca and Dante are not parties to this appeal, but are referenced throughout this opinion as necessary.

one. The social worker observed two bruises on D.'s face, a long one and a round one near his left eye. Stepmother informed the social worker that Luca got angry and threw a toy at D. which hit him on the face. Stepmother denied hitting D. D. also stated that Luca threw a toy at him.

On December 17, 2014, the social worker received a telephone call from paternal grandfather (PG), who stated that the stepmother lied to the social worker. PG explained that D. had come to his home and told him what happened. PG reported that stepmother told D. to tell the social worker that Luca had hit him with a toy and not to report that she was the one that hit him. PG stated that this is not the first time D. had come to his home with bruises. PG reported that father has anger issues, there is violence between father and stepmother, and that father's domestic violence was the reason that D.'s mother left father. D. came to PG's home with purple bruising on his buttocks in September 2014, and reported that father had hit him because he did not do his homework right. Father had been arrested for domestic violence in May 2012. PG paid to "bail him out."

The social worker then spoke with D. a second time. D. admitted that he had lied to the social worker in the previous interview. D. explained he told the lie because his stepmother told him to, and he did not want to get in trouble. When stepmother found out that the social worker was looking for her, she put makeup on D.'s face and told him to say that Luca hit him with a toy.

What really happened was that D. had a project due at school. Stepmother was supposed to help him with the project but she was too busy watching her show on television. D. would ask her questions and she would not respond, so he assumed it was fine. When he glued something on the project, mother asked

him why he did that. She took him upstairs and slapped him about 10 times. D. was not sure what he had done wrong or why she was slapping him. D. stated that he did not know why father and stepmother want him at home. He said he has to wake them up to take him to school. He never eats breakfast, and he packs his own lunch. D. stated a preference for staying with paternal grandparents, who feed him breakfast, lunch and dinner. D. explained that when he lives with father and stepmother, he is afraid because he does not know when he is going to get hit.

School staff confirmed that D. came to school on December 11, 2014, with a bruise on his face. The bruising was more visible on December 12, 2014. School staff stated that D. admitted that he had been hit by someone in his home but would not mention names. The school was concerned for D. because he was not performing at grade level and his schoolwork reflected no parent involvement. There was constant confusion about who brings his lunch and who would be picking him up. Father had never come to school. Stepmother and PG were the only family members who came to the school. School staff expressed concern that D. appeared depressed.

On December 24, 2014, DCFS filed a petition on behalf of D. pursuant to section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect). Counts a-1 and b-2 alleged physical abuse by father. Count b-1 alleged physical abuse by stepmother and father's failure to protect the child from such abuse.

D. and father appeared at the detention hearing and were appointed separate counsel. The court found father to be D.'s presumed father. D. was detained from father and placed with paternal grandparents. The court ordered monitored visits for father.

Amended petition

On January 13, 2015, DCFS filed an amended petition, adding allegations under subdivisions (a) and (b) that father and stepmother engaged in violent altercations in D.'s presence, placing him at risk.

In a jurisdiction/disposition report dated January 15, 2015, DCFS reported that in a follow-up interview with D., he reported that father would ask him questions and spank him hard for every answer he did not know. The spanking left blue, black, and purple marks that stayed for a long time. D. reported that his brothers were never hit and never got in trouble. D. believed that his brothers were treated better. Father and stepmother fought by throwing objects and using their hands to hit each other in D.'s presence. The police responded to the home more than once. D. had no desire to go back to father and stepmother and wished to remain with his grandparents. As of January 13, 2015, a written visitation schedule had not been created for father due to his changing work schedule.

Jurisdiction/disposition

The adjudication was continued from January 15, 2015 to February 27, 2015, for DCFS to conduct a search for D.'s mother, Jeanette. Visitation between father and D. was not consistent, as father missed some of the scheduled visits. PG also expressed concerns that father's immaturity at the visits occasionally made D. feel bad.

