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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re EDWIN I., et al., Persons Coming
Under the Juvenile Court Law.

B298293

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK92491A, C)

Plaintiff and Respondent,

v.

I.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Sabina Helton, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

I.P. (Mother) appeals from court orders terminating her parental rights to two of her children after almost three years of dependency proceedings. She asserts the beneficial parent-child relationship exception to adoption applies. Additionally, she faults the Los Angeles County Department of Children and Family Services (DCFS) for failing to facilitate visitation among her three children. According to Mother, regular sibling visitation would have allowed her to successfully raise the beneficial sibling relationship exception. We affirm.

FACTS

Mother has three children: Edwin I. (born 2011), E.I. (born 2013), and Emiliano T. (born 2014). Edwin and E.I. share the same father. In 2012, Edwin was removed from the parents' custody after the juvenile court found the parents' abuse of narcotics rendered them incapable of adequately caring for him. We affirmed the jurisdictional findings and dispositional orders in *In re E.I.* (April 12, 2013, B242762) [nonpub. opn.]. Jurisdiction over Edwin was terminated after Mother completed a court-ordered substance abuse program and successfully remained employed.

The Initial Proceedings

In June 2016, DCFS received a referral that Edwin was exhibiting sexually inappropriate behavior, including humping E.I. from behind and telling E.I. that he wanted to put his penis in E.I.'s buttocks. Mother reported to the children's social worker that she suspected her 17-year-old brother may have sexually abused her children. During the interview, the social worker observed a one-inch cut on Edwin's left cheek. Mother initially denied she caused the injury, but later admitted she hit Edwin with a belt and it cut his cheek. The children were removed from

their parents' custody. Edwin was placed with Mr. C. and Mr. H. His brothers were placed together in a separate foster home.

On August 8, 2016, the juvenile court sustained a dependency petition under Welfare and Institutions Code section 300, subdivisions (a) and (b),¹ that alleged the children were at risk of harm due to Mother's drug use, physical abuse, and inability to provide appropriate care and supervision of Edwin's "acting out behavior." The juvenile court also sustained allegations under section 300, subdivision (g), that the children were at risk of harm due to their fathers' criminal history, criminal conduct, and failure to provide for their care and support. At the time of the jurisdiction and disposition hearing, Edwin and E.I.'s father was serving a 21-year prison term, and Emiliano's father was serving a 19-year prison term.

The juvenile court ordered sibling visits and granted Mother monitored visits. It also ordered her to drug and alcohol testing and programs, parenting classes, an anger management program, and individual counseling. Mother was arrested on June 22, 2016, on a second-degree robbery charge. She completed certain programs and classes while incarcerated, but failed to continue any other programs past October 2016. She was unable to participate in individual counseling due to her incarceration.

Review hearings were conducted on February 6, 2017, and August 7, 2017. The juvenile court found continued jurisdiction over the children was necessary with all previous orders, including monitored visits with Mother and sibling visits, to remain in full force and effect. Throughout the dependency

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

proceedings, Edwin remained with Mr. C. and Mr. H., whom he liked, although he affirmed he loved Mother. E.I. and Emiliano were placed in six different foster homes, sometimes separately and sometimes together, with the goal that they remain together. They were moved often due to E.I.'s escalating behavioral issues. E.I. was enrolled in weekly individual therapy for anger and behavioral issues.

Visitation

On the first day Mother was scheduled to visit the children after they were detained, she was arrested for second-degree robbery. Mother remained incarcerated for most of the dependency proceedings. Initially, the children visited her monthly through the Incarcerated Parents Program. Mother said she missed the children and hoped they were doing well. The monitor reported the visits were improving and the children were responding more to Mother when asked to do something. The children's caregivers, however, reported the children had a difficult time after visits with Mother, becoming more violent and taking several days to get "back on track."

Face-to-face visitation became challenging once Mother was transferred to facilities that were further away. However, she spoke with Edwin and Emiliano on the phone twice a month, from five to 10 minutes with Emiliano and up to 30 minutes with Edwin. She also regularly exchanged letters and pictures with them. E.I. was unwilling to visit with Mother, and his therapist recommended against it.

At hearings in September 2017 and January 2018, Mother complained she had not seen the children and requested face-to-face visits resume. In the September 13, 2018 status report, DCFS reported Edwin's caregivers attempted to bring him to

visit Mother, but were told shortly before they were scheduled to arrive that they were not approved to enter the facility. Edwin subsequently visited Mother on his birthday. They played board games and talked for two and a half hours. Edwin enjoyed his visit with Mother and his phone calls with her. His caregivers stated they were open to Mother maintaining a relationship with him.

Although the juvenile court ordered sibling visits, E.I. and Emiliano did not visit with Edwin after December 1, 2016, when they relocated to a new placement. As a result of E.I. and Emiliano's frequently changing placements and E.I.'s reluctance to participate, the brothers did not have regular sibling visits for long periods of time. Mother complained of the lack of visits and requested sibling visits in September 2017 and January 2018. The children's caregivers subsequently agreed to monthly visits among the siblings on the last Sunday of the month with the possibility of additional visits.

Section 366.26 Proceedings

At the 18-month review hearing on September 14, 2017, the juvenile court found it was detrimental to return the children to parental custody. It thus terminated reunification services and set a section 366.26 hearing.

On January 11, 2018, DCFS reported Emiliano was placed with Mr. and Mrs. S and that E.I. was placed with non-relative extended family member, Ms. C. Edwin remained at his original placement. Edwin's caregivers expressed interest in adopting him, as did Emiliano's. Ms. C. expressed interest in becoming E.I.'s legal guardian. DCFS requested a continuance of the section 366.26 hearing to begin the adoption process.

The section 366.26 hearing was held on May 2, 2019. As to Edwin and Emiliano, the juvenile court found neither the beneficial parent-child relationship nor the sibling relationship exception applied to preclude the termination of parental rights. The court found them to be adoptable by clear and convincing evidence. The court thus terminated parental rights and found their respective caregivers to be the prospective adoptive parents. Mother filed a timely notice of appeal from the orders terminating her parental rights.²

DISCUSSION

Mother contends the beneficial parent-child relationship exception applies to preclude termination of her parental rights. She asserts the benefits arising from her relationship with Edwin and Emiliano outweigh the potential benefits they might receive from adoption. She also argues she was prejudiced by DCFS's failure to ensure regular sibling visitation, which prevented her from asserting the sibling relationship exception to adoption. We disagree.

I. Applicable Law

The juvenile court must terminate parental rights if it finds by clear and convincing evidence it is likely the child will be adopted. (§366.26, subd. (c)(1).) However, the juvenile court will not terminate parental rights if it determines doing so would be detrimental to the child based on one of several statutory exceptions. (§ 366.26, subd. (c)(1)(B)(i).) The party challenging termination of parental rights bears the burden of proving that one or more of the statutory exceptions applies. (*In re C.F.* (2011))

² E.I. is not a subject of this appeal.

193 Cal.App.4th 549, 553; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

To establish the beneficial parent-child relationship exception, a parent must prove termination of parental rights would be detrimental to the children because (1) the parent maintained regular visitation and contact with them, and (2) the children would benefit from continuing their relationship with the parent. (§ 366.26, subd. (c)(1)(B)(i).) In deciding whether the exception applies, courts consider 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 the parent and child, and the child's particular needs. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937–938 (*Jason J.*))

The beneficial parent-child relationship exception only applies when there is a relationship that promotes the child's well-being to such a degree that it outweighs the well-being the child would gain in a permanent, stable home with adoptive parents. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621–622 (*K.P.*)). “Because a 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.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*)).

To establish the sibling bond exception, a parent must prove termination of parental rights would be detrimental to the child because “[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home,

whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

“[T]he juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists . . . is, because of its factual nature, properly reviewed for substantial evidence. [Citations.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citation.] This ‘“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,’ is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]” (*K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re J.C.* (2014) 226 Cal.App.4th 503, 531.) Further, we review the juvenile court’s ruling, not its reasoning, and we affirm the ruling if it is correct on any ground. (*In re B.L.* (2012) 204 Cal.App.4th 1111, 1116.)

II. Mother Has Failed to Prove the Beneficial Parent-Child Relationship Exception Applies

Mother falls well short of showing the parent-child relationship exception applies. Even if we assume that Mother maintained regular visits and contact with the children, Mother

has not shown the benefits of a continued relationship with her outweigh the benefits of a permanent and stable home.

