Filed 5/30/17 In re Maria F. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re MARIA F. et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B279343 (Super. Ct. Nos. 1436103, 1436104) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD PROTECTIVE SERVICES, Plaintiff and Respondent, v. R.F., Defendant and Appellant.	

The juvenile court terminated the parental rights of R.F. (Mother) to her children Maria (born in 2005) and Juan (born in 2008). (Welf. & Inst. Code, § 366.26.)[1] The court exercised its discretion and denied Mother a contested hearing on the

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

"beneficial relationship" exception to section 366.26. We affirm because Mother failed to offer relevant proof that she consistently visited the children, or held a parental role, or that the children would be greatly harmed if the court severed the maternal relationship.

FACTS

The Santa Barbara County Child Welfare Services (CWS) took Maria and Juan into protective custody in July 2014. The children were unwashed, unfed, lice-ridden and suffering from tooth decay. The family home smelled of urine and feces, and was filled with rotten food, insects, garbage, soiled clothing and debris.

Mother refused to use available resources for the children's food and medical needs. Though she received food stamps, aid from a charity, and had $600 in cash, she had no food in her home. The children had not eaten for a day and were very hungry. Mother allowed her husband, J.F. (Father), to use cash aid meant for food to support his addiction to alcohol. Mother admitted that these problems had persisted for a long time and adversely affected the children's well-being.

CWS filed a petition alleging parental failure to protect the children, who lacked proper food, clothing, shelter, medical care and supervision. (§ 300, subd. (b).) On July 9, 2014, the juvenile court found a prima facie case for detaining the children, who were placed in foster care. The parents were allowed monitored visits of four hours per week, but quickly fell out of contact with CWS and visitation was cancelled.

At the jurisdiction hearing on September 11, 2014, the court found the facts alleged in the petition to be true. It declared the children to be dependents of the court. At

disposition, the parents were given reunification services. Father died a few weeks after the hearing.

By March 2015, Mother had completed a parenting program, was participating in therapy, and was attentive to the children's educational and health needs. The six-month review report characterized her as hardworking and strongly bonded with the children. She lacked suitable housing for her family. She spent seven unsupervised hours with the children on Sundays, and several hours with them after school on Tuesdays and Thursdays. On days she did not visit, she telephoned the children, who enjoyed being with Mother and asked to see more of her. The children liked their foster placement.

In August 2015, CWS reported that Mother still lacked suitable housing, preventing the children from having overnight visits with her since their removal a year earlier. Juan was overdue for oral surgery to address tooth decay because Mother failed to complete the necessary paperwork. Mother worked six days a week and spent Sundays with the children. CWS helped Mother submit housing applications, but had difficulty staying in touch with her because she lacked a telephone. She was active in the children's education, counseling and medical appointments, and complied with the case plan with regular visits, completion of a parenting program, and by taking responsibility for the problems that led to the dependency proceeding. The children were excited to see Mother and wanted to reunify with her. At the request of CWS, the juvenile court agreed to give Mother six more months of services, to find housing.

In December 2015, CWS asked the court to terminate reunification services. Mother was living in an apartment with five other people, and the children cannot reside with her. For

months, CWS workers emphasized to Mother the importance of securing housing for the children, who said that they missed Mother and wanted to live with her. Mother works six days a week, but is stymied in finding housing owing to her lack of a social security number and sufficient cash to cover rent and a security deposit. She spent all day with the children on Sundays.

The social worker tried to reach Mother six times in January 2016. Each time, "Mother's phone appeared to be off" and the social worker was unable to leave a voicemail message. Maria expressed anxiety because she and Juan were moved multiple times to different foster families. The court terminated Mother's reunification services on January 14, 2016, and set a permanent plan hearing. CWS recommended termination of parental rights so that the children can be adopted.

In January 2016, Mother cancelled two of her Sunday visits, and attempted to cancel a third but was prevented by the foster mother. The cancellations upset Juan, who cried when Mother failed to visit. The caregiver opined that Mother causes the children to suffer by cancelling visits. Maria began to voice a preference for staying with the caregiver rather than visit Mother. When asked about returning to Mother's care, both children expressed sadness about leaving the foster family. Though that family could not provide the children with permanency, paternal relatives were interested in taking the children. Maria complained that during visits, Mother was usually busy texting and "doesn't really talk to us." The court warned Mother at a hearing in May 2016 that her last-minute cancellation of visits caused the children distress and heartbreak.

