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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B282904
(Super. Ct. No. 15JD00285)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

M.W.,

Defendant and Appellant.

M.W. (Mother) appeals the juvenile court's order terminating her parental rights and selecting adoption as the permanent plan. (Welf. & Inst. Code,¹ § 366.26.) She contends

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

the court erred when it found she did not qualify for the beneficial relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

FACTUAL AND PROCEDURAL HISTORY

J.A. was born in April 2013. Over the next two years, the San Luis Obispo County Department of Social Services (DSS) received referrals regarding methamphetamine use by Mother, alcohol abuse by I.A. (Father), and domestic violence between Mother and Father. Police responded to the home several times.

Initially, DSS worked informally with Mother and Father, but they did not follow through with the services offered. Police arrested Father after he brandished a knife and threatened to kill Mother. She left home after the incident, but soon returned. DSS told Mother she could either take J.A. to a shelter or return to the home and have J.A. taken into custody. When Mother refused to leave the home, the juvenile court ordered J.A. detained. The court placed him with an aunt and uncle.

The juvenile court ordered reunification services for Mother and Father. DSS developed a case plan that included drug treatment and testing, domestic violence services, and parenting education. The court also ordered twice weekly supervised visits. Mother attended most of her visits with J.A., though she was often late or would end visits early. She and J.A. appeared to value their time together. J.A. responded to her directives. He expressed discontent when visits ended.

DSS's six-month report stated J.A. was making "huge gains" with speech therapy. Father was in jail. Mother had missed four of her nine scheduled visits and another visit was canceled. Mother arrived on time to only one of the four

visits she attended. She was not compliant with the services in her case plan. The report recommended terminating services.

Mother did not attend the review hearing. The juvenile court ordered services terminated.

The following month, Mother and Father moved to Riverside County. Both remained sober for three months. Mother participated in substance abuse treatment and parenting education. She reported no domestic violence incidents with Father. She visited J.A. monthly.

Mother petitioned to reinstate services. The juvenile court granted the petition and increased visits to twice monthly. It gave DSS discretion to allow unsupervised visits and a 30-day visit.

In its 12-month report, DSS stated J.A. was on a 30-day visit with Mother and Father. Mother was compliant with most of her case plan. J.A. was not enrolled in speech therapy or preschool, however, and was not consistently obeying Mother's directives. The juvenile court ordered continued services.

Father then used alcohol again. He committed domestic violence against Mother after she and J.A. picked him up from a bar. After the incident Mother drove J.A. and herself to a relative's home. A social worker drove Mother and J.A. back to San Luis Obispo County. Father went to jail.

The next month, Mother used methamphetamine. J.A. returned to his aunt and uncle's care. The juvenile court detained J.A. again and ordered weekly supervised visits for Mother.

DSS subsequently recommended the juvenile court terminate services and set a section 366.26 hearing. During the 30-day visit, Mother relapsed on methamphetamine, and J.A.

regressed in his potty training and developed negative behaviors. Mother and J.A. were affectionate toward each other during their weekly visits, but DSS believed Mother “lacks parenting skills.” She also made J.A. feel guilty when he did not want to speak to her on the phone.

At the next review hearing, a DSS social worker testified that Mother maintained visitation and was not using methamphetamine. She and J.A. had a loving relationship. The social worker nevertheless recommended terminating services based on Mother’s inability to demonstrate stability or to refrain from using drugs throughout the review period. The social worker was also concerned that Mother did not enroll J.A. in speech therapy while he was in her care, that she did not participate in domestic violence services after J.A.’s removal, and that she took J.A. with her to pick up Father from a bar.

The juvenile court terminated services based on Mother’s history of domestic violence and substance abuse, her recent relapse, and the recent domestic violence committed in J.A.’s presence. The court found no exceptional circumstances to extend services to 18 months. It ordered DSS to transition visits to one per month, and ordered phone contact with J.A. reduced to twice weekly.

In its section 366.26 report, DSS recommended the juvenile court terminate parental rights and find J.A. adoptable. J.A. no longer experienced the anxiety, tantrums, destructive behavior, and sleep difficulty he had when he first returned to his aunt and uncle’s care. He was potty trained and attended speech therapy. He was a “smart, engaging[,] and social young boy” with a high likelihood he would be adopted.

Mother requested the juvenile court return J.A. to her care or reinstate services. She was in drug treatment and counseling. She rented a room and worked two jobs.

DSS filed an addendum to its section 366.26 report that reiterated its recommendation that the juvenile court find J.A. adoptable and terminate parental rights. DSS did not believe Mother had “demonstrated a long enough period of sobriety to support confidence in a sustained change.” Mother had not participated in domestic violence treatment. DSS was concerned about her “ability to maintain stable employment in the face of stress and triggering events.” J.A. needed “the stability and permanency that adoption will provide him.”

At the section 366.26 hearing, Mother testified that she had two jobs and worked full time. She had been sober for five months. Her last relapse lasted three days. She was willing to take domestic violence classes. She did not intend to reunite with Father.

