

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B280217
(Los Angeles County
Super. Ct. No. DK01423)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ABEL P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates, Arezoo Pichvai for Plaintiff and Respondent.

Abel P., the presumed father of Israel P., who is now four years old, appeals from a juvenile court order terminating his parental rights, contending the court erred in denying him a contested hearing on the applicability of the parental relationship exception to termination of parental rights. We affirm.

BACKGROUND

In September 2013, Abel P. (father) and Israel P.'s mother engaged in shoplifting and had a violent altercation with a security guard, with Israel P. present. They were arrested, and Israel P. was detained and declared by the juvenile court to be a ward of the court. Israel P. was returned to father's custody in October 2014. Later, father separated from Israel P.'s mother and moved out of Israel P.'s home.

On December 24, 2014, father violently assaulted Israel P.'s mother in the child's presence. Five days later, father attempted to enter Israel P.'s home by shattering a window, causing glass shards to fall onto Israel P. and his sisters. Father was arrested. In January 2015, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 342¹ petition on behalf of the children, alleging father failed to supervise or protect them. The juvenile court ordered Israel P. to be detained from father and placed with mother, and ordered DCFS to provide father access to a domestic violence program. In April 2015, father enrolled in the program.

¹ All further statutory references are to the Welfare and Institutions Code. Section 342 authorizes a subsequent petition in a pending dependency case.

In April 2015, Israel P. was detained from his mother and placed with a foster family. In July 2015, the juvenile court sustained the section 342 petition against father and granted him monitored three-hour visits at least three times per week.

By 2016, father's visitation was reduced to one hour twice a month. During visitation in 2015 and 2016, father often arrived late, lacked parenting skills, failed to supervise Israel P., neglected him, had to be reminded to change his diaper and check on him in the play area, brought inappropriate meals and made inappropriate remarks, struggled to comply with the visitation rules, and spent entire visits on his phone. Israel P.'s foster family made additional visitation available, but father refused it, stating he had work conflicts. During an interview with a social worker in July 2016, father admitted Israel P. did not recognize him as his father.

Father participated in individual counseling, completed the domestic violence program, and satisfied his treatment goals in individual mental health therapy. However, in February 2016, the juvenile court found father had not resolved the issues that caused Israel P.'s removal. The court restricted his visits to one time a month for one hour, terminated reunification services, and scheduled a section 366.26 hearing.

In September 2016, Israel P.'s foster family requested adoption, which was approved.

In January 2017, father's therapist reported he had made little progress in improving his life or becoming a better parent. DCFS reported father lacked parenting skills and was unaware of Israel P.'s basic needs and did not know how to interact with him.

In January 2017, at the non-contested section 366.26 hearing, father requested a contested hearing. He argued he could prove the parent-child beneficial relationship exception precluded termination of his parental rights because he consistently visited Israel P., attended every court hearing, kept in contact with the social worker, and completed his case plan. The court found that father failed to show a likelihood of proving his beneficial parental relationship with Israel P. precluded termination of parental rights. It therefore terminated father's parental rights without a contested hearing.

Father appealed.

DISCUSSION

Father contends the court abused its discretion in refusing to hold a contested hearing.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern" and "the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability." (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subdivision (c)(1) provides that if the court finds by clear and convincing evidence that "it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the Legislature"].) The statutory preference favors adoption unless the parent opposing termination can demonstrate an enumerated statutory exception applies. As pertinent here, the adoption preference may be

overcome by showing that termination of parental rights would be “detrimental to the child” because the 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).)

The “benefit” prong of this 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.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) Even frequent and loving contact between a child and a parent is insufficient, by itself, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one,” because it “would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile 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. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction

between the parent and the child, and (4) the child’s particular needs.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

When a parent claims an exception to the termination of parental rights, the court has the discretion to request an offer of proof before holding a contested section 366.26 hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) Unless there is a chance the parent could prevail in a contested hearing, the court may deny such a hearing. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816-817 [contested hearing properly denied where parent failed to offer sufficient evidence of regular visitation]; *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1147-1148 [contested hearing properly denied where parent offered no evidence of frequent visitation]; c.f. *In re Grace P.* (2017) 8 Cal.App.5th 605, 614 [contested hearing necessary where parent offered evidence on both prongs of the beneficial relationship exception].)

We review the juvenile court’s factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court’s discretionary decision—whether the relationship constitutes a compelling reason for determining termination of parental rights would be detrimental to the child—under the abuse of discretion standard. (*Ibid.*)

Father argues he maintained regular visits with Israel P., talked with him about school, occasionally redirected his behaviors, brought food, and played with him, which alone establishes his role as a parent. We disagree.

Frequent visitation and loving contact are not enough—there must also be a beneficial parental relationship. Here,

father visited Israel P. for only one hour, two times per month, refusing the foster family's offer of additional visitation. He was usually late for visits, failed to comply with visitation rules, failed to supervise Israel P., had to be reminded to change his diaper and check on him in the playing area, and overfed him.

No evidence suggests father attended to Israel P.'s physical care, nourishment, or medical needs, or assisted in managing his school or personal life. In other words, nothing in the record suggests father reasonably could show that he had formed a parent-child relationship with Israel P., or that the benefit the minor would get from continuing in the relationship outweighed the benefit he would get from adoption. Father admitted Israel P. did not recognize him as a parent. Therefore, the juvenile court was within its discretion to terminate father's parental rights without a contested hearing.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.