On June 14, 2016, Juan and Maria were placed in emergency foster care in Ventura County. They were described

as sweet, lovable and positive children. Maria struggled in school despite the help of three tutors, and had to repeat fifth grade. The caregivers felt that it was very detrimental to move the children from home to home.

When the children moved to Ventura, Mother stopped visiting, though CWS purchased train tickets for her trip from Santa Maria. She always cancelled, making excuses about why she could not come. Juan was tearful when Mother cancelled visits, but Maria did not seem disturbed. Mother visited the children once in July, and saw Juan on September 30, 2016 when he was in Santa Maria with his caregiver. Mother felt that taking the train to Ventura was arduous.

Prospective adoptive parents, a paternal aunt and uncle who live in Santa Maria, wish to take Juan and Maria into their home and adopt them. They have been married for 32 years and have no biological children. They know the children well because Father regularly visited with the children in tow. They promise to treat the children as their own.

The children moved in with their aunt and uncle in October 2016. CWS advised the court that the children are very happy to live with relatives, and want to stay there. The extended family is openly affectionate, and the children reciprocate the loving sentiments. The prospective adoptive parents cleared all necessary background checks and are eager to proceed with adoption. They assisted with Mother's visits, and reported that the children are happy to return to them afterward.

Mother made an offer of proof before the permanent plan hearing.[2] The court deemed the offer insufficient. At the

---

[2] Mother's offer is addressed in the discussion section of this opinion.

hearing, on November 23, 2016, the court accepted into evidence the CWS reports and took notice of its prior findings and orders. The social worker testified that the children are outgoing, friendly, and sweet. They have lived with the prospective adoptive parents since October 23, 2016. The relatives very much want to adopt the children. If they cannot do so, other families expressed an interest in adoption, including a foster home where the children were once placed. The children are "very adoptable." The court found that the children are adoptable and living in an adoptive home. It identified adoption as the permanent plan and terminated Mother's parental rights.

DISCUSSION

Children have a fundamental right to be protected from neglect and to have a stable, permanent home. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.) Termination of family reunification services "ordinarily constitutes a sufficient basis for terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 236-237.) When services end, the primary focus is on the child's need for permanency and stability; a parent's interest in the care, custody and companionship of the child is no longer paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

At the permanent plan hearing, if the court finds that the child is likely to be adopted, "the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); *In re S.B.* (2009) 46 Cal.4th 529, 532.) Adoption is the permanent plan preferred by the Legislature "'because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.'" (*In re Celine R.* (2003) 31 Cal.4th 45, 53,

quoting *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)[3] After a child has been under juvenile court jurisdiction for an extended period, it is "inimical to the interests of the minor" to burden efforts to place the child in a permanent home. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256.)

In exceptional circumstances, a parent may avoid termination of parental rights by showing that it would be detrimental to the child. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.) Mother asserts that termination of parental rights would be detrimental because she 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 parent carries the burden of proving regular visitation, a parental (not merely friendly or familiar) role, and that the child would be greatly harmed by termination of parental rights. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350; *In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.)

When a parent asserts the "beneficial relationship" exception to the termination of parental rights, the court may require "an offer of proof to insure that before limited judicial and attorney resources are committed to a hearing on the issue, mother had evidence of significant probative value. . . . [D]ue process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence" on one of the statutory exceptions to termination of parental rights. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122; *In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053 [offer of proof required when a parent asserted the "sibling relationship" exception].) The requirement

---

[3] Mother does not dispute on appeal that Juan and Maria are likely to be adopted as a sibling unit.

of an offer of proof is permissible because the parent bears the burden of proving an exception to terminating parental rights. (*In re Thomas R.* (2006) 145 Cal.App.4th 726, 732; *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.)

"The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued." (*In re Tamika T., supra,* 97 Cal.App.4th at p. 1124.) On appeal, we review the denial of a contested hearing for an abuse of discretion. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611; *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 758-759.)

Mother made a meager offer of proof regarding the "beneficial relationship" exception to the legislative preference to terminating parental rights.

As to the first prong, regular visitation, Mother admitted that she "was unable to make a lot of visitations during the review period due to the children being placed in Ventura, CA on June 14, 2016, and her work schedule." She seemed to question whether she was permitted to visit on Sundays, her day off, yet also noted that she contacted CWS to cancel Sunday visits.

The record shows that Mother visited the children three times per week after Father died in October 2014. Her visits waned by August 2015, when she saw them once per week. In January 2016, Mother cancelled visits, and was warned by the court in May 2016 that her last-minute cancellations distressed the children. She stopped visiting in June 2016, when the children moved to Ventura, though CWS offered her free transportation.