Jeanette first appeared in the case on February 27, 2015. The adjudication was continued to April 21, 2015. D. expressed a desire to remain with paternal grandparents. By the time of the April 2017 hearing, father was visiting weekly with D. Father expressed concern over D.'s appearance, stating that he was disheveled and appeared overweight. D. expressed that he sometimes ended visits early due to his decision not to allow his

father to make him feel bad anymore. The social worker observed that tension between the paternal grandparents and the stepmother's parents remained a barrier to ensuring sibling visits. Despite DCFS's encouragement, and close proximity of the grandparents' homes, they were unable to arrange consistent sibling visits.

At the hearing, father pled no contest to an amended petition. The court sustained the allegations under section 300, subdivision (b). The court found that there had been inappropriate physical discipline by stepmother; inappropriate physical discipline by father; and an unresolved history of domestic violence between father and stepmother.

Father was ordered family reunification services, and granted monitored visits three times per week for at least three hours.⁴

Progress hearing

A progress hearing took place on July 21, 2015. Father had completed a parenting course and was participating in a 52-week domestic violence program as well as individual counseling.

In April 2015, father's visits with D. had been liberalized to unmonitored. However, on July 9, 2015, DCFS received a referral alleging that father kicked D.'s leg during an unmonitored visit on July 1, 2015, and that D. had witnessed father and stepmother arguing. Father had also called D. hurtful names. D. informed the social worker that he no longer wanted unmonitored visits with father. On July 10, 2015, PG reported that D. returned from an unmonitored visit very upset, and informed PG that father and stepmother asked him to lie about the July 1, 2015 incident. Father denied the allegations.

⁴ Disposition for Jeanette was continued to May 5, 2015, at which time she waived her right to reunification services.

The court ordered father's visits to be monitored pending the completion of the investigation of the most recent referral.

Six-month review hearing

At the six-month review hearing on October 20, 2015, DCFS noted that D. was doing well in the paternal grandparents' home, though there was conflict between the paternal grandparents and father that caused difficulty with visitation. This caused D. anxiety.

The July 9, 2015 referral alleging that father physically abused D. was substantiated. The social worker observed that D. did not appear to be afraid of father but did not like being at father's home. Father had completed most of his court-ordered services, but the court found a risk of returning D. to father's care due to the recently substantiated referral. DCFS recommended six more months of reunification services.

Father requested a contested hearing on the issue of D.'s return to his custody.

Contested review hearing

The contested hearing took place on March 25, 2016. Father had been having monitored visits with D. once per week starting in February 2016. The visits were going well. Father also spoke with D. on the telephone every night for approximately 15 minutes. Father continued to attend a 52-week domestic violence course, individual counseling, and conjoint counseling with D. Father and stepmother had also started conjoint counseling.

The court ordered D. released to father's custody over the objections of DCFS and D.'s counsel.

The paternal grandparents were awarded monitored visits once per week. On June 2, 2016, father walked the case onto the calendar, and the visitation order was vacated.

The second removal

On September 14, 2016, DCFS filed a petition pursuant to section 387 alleging father and stepmother engaged in a physical altercation on August 21, 2016, in the presence of D. During the altercation, father threatened to kill himself. At the detention hearing, the court detained D. from father and placed him in the home of step-maternal grandparents. Father was granted monitored visits.

D. reported that during the August 21, 2016 altercation, father was breaking things in the home. At some point, stepmother entered D.'s room and closed the door. Father then broke down the door. D. called PG and asked him to come to the home to stop father from hurting anyone. D. stated that father threatened to kill himself. PG confirmed receiving the call from D. and witnessing father break down the door to D.'s bedroom. Father denied the allegations.

D. informed the social worker that he had not wanted to return to father's care at the March 25, 2016 hearing, but did so because the court "forced" him to. D. wanted to return to paternal grandparents' home.

On September 27, 2016, father and stepmother appeared at D.'s football game without a monitor. Paternal aunt requested that father and stepmother leave, and an argument ensued. D. became upset and yelled "Stop fighting." The principal of the school observed father and stepmother's conduct, believed it to be threatening, and called law enforcement.

The court sustained the section 387 petition on November 8, 2016. D. was placed with paternal grandparents. DCFS recommended reunification services for father, but the court denied services because father had utilized all of the time statutorily allowed for reunification services. The court set a permanency planning hearing for March 7, 2017.

