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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re P.L. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.M.,

Defendant and Appellant.

B299061

Los Angeles County
Super. Ct. Nos.
DK12676A,
DK12676B,
DK12676C

APPEAL from an order of the Superior Court of
Los Angeles County. Stephen C. Marpet, Juvenile Court Referee.
Affirmed.

Joseph T. Tavano, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, and Kristine Miles,
Assistant County Counsel, for Plaintiff and Respondent.

Mother appeals from the juvenile court’s order terminating her parental rights to her three children under Welfare and Institutions Code section 366.26.¹ She contends the court erred when it determined the beneficial parent-child relationship exception to adoption did not apply. While the evidence showed mother consistently visited with the children and expressed interest in their well-being, it also showed she was unable to foster more than a “sibling-like relationship” with them. In view of this competing evidence, we cannot say the juvenile court erred in implementing the statutorily preferred plan of adoption. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the evidence in the light most favorable to the juvenile court’s findings, resolving all conflicts and drawing all reasonable inferences to uphold the court’s order, if possible. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*); *In re K.P.* (2012) 203 Cal.App.4th 614, 622 (*K.P.*).)²

¹ Statutory references are to the Welfare and Institutions Code.

² Later we discuss the split of authority regarding the standard of review applicable to a juvenile court ruling rejecting an adoption exception claim. (See *K.P.*, *supra*, 203 Cal.App.4th at pp. 621–622 [outlining contours of split]; *In re Caden C.* (2019) 34 Cal.App.5th 87, 106–107 (*Caden C.*), review granted July 24, 2019, S255839.) Because we adopt the near unanimous view that the substantial evidence standard applies to the factual determination of whether a beneficial parental relationship exists, we apply that standard in stating the background facts. (See *K.P.*, at pp. 621–622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 (*Bailey J.*) [adopting hybrid approach under

The family consists of mother, father, and their three children: P.L. (born September 2007), R.L. (born October 2008), and A.L. (born September 2012). Father is not a party to this appeal.

In April 2017, the juvenile court took jurisdiction over the children, finding the parents' domestic violence, father's alcohol abuse, and mother's failure to protect the children placed them at risk of serious physical harm.³ The evidence showed father was a habitual alcohol abuser, he regularly beat mother when he was drunk, and, in a recent incident, he had held pliers to mother's neck while he attempted to rape her in front of the children. Despite the abuse, mother said she did not plan to seek a permanent restraining order against father. The juvenile court removed the children from mother's custody and ordered her to participate in a domestic violence support group for victims, a parenting education program, a support group for family members of alcoholics, and individual counseling to address domestic violence and other case issues. The court granted

which substantial evidence standard applies to factual determination of whether a beneficial relationship exists, while abuse of discretion standard applies to discretionary decision about whether the importance of the relationship outweighs the benefit to the child of adoption].)

³ The juvenile court had previously taken jurisdiction over the children in October 2015, based on the risk of harm posed by father's alcohol abuse and mother's failure to protect the children. Despite the parents' failure to complete their case plan, the court terminated jurisdiction and placed the children in mother's sole physical custody. Soon after, mother allowed father to return to the family home.

mother monitored visitation with the children, and authorized the Los Angeles County Department of Children and Family Services (the Department) to liberalize visitation, if appropriate.

At the six-month review, the Department reported mother consistently visited the children twice per week, for a total of four hours, in a monitored setting. It noted, however, that mother had “no filter” when speaking with the children, and she struggled to express herself in an “appropriate manner.” While mother had completed parenting classes, the Department reported she did “not appear to process certain information adequately,” making it difficult to assess her progress. It noted “mother suffered a stroke many years ago, which appears to have affected her cognitive ability to process information.”

The Department reported the children looked forward to their visits with mother, but the foster parents had difficulty working with mother due to her inappropriate behavior. The foster mother, who served as a visitation monitor, reported mother played rough with her older son P.L., in defiance of the monitored family visitation rules. She usually played and interacted most with her youngest child and, in one instance, exclaimed she did not care about P.L. During a different visit, mother became very angry and started yelling at the foster mother in front of the children and other children who were present. The foster mother attempted to terminate the visit, and called the police, when mother refused to let go of the children. The foster mother also reported that mother regularly whispered to P.L. in his ear during visits, and P.L. returned from these visits “sad,” confiding that mother only cared about his younger brother and not him. Mother also regularly texted her new boyfriend during visits, and would show the children videos

of him on her phone. The Department observed that mother did not have “malicious intent” with the children, but she had “limited insight which leads to poor decisions and parenting.”

The juvenile court found mother to be in partial compliance with her case plan, continued reunification services, and ordered the visits to remain monitored.

At the twelve-month review, the Department reported the children had begun having regular overnight visits with their paternal aunt and uncle, and the Department planned to place the children with the paternal relatives. Mother was not fully complying with her case plan, and the domestic violence program staff expressed concern about her mental health needs. Despite the Department’s request for a mental health evaluation to determine if there were additional services that could assist mother, she failed to attend scheduled appointments with a psychologist.

Mother remained consistent with her monitored visits. However, the monitor continued to report that mother engaged the children at only a “peer-like level” and, although mother loved the children, her relationship was “sibling-like” and not that of a parent to a child. The Department again expressed concern about mother’s cognitive limitations and her apparent inability to parent the children. The juvenile court continued mother’s reunification services.⁴

At the eighteen-month review, the Department reported the children had been living with the paternal aunt and uncle for about a month. The paternal relatives were meeting the

⁴ Father was incarcerated during the review period, and later deported to Mexico. The juvenile court terminated his reunification services.

children's needs and the children were happy in their care. Mother remained consistent with her monitored visits, but her behavior also remained "peer-like." The older children had become aware of mother's limitations and were making excuses for her behavior. Mother had completed parenting classes, but had dropped out of her domestic violence and individual counseling programs. The Department expressed concern that mother's cognitive delays and lack of a reliable support system would prevent her from protecting or adequately parenting the children. On October 29, 2018, the juvenile court terminated mother's reunification services and set the matter for a permanent placement hearing.

Mother continued to have monitored visits with the children. Despite all three children struggling with healthy eating, and P.L. having been diagnosed with high cholesterol and obesity, the monitor reported mother gave the children bags of candy and junk food at some visits.

On June 7, 2019, the juvenile court held a hearing for selection and implementation of a permanent plan for the children. No party called witnesses for testimony. Minor's counsel informed the court that all three children understood the paternal aunt and uncle would be adopting them. Counsel said the children had a bond with mother and they wished to continue to visit with her, and the paternal aunt had agreed to continue visitation.

The juvenile court found by clear and convincing evidence that the children were likely to be adopted. It found mother had maintained regular visits with the children, but she had "not established a bond" with them. The court terminated mother's parental rights and designated the paternal aunt and uncle

as the prospective adoptive parents, concluding any benefit to the children from maintaining a parental relationship with mother was outweighed by the benefits the children would receive through the permanency and stability of adoption.

Mother filed a timely notice of appeal.

DISCUSSION

“At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*K.P.*, *supra*, 203 Cal.App.4th at p. 620.) “To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated.” (*Ibid.*, citing § 366.26, subd. (c)(1).) “Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily specified exceptions (§ 366.26, subd. (c)(1)(A)–(B)), the juvenile court ‘shall terminate parental rights’ (§ 366.26, subd. (c)(1)).” (*K.P.*, at p. 620.)

Here, the juvenile court found the children were likely to be adopted and, while mother had maintained regular visitation, she had “not established a bond” with the children. Thus, having found the benefits of permanency and stability from adoption outweighed any benefits the children might receive from continuing the parental relationship, the court terminated mother’s parental rights. Mother contends the court erred, asserting the parent-child relationship exception applied. For the reasons that follow, we disagree.

“Section 366.26 provides an exception to the general legislative preference for adoption when ‘[t]he court finds a compelling reason for determining that termination would

be detrimental to the child’ (§ 366.26, subd. (c)(1)(B)) because ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).)” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) “The ‘benefit’ prong of the exception requires the parent to prove his or her relationship with the child ‘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.’” (*Ibid.*, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The party invoking the exception bears the burden of proving its elements. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527 (*I.W.*).) To meet the burden “the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a *parental role* in the life of the child.” (*Ibid.*, italics added; *K.P.*, *supra*, 203 Cal.App.4th at p. 621 [“No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ ”].) “Moreover, ‘[b]ecause 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.’” (*K.P.*, at p. 621, quoting *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*).)

There is a split of authority concerning the applicable standard of review for an appellate challenge to a ruling rejecting a claim that an adoption exception applies. (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) “Most courts have applied the substantial

evidence standard of review to this determination (see, e.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953 []), although at least one court has concluded that it is properly reviewed for an abuse of discretion (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351).” (*Ibid.*)

In recent years, our appellate courts have adopted a hybrid approach to reviewing these decisions. (See *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314–1315; *K.P.*, *supra*, 203 Cal.App.4th at p. 622; *Caden C.*, *supra*, 34 Cal.App.5th at pp. 106–107.) As the *Bailey J.* court observed in first articulating this hybrid analysis, the juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual one and a discretionary one. (*Bailey J.*, at pp. 1314–1315; *K.P.*, at p. 622.) The first determination—whether a beneficial relationship exists—is, because of its factual nature, properly reviewed for substantial evidence. (*Bailey J.*, at p. 1314.) The second determination—whether the existence of that relationship constitutes a compelling reason for determining that termination would be detrimental to the child—is 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.” (*Id.* at p. 1315.) This determination is appropriately reviewed under the deferential abuse of discretion standard. (*Ibid.*; *K.P.*, at p. 622.) Our Supreme Court granted review to resolve the split of authority. (See *In re Caden C.*, review granted July 24, 2019, S255839.)

