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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.W. a Person Coming Under the Juvenile Court Law.
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.L., Defendant and Appellant.

B280871

(Los Angeles County
Super. Ct. No. DK08183)

APPEAL from an order of the Superior Court of Los Angeles County, Terri Truong, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, William D. Thetford, Deputy
County Counsel, for Plaintiff and Respondent.

Appellant K.L. (Mother) is the mother of nine minor children, only one of whom is the subject of the present appeal. Mother appeals the juvenile court order terminating parental rights over K.W. (K.), her second youngest child, in the face of assertions that the parental benefit and sibling exceptions applied. (See Welf. & Inst. Code, § 366.26, subds. (c)(1)(B)(i) & (c)(1)(B)(v).)¹ Finding no error or abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has nine minor children, including K., born in July 2014, and “D.,” born after proceedings began in December 2015. In October 2014, Mother and six of the children were living with Mother and her adult son, Michael J.² The Department of Children and Family Services (DCFS) received information that Michael was acting as a pimp for one or more underage girls who were living in the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² In October 2014, two of the children were living with their paternal grandmother.

home.³ DCFS obtained a warrant for the removal of the children. At the time, K. was three months old. During interviews of the older children, the caseworker learned that Mother and K.'s father, Donald, had engaged in a physical altercation.

In December 2014, the court found true that Mother “established a detrimental and endangering home environment for the children [by] expos[ing] the children to sex trafficking in the . . . home.” Mother pled no contest to that allegation. The court held in abeyance the allegation that Mother and Donald “engaged in domestic disputes in which [Mother] pushed [Donald] in the presence of [one of the older children].” Following a hearing in February 2015, that allegation was found true.⁴ The reunification plan

³ This was not the family's first interaction with DCFS. There had been a referral earlier in 2014 when Michael's infant daughter died in the home, apparently of sudden infant death syndrome, while Mother was babysitting her. There had been other reports of neglect of one or more of the children between 2005 and 2014. In 2007, Mother participated in a voluntary family maintenance program.

⁴ After making its jurisdictional findings as to all the children, the court terminated jurisdiction over the three oldest, born in 1998, 2001 and 2003, and issued an exit order giving full-time physical custody to their respective fathers, Calvin H. and Roy A. The three middle children, born in 2006, 2007 and 2009, were placed in the legal custody of their father, D.H. Although he was serving a lengthy prison sentence when proceedings began, he arranged for a paternal aunt to care for the children in his absence. The third youngest child, T., was placed in a foster
(*Fn. is continued on the next page.*)

required Mother to participate in a parenting class and individual counseling to address anger management, child protectiveness and other case issues.⁵

In December 2014, K. was placed with foster mother “Ms. W.” Mother enrolled in a parenting class and began participating in individual counseling. She was visiting the children weekly. Mother completed the parenting class in February 2015, and completed the counseling program in June 2015. However, the caseworker expressed concern that Mother had not sufficiently addressed anger management in her therapy sessions. Mother began anger management counseling in October 2015. The caseworker also expressed concern that Mother was continuing to smoke marijuana.⁶

In September 2015, the court concluded that Mother was making sufficient progress and ordered unmonitored

home with foster mother “Ms. P.” As stated above, Mother’s youngest child, D., was born after proceedings began.

Donald W. is the presumed father of K. and D. He did not come forward to receive reunification services, and is not a party to this appeal.

⁵ Mother had admitted using marijuana, claiming that it was for medical purposes and that she had used only outside the presence of the children. Although the court struck an allegation that Mother was a current user of marijuana and did not include drug testing in her original reunification plan, Mother apparently agreed to drug test, as the record includes documentation of regular tests.

⁶ Mother tested positive for marijuana once between December 2014 and December 2015.

visitation with K., T., and the three middle children. In October, the court issued an order allowing overnight visits. DCFS assessed Mother's home for overnight visits and concluded they could not begin until she obtained sufficient beds for the children and child safety plugs for the electrical outlets. The caseworker informed Mother that Michael should not be allowed to live in the home or be present during visits, and that Mother should not have any adults present during visits who had not been cleared by DCFS.

Between September 2015 and March 2016, Mother had unmonitored visitation two hours weekly with K., T., and the three middle children. In December 2015, Mother gave birth to D. Shortly after the birth, DCFS received information that Michael and Donald were living with Mother, and that Donald was selling drugs.⁷ The caseworker who investigated discovered Donald was in jail and found no evidence that Michael was living in the home. Approximately a month later, DCFS received additional reports that prostitution and drug use or manufacture were occurring inside the home, and that Michael or another unknown male was living there.⁸ The caseworker uncovered evidence that Michael was living in Mother's home and being allowed to babysit the children, and that there were other unknown adults coming

⁷ Donald had an extensive criminal record, including convictions for possessing drugs for sale.

⁸ Between January and April 2016, Mother tested positive for opioids once, and missed several tests without excuse.

and going from the home. In February 2016, DCFS obtained a removal order for D., and D. was placed with K. in the care of Ms. W. In March 2016, DCFS filed a section 388 petition, asking that Mother's visitation with K., T., and the three middle children revert to monitored.

In April 2016, the court held a hearing on DCFS's section 388 petition, and ordered visitation to revert to monitored. In May 2016, DCFS recommended termination of reunification services for Mother. K's foster mother expressed interest in adoption. K. was doing well in her foster home and becoming attached to her family, which included both her younger sibling D. and a foster brother.⁹ Ms. W. had an approved adoption home study.

On May 25, 2016, the court adjudicated a section 300 petition filed on behalf of newborn D., finding essentially the same allegations true that had supported the assertion of jurisdiction over the other children: that Mother exposed the child to sex trafficking in the home, and that Mother and Donald engaged in a physical altercation. At the hearing, the court terminated reunification services with respect to T. and K., but ordered reunification services for Mother with respect to D. The reunification services ordered included random drug testing and additional counseling.

In the section 366.26 report, the caseworker reported that Mother had been consistent with her weekly monitored

⁹ T.'s foster family also expressed interest in adoption, but later, elected to pursue long-term guardianship instead.

visits with the children. K. continued to do well in her foster home and demonstrated a close bond with her foster family. The caseworker observed the girl seeking out her foster mother for comfort and affection. The foster mother was committed to adoption.¹⁰ DCFS recommended adoption as the permanent plan for K.

On November 30, 2016, Mother filed a section 388 petition asking the court to return K. and T. to her custody or to allow overnight visits. The court set a hearing on the petition. In February 2017, DCFS prepared a report in response to the section 388 petition.¹¹ The report stated that Mother had completed parenting and anger management classes and had been participating in counseling for more than a year. Her drug tests since April 2016 were negative. She had maintained telephonic and in-person visitation with the children. Mother promised the caseworker she would have nothing more to do with Donald or Michael. T.'s foster mother said visits had been going well, and that Mother and T. were engaging more than in the past. However, K.'s foster mother, Ms. W., reported that K. was staying closer to her during visits and engaging less with Mother. DCFS recommended against granting additional reunification services or granting Mother custody of or overnight visits with K. or T., contending Mother's past actions proved she

¹⁰ Ms. W. also expressed a willingness to adopt D.

¹¹ A month earlier, Mother had started having unmonitored visits with D.

was not completely trustworthy. It recommended, however, that Mother be permitted unmonitored day visits.

At the joint section 366.26 hearing and hearing on Mother's section 388 petition, held on February 6, 2017, the court granted Mother unmonitored visitation with T. and the three middle children. The petition was otherwise denied. Turning to the permanent plan for K., the court accepted Mother's stipulated testimony that she had been visiting K. every Saturday for two hours, that she consistently took advantage of the unmonitored visitation previously allowed by the court, that she and K. ate and played together during their visits, that K. called her "mommy" and hugged her, and that K. had recently begun crying when visits ended. Her counsel argued there was a strong bond between Mother and K. that would be detrimental to break. Counsel for K. joined in Mother's counsel's argument, and further contended that termination of parental rights would interfere with the sibling relationship between K., then two and a half, and D., then 14 months, who had been living in the same foster home since February 2016. K.'s counsel pointed out that Mother had been granted reunification services with respect to D., and could possibly reunify with her. DCFS's counsel argued that termination of parental rights to permit K.'s adoption by Ms. W. was in K.'s best interests. The court, after observing that K. had been detained from Mother since November 2014, when she was four months old, determined that the evidence did not demonstrate that K. would benefit from continuing the relationship with Mother. With respect

to the sibling relationship with D., the court found there was insufficient evidence to show that continuing the relationship would be in K's best interest. Accordingly, the court terminated parental rights over K. Mother appealed the order terminating parental rights.

DISCUSSION

When a section 366.26 permanent plan hearing is held, the juvenile court's choices include: (1) terminating parental rights and ordering that the child be placed for adoption; (2) appointing a long-term legal guardian; or (3) ordering long-term foster care. (§ 366.26, subd. (b); *In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court determines 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)), unless one of the statutory exceptions applies and "provides a compelling reason for finding that termination of parental rights would be detrimental to the child." (*In re Celine R.*, *supra*, at p. 53.) Termination of parental rights to free the child for adoption is the "first choice" because "it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.'" (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

Once it is determined that the child is adoptable, a party seeking a different permanent plan "has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section

366.26, subdivision (c)(1)(B). [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.)¹² The statutory exceptions “permit the court, in exceptional circumstances [citation], to choose an option other than the norm, which remains adoption.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822, italics omitted.) At the hearing, Mother sought to invoke the exception found in section 366.26, subdivision (c)(1)(B)(i), precluding termination of parental rights where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” K.’s counsel invoked the exception of subdivision (c)(1)(B)(v), precluding termination of parental rights when “[t]here would be substantial interference with a child’s sibling relationship.”

In reviewing challenges to a juvenile court’s decision as to the applicability of these exceptions, we apply the substantial evidence standard of review to evaluate the evidentiary showing, such as whether a beneficial parental relationship exists or whether the child has a close and strong bond with a sibling. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) We apply the abuse of discretion standard to