The DSS social worker testified that J.A.’s aunt and uncle were committed to adoption. J.A. had progressed since his extended visit with Mother. He called his aunt “Mamma Maria” and identified her as his primary caregiver. He needed a level of stability in his life that Mother could not provide. Though he would experience grief and loss if Mother’s parental rights were terminated, the benefits and stability of adoption outweighed that harm.

The juvenile court found J.A. adoptable and terminated Mother’s parental rights, finding that the beneficial relationship exception did not apply. The court commended Mother for the progress she made, but was not assured that her success would last long term. She was out of compliance with her

case plan at various stages of the case. She had only recently begun domestic violence services. J.A. regressed when he stayed with her. He had been out of her care for most of his life. Mother was unavailable to him as a parent.

DISCUSSION

Mother contends the juvenile court erred when it terminated her parental rights because she showed the existence of a beneficial relationship with J.A. We are not persuaded.

“Adoption, where possible, is the permanent plan preferred by the Legislature. [Citations.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the juvenile court finds clear and convincing evidence that a child will be adopted, “the court shall terminate parental rights and order the child placed for adoption” unless it “finds a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) Termination will be detrimental if there is a beneficial relationship between the parent and child. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

To show the existence of a beneficial relationship, a parent must prove that: (1) they have “maintained regular visitation and contact with the child,” and (2) “the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i); see also *In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) We review whether a beneficial relationship exists for substantial evidence. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) “[W]e presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Substantial evidence supports the juvenile court's determination that Mother failed to show the applicability of the beneficial relationship exception. Mother missed several visits with J.A. She was late to others. She ended others early. Because Mother did not visit J.A. "consistently and to the extent permitted by court orders [citation]," she has not shown she maintained regular visitation and contact. (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; see, e.g., *In re J.C.* (2014) 226 Cal.App.4th 503, 531-532 [mother late for visits]; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643-644 [parents missed multiple visits]; *In re C.F.* (2011) 193 Cal.App.4th 549, 554 [mother missed multiple visits].)

Nor has Mother shown that J.A. would benefit from continuing his relationship with her. "A beneficial relationship is one that '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.' [Citation.]" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) "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." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) "The existence of [a beneficial] relationship is determined by '[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.' [Citation.]" (*In re Amber M.*, at p. 689.)

J.A. is nearly five years old. He has spent more than half his life out of Mother's care. His interactions with Mother have been both positive and negative: During their visits, J.A. valued his time with Mother. He responded to her directives. He

called her “Mamma” and was sad when their visits ended. But Mother also made J.A. feel guilty when he did not want to speak to her on the phone. He witnessed Mother and Father engage in domestic violence. He was present when Mother relapsed on methamphetamine. And Mother would threaten to spank J.A. rather than employ other methods to correct his behaviors.

Mother also did not respond to J.A.’s particular needs. When he was in her extended care, Mother did not enroll J.A. in speech therapy or preschool. He regressed in his potty training. He developed negative behaviors, including temper tantrums, anxiety, destructive behavior, and difficulty sleeping. These factors provide substantial evidence to support the juvenile court’s conclusion that J.A. would not benefit from continuing his relationship with Mother. (See, e.g., *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 [beneficial relationship exception did not apply where children were accustomed to placement and had behavioral problems after visits]; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 [exception did not apply where mother was only beginning to work through domestic violence issues and had an unstable relationship with children’s father, and children were bonded with current caregivers]; *In re Marcelo B., supra*, 209 Cal.App.4th at pp. 643-644 [exception did not apply where parents exposed son to domestic violence, relapsed into alcoholism, and missed multiple visits, and son had lived half his life with current caregivers]; *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [exception did not apply where children spent more than two years with current caregiver, despite mother’s regular visits].)

That Mother had multiple, generally positive visits with J.A.—including an extended visit in late 2016—does not

persuade us that she has shown the existence of a beneficial relationship. A “parent must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that parent and child find their visits pleasant” for the beneficial relationship exception to apply. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827, internal alterations omitted; see also *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 450 [“affectionate closeness” between mother and child during visits outweighed by close bond with prospective adoptive mother and need for permanent and stable home environment].) Nor do Mother’s commendable efforts at maintaining sobriety and finding employment persuade us that she falls under the beneficial relationship exception. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [exception inapplicable where child adjusted to foster family who was willing to adopt him and there was risk of drug relapse by father, despite his seven months of sobriety and social worker’s acknowledgment that terminating relationship would involve some risk].)

This case is unlike *In re Amber M.*, *supra*, 103 Cal.App.4th 681, on which Mother relies. The mother in *In re Amber M.* “visited [her children] as often as she was allowed.” (*Id.* at p. 690.) Here, Mother missed several visits, was late to others, and terminated others early. And though the *In re Amber M.* court recognized that the mother’s unreadiness “for the children’s return to her custody” alone could not justify the termination of parental rights (*ibid.*), the court below, too, weighed that as one factor among many when it declined to find that Mother fell under the beneficial relationship exception. Mother has not shown hers to be the one of the “extraordinary case[s]” in which the “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.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant.

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