Section 366.26 hearing

DCFS filed a report in anticipation of the March 2017 hearing. D. remained placed with the paternal grandparents. Father's visits were monitored by DCFS staff. The visits took place at the DCFS office every Tuesday and every other Saturday. Before the visits were monitored by DCFS staff, they had been monitored by stepmother's father. D. reported that the monitor would step away, and father would use the opportunity to make inappropriate comments. Father blamed D. for his loss of custody of D.'s brothers. DCFS noted that father and stepmother coached D. and blamed D. for DCFS's involvement with the family. D. was often upset after visits with father. Paternal grandparents were willing and able to adopt D. D. informed the social worker that he wanted to be adopted by paternal grandparents and live with them forever. The section 366.26 hearing was continued for completion of the paternal grandparents' adoption home study.

DCFS filed a status review report on May 9, 2017. Father continued his visits and daily telephone calls with D. D. stated that he enjoyed spending time with father. Paternal grandparents were very active and involved with D., and D.'s academic skills were improving in their care. Paternal grandparents expressed that they would always try to foster a good relationship between father and D.

DCFS filed another report in anticipation of the section 366.26 permanency planning hearing. D. confirmed that he wished to be adopted by his paternal grandparents. D. expressed a desire to continue visits with father, but limit his telephone contact to three times per week. In May, father had accompanied D. and PG to a doctor visit. In the presence of D. and the doctor, father commented about D.: "[L]ook at him he's obese." D. began

to cry. The doctor was interviewed, and confirmed that father was “quite mean” to D. and that D. was visibly upset.

On August 21, 2017, DCFS reported that the paternal grandparents’ home study was approved. DCFS found it was likely that D. would be adopted if parental rights were terminated. Father set the section 366.26 hearing for contest.

The contested hearing took place on September 15, 2017. DCFS filed a report for the hearing. D. had expressed numerous times his desire to be adopted by the paternal grandparents. Father had expressed to D. that father did not want D. to be adopted. D. stated that he did not want to live with father “anymore, ever” because father failed to change his behavior. D. recalled that the last time he went home with father, the police came and the door was broken down.

Father testified at the hearing. Father discussed his visits and telephone contact with D. The court found D. to be adoptable by clear and convincing evidence. Father’s counsel argued that the court should not terminate parental rights because doing so would be detrimental to D. based on father’s regular and consistent visitation. Father’s counsel argued that D. did not fully understand the ramifications of adoption.

D.’s counsel requested that the court terminate parental rights. D.’s counsel conceded that father maintained regular and consistent visitation, but argued that any benefits conferred on D. by having the continued relationship with father were outweighed by the benefits of adoption. DCFS also argued for termination of parental rights, making similar arguments to those of D.’s counsel.

The court found that father failed to show a compelling reason for a determination that the termination of parental rights would be detrimental to D. First, father failed to show that he could not continue his relationship with D., since his own

parents were adopting the child. Additionally, father's coaching of D., and father's rude and insensitive comments, contradicted father's position that the termination of parental rights would be detrimental to D. Finally, D.'s strong opinion that he wanted to be adopted by the paternal grandparents and did not want to return to father's care undermined father's position that the parental relationship exception outweighed the benefits of adoption.

The court terminated parental rights. On November 13, 2017, father timely appealed.

DISCUSSION

Father challenges the juvenile court's order terminating parental rights. He contends that the juvenile court erred in failing to apply the beneficial parental relationship exception. (§ 366.26, subd. (c)(1)(B)(i).)

I. Applicable law and standard of review

Section 366.26, subdivision (c) mandates that "[i]f 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." However, the court may refrain from terminating parental rights if one of several exceptions applies. One such exception exists where a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) If the court finds that this exception applies, "the court shall order that the present caretakers or other appropriate persons shall become legal guardians of the child." (§ 366.26, subd. (c)(4)(A).) The court may then make an order for continued visitation. (§ 366.26, subd. (c)(4)(C).)