Here, the juvenile court rejected the exception based on its *factual* finding that mother had not established a parental bond

with the children, and we join with the near unanimous consensus of courts that, applying either the traditional or hybrid approach, have reviewed such findings under the substantial evidence standard. (See *K.P.*, *supra*, 203 Cal.App.4th at p. 622; *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314; cf. *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [observing, “[e]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling’ ”; thus, the “practical differences between the two standards of review are not significant”].) We note, however, that even the familiar substantial evidence test is subject to further refinement in this circumstance because, in the lower court, mother (the appellant here) had the burden of proving a beneficial parental bond with the children sufficient to outweigh the benefits of the statutorily preferred plan of adoption. (See *I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

Under the familiar substantial evidence test, “ ‘ ‘ ‘the appellate court ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing.’ ” ’ ” (*I.W.*, *supra*, 180 Cal.App.4th at p. 1527, italics omitted.) Thus, all evidentiary conflicts are effectively resolved in favor of the juvenile court’s judgment. (*Ibid.*) “But this test is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence. In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence

supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case." (*Id.* at p. 1528, citing *Hicks v. Reis* (1943) 21 Cal.2d 654, 659–660 [trial court is entitled to reject in toto the testimony of a witness, even if that testimony is uncontradicted].)

"Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.'" (*I.W., supra*, 180 Cal.App.4th at p. 1528.)

Mother argues she and the children "shared a strong bond and they enjoyed spending time as a family." She concedes she never progressed beyond monitored visits, but emphasizes she was "consistent with visits and advocated for more time with the children." She also acknowledges her cognitive deficits "limited her insight and impaired her ability to parent her children," but she argues this was unfortunately due to a stroke that "affect[ed] her cognitive ability to process information, . . . making it difficult to properly access her progress" in parenting classes. She urges her health issues should not be a basis for terminating her parental rights, and emphasizes she "made efforts to engage [the children] in conversation, despite her limitations."

While the record more or less supports mother's contentions, these *factual* arguments are insufficient to establish reversible error. Because there was competing evidence in this case, we cannot conclude that mother's evidence was of such

a character and weight as to leave no room for the juvenile court's determination that mother failed to meet her burden of proving a beneficial parental bond with the dependent children. (See *I.W.*, *supra*, 180 Cal.App.4th at pp. 1528–1529.)

As mother concedes, she never progressed beyond monitored visits with her children during the more-than-two-year-long dependency proceeding. In each progress report, the Department noted a persistent concern that mother's cognitive deficits limited her insight and impaired her ability to parent her children. The evidence substantiated the Department's concern. The record shows mother played rough with P.L., in defiance of the monitored visitation rules; she said she did not care about her son; she texted her boyfriend during visits and showed poor decision-making and parenting skills; she had difficulty engaging the children in conversation; she brought them inappropriate things, such as junk food and unhealthy meals, despite their reported health problems; the older children became aware of mother's cognitive limitations and started making excuses for her behavior; and mother's engagements with the children never transcended more than a "peer-like level" of interaction. Given that evidence, the juvenile court had good reason to credit the Department's report that mother's relationship with the children was "sibling-like" and not that of a parent to a child.

Thus, notwithstanding mother's consistent visitation and evident love for the children, the juvenile court had ample grounds to conclude she failed to meet her burden of proving a beneficial *parent-child* bond. (See *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1109 [parent's failure to progress beyond monitored visitation and to foster meaningful parental relationship justified order terminating parental rights];

Jasmine D., *supra*, 78 Cal.App.4th at p. 1350 [“a *parental* relationship is necessary for the [beneficial relationship] exception to apply”].) Where the evidence is conflicting or competing, it is not our function to revisit the juvenile court’s failure-of-proof conclusion. (See *I.W.*, *supra*, 180 Cal.App.4th at pp. 1528–1529 [where “juvenile court considered the conflicting, competing evidence and essentially discounted mother’s evidence in concluding that mother had failed to carry her burden of proof,” appellate court would not reevaluate the evidence or revisit the juvenile court’s conclusion].) The court did not err in terminating mother’s parental rights to implement the statutorily preferred plan of adoption.

DISPOSITION

The order is affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.