Mother's offer of proof did not create a triable issue. The record does not show that CWS failed to assist Mother or

accommodate her work schedule. Mother did not have stable housing or a telephone, nor did she stay in touch with the social worker. As a result, the social worker was unable to help her.

Mother felt that she needed to work, and that the trip to Ventura was arduous, but this does not excuse her failure to sustain a relationship with the children, and is not relevant to the issue of whether she "maintained regular visitation and contact" with the children throughout the dependency proceeding. (§ 366.26, subd. (c)(1)(B)(i).) Once reunification services ended, in January 2016, the burden was on Mother to arrange visits with the children, not on CWS.

Visiting the children once from June to the end of October 2016 is not regular visitation. "Regular visitation exists where the parents visit consistently and to the extent permitted by court orders. [Citation.] That level of visitation did not occur here and its lack would fatally undermine any attempt to find the beneficial parental relationship exception." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; *In re Grace P., supra,* 8 Cal.App.5th at p. 608-609 [a parent must visit "consistently and regularly" to justify a contested hearing on the beneficial relationship exception].)

Turning to the second prong of the statutory exception, Mother proposed to show that the children would benefit from continuing their relationship with her. She would testify that she was thoroughly involved with the children from birth until their detention in 2014. The case worker who supervised visits would testify; however, Mother's visits have been unsupervised since 2014, so the CWS employee could shed little light on the quality of Mother's current visits. Mother argued that CWS

reports show that the children enjoy her visits and Juan is deeply affected when Mother cancels.

Mother's offer of proof is not sufficient to require a trial because she cannot produce any relevant evidence of "a parental role." No matter how frequent and loving the contact, or emotional the bond, the parent must occupy a beneficial parental role in the children's life. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) A parental relationship ""'characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship." [Citation.]'" (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165-1166 [a mother's visits went well and the children reacted positively to her, but this evidence fell short of showing that the relationship promoted the children's well-being to such an extent as to outweigh adoption]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

At the section 366.26 hearing in November 2016, Mother offered to prove a parental role that ended in July 2014, when the children were detained. We cannot ignore that in 2014, when Mother had custody, the children were unfed, unwashed, lacked medical attention, and lived in dire, squalid conditions. She misused family food money to purchase alcohol for Father. While the record shows that Mother was active in 2014-2015 in the children's education, counseling and medical appointments, there was no offer to show that she provided them with basic necessities during two and a half years of foster care, despite having full time employment, or that the children looked to her for the kind of emotional support provided by a parent.

By January 2016, Mother no longer participated in the children's lives, beyond being an occasional visitor. A relationship that is "pleasant" and even "emotionally significant" is not enough to establish a benefit to the child because "it bears no resemblance to the sort of consistent, daily nurturing that marks a parental relationship." (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) Mother's sporadic contact with the children persisted in 2016. On this record, the court could not possibly find that Mother had a parental role.

Mother's offer of proof did not assert that "'severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.'" (*In re Marcelo B., supra,* 209 Cal.App.4th at p. 643, citing *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Mother gave the court no "*compelling* reason for determining that termination would be detrimental to the child[.]" (§ 366.26, subd. (c)(1)(B), italics added.)

At most, Mother alluded to a "strong bond," but her offer of proof did not say whether the quality of this bond promotes the children's well-being to such a degree as to outweigh the benefits they would gain in a permanent home. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re Marcelo B., supra,* 209 Cal.App.4th at p. 643.) The offer of proof cites instances in which Juan suffered sadness and distress because Mother repeatedly cancelled her visits; these examples show that Mother's insensitive behavior provoked emotional trauma instead of promoting well-being. Mother's papers do not suggest that she will ever be able to meet the children's need for a parent. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350.)

Here, the court heeded the legislative mandate that dependent children who cannot be reunified with their parents be provided the most stable possible home. Mother had two and a half years to find suitable housing, and was repeatedly warned that time was running out, yet she failed to avail herself of CWS's help. She withdrew from the social worker and the children. Meanwhile, the children suffered from being moved, foster home to foster home, with no hope of permanency. Under the circumstances, the court did not abuse its discretion in determining that Mother did not carry her burden of proving the existence of issues requiring a trial.

DISPOSITION

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and Appellant.

Michael C. Ghizzoni, County Counsel, Ashley E. Flood, Deputy, for Plaintiff and Respondent.