By the time of the section 366.26 hearing, Edwin was eight years old and had lived with his caregivers, Mr. C. and Mr. H., for three years. They occupied the central parental role in his life, providing for his medical, physical, and emotional needs. When his therapist broached the topic of adoption and permanency with Edwin, he seemed “very content” and showed no sadness about permanently living with Mr. C. and Mr. H.

Emiliano was one year old when he was removed from Mother’s custody. He had lived with his potential adoptive parents, Mr. and Mrs. M., for almost one and a half years at the time of the section 366.26 hearing. He referred to them as his mommy and daddy and to the other children in the home as his siblings.

During this time period, Mother had not moved beyond supervised visitation; her phone calls with Edwin and Emiliano remained monitored and relatively short, twice monthly at five to 10 minutes with Emiliano and up to 30 minutes with Edwin. Indeed, Emiliano did not appear to know it was Mother on the phone calls; he told the children’s social worker he was speaking with a previous social worker named Lauren. Moreover, the caregivers reported that until April 2018, both children exhibited negative behaviors after their telephonic visits with Mother.

While Edwin and Emiliano enjoyed visiting and corresponding with Mother, the record does not support Mother’s argument that their relationship with her “conferred benefits . . . more significant than the permanency and stability offered by adoption.” (*K.P.*, *supra*, 203 Cal.App.4th at p. 623 [parent-child relationship exception not shown where parent

maintained regular visitation with child but child removed from the parent's custody when one month old and parent did not progress beyond once-per-week monitored visits]; *Jason J.*, *supra*, 175 Cal.App.4th at p. 938.)

Mother argues reversal of the parental rights termination order is warranted because “[t]here is no ‘Go to jail, lose your child’ rule in California.” Mother argues she substantially complied with regular visitation as required under section 366.26, subdivision (c)(1)(B)(i), such that her incarceration should not preclude her ability to raise this exception to adoption.

We agree that incarceration does not automatically result in termination of parental rights or preclude the assertion of the parent-child relationship exception. However, it does not relieve Mother of the burden to prove that hers is the “extraordinary case” in which the preservation of her rights will prevail over the preference for adoption. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) As discussed above, Mother has offered no evidence she plays a parental role to Edwin or Emiliano as required under section 366.26. The relationship required under the statute is one characterized by a significant, positive, emotional attachment from child to parent, resulting from the parent's attention to the child's needs, and arising from frequent interaction, companionship, and shared experiences. (*Jason J.*, *supra*, 175 Cal.App.4th at p. 936; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The emotional attachment must be one of parent and child, rather than the attachment a child might feel to a “‘friendly visitor’” or nonparent relative. (*Jason J.*, *supra*, at p. 938; *In re Angel B.* (2002) 97 Cal.App.4th 454, 468.)

Mother has presented no evidence the children had this level of attachment to her, even taking into consideration her regular correspondence with them and twice monthly telephone calls. Mother has failed to establish that any bond between her and the children was so significant and compelling in the children's lives that the benefit of preserving it outweighed the stability and benefits of adoption. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396.) Mother has thus failed to meet her burden to demonstrate the beneficial parent-child relationship exception was appropriate in this case. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.)

III. The Sibling Relationship Exception Does Not Apply

Mother next argues she could have successfully asserted the sibling relationship exception, but for DCFS's failure to facilitate more sibling visits. In making this argument, Mother acknowledges there is an insufficient bond between the brothers to apply the sibling relationship exception to adoption.

Mother provides no legal authority for the proposition that a parent's rights may not be terminated when the children *could have* established a stronger relationship through more frequent visits. Section 366.26, subdivision (c)(1)(B)(v), is only concerned with the relationship as it exists, not with what could have been. Indeed, it would be pure speculation to assume the brothers would have established a sufficiently strong bond for the exception to apply even if monthly visits had occurred earlier.

Even so, the record here does not support Mother's argument. Edwin was four years old, E.I. was three, and Emiliano was one when they were removed from Mother's custody. Although E.I. and Emiliano were initially placed together, they were ultimately separated. Edwin was never

placed with E.I. or Emiliano. It is reasonable to conclude that children who are separated from one another at such a young age will likely not develop the type of bond required by the statute, even if they visited with one another regularly.

DISPOSITION

The orders terminating Mother's parental rights to Edwin and Emiliano are affirmed.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.