In order to establish the beneficial parental relationship exception, the parent is required to prove, by a preponderance of

the evidence, that (1) the parent maintained regular visitation and contact; and (2) the child would benefit from continuing the relationship to such a degree that termination of the relationship would be detrimental to the child. (§ 366.26, subd. (c)(1)(B)(i).) Application of the exception is decided on a case-by-case basis, and the juvenile court should take into consideration factors such as “the minor’s age, the portion of the minor’s life spent in the parent’s custody, whether interaction between parent and child is positive or negative, and the child’s particular needs. [Citation.]” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 471 (*Scott B.*))

Courts have applied “various standards of review” when considering juvenile court determinations regarding the applicability of statutory exceptions to termination of parental rights. (*Scott B.*, *supra*, 188 Cal.App.4th at p. 469.) The *Scott B.* court explained, “both the substantial evidence test and the abuse of discretion test have been applied.” However, “[t]he practical difference between the two standards of review are not significant.” (*Ibid.*) Both standards require that the evidence be viewed most favorably in support of the juvenile court’s action.⁵ (*Ibid.*)

We find that we need not resolve the conflict regarding the standard of review. The record supports the juvenile court’s decision, regardless of the standard applied.

II. Father failed to prove the second element of the beneficial parental relationship exception

The parties agree that father met the first requirement of the beneficial parental relationship exception -- he maintained regular visitation and contact with D. However, father was

⁵ The Second District has recently applied the substantial evidence test in reviewing a juvenile court’s determination regarding the beneficial parental relationship exception. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 644.)

required to make a further showing that the benefits to D. of a continued relationship with father outweighed the benefits of adoption. Father failed to make this second showing.

Application of the factors set forth in *Scott B.* weigh in favor of the juvenile court's decision. D. was eight years old when he was first removed from father and stepmother. Prior to his removal from father, D. had lived with the paternal grandparents periodically. By the time of the section 366.26 hearing, D. was 11 years old, and had been living with paternal grandparents for a total of 18 months. In contrast, during the dependency proceedings, D. had lived with father for only five months, during which time he was exposed to domestic violence. Thus, throughout the time of the juvenile court's jurisdiction, D. spent far more time living with paternal grandparents, who were actively involved with D. and took responsibility for his daily care.

In addition, the negative impact of father's interactions with D. were well documented. Father made rude and insensitive comments to D., and blamed him for the family's involvement with DCFS. D. was often upset after visits with father. This evidence weighs in favor of the juvenile court's determination that the beneficial parental relationship exception did not apply. (*Scott B., supra*, 188 Cal.App.4th at p. 471.)

Finally, the evidence showed that D. expressed a specific need and desire to be adopted by his grandparents. D. did not want to live with father "ever." D. recalled that the last time he was ordered home to live with father, father became violent and the police were called. D. desired the permanency of adoption by his paternal grandparents to avoid any risk that he would have to go back to father. According to the social worker, D. was "a very smart boy and very articulate." He was clear about what he wanted for his future, reiterating "over and over that he wishe[d]

to proceed with the adoption with paternal grandparents.” D.’s expressed need for the stability of adoption supports the juvenile court’s determination that the beneficial parental relationship exception did not apply. (*Scott B.*, *supra*, 188 Cal.App.4th at p. 471.)

Father accepts that D. wanted to remain with his grandparents forever. However, father insists that he need not show daily contact with D., nor that he would be able to regain custody of D. in the future. (§ 366.26, subd. (c)(1)(B)(i).) Father argues that the interaction between natural parent and child will almost always confer some benefit on the child. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Such continued contact cannot be guaranteed under a plan of adoption. (*In re Sylvia R.* (1997) 55 Cal.App.4th 559, 563.) Father speculates that following adoption, his visits with D. could cease. To ensure continued familial contact, father argues, the juvenile court should have applied the exception to termination of parental rights and instead allowed the grandparents to become legal guardians. Father insists that a guardianship plan would have been more appropriate under the circumstances.

In deciding whether to apply the beneficial parental relationship exception, the child’s need for stability must be balanced against the child’s relationship with his parent. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In this case, the juvenile court properly determined that D.’s need for the stability and permanence of adoption outweighed father’s desire to be guaranteed continuing contact with D. Because legal guardianship may be revoked, it ““falls short of the secure and permanent placement”” preferred by both the Legislature and D. himself. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1156.) The evidence supports the juvenile court’s determination that father

failed to show that continuing the parental relationship outweighed the benefits of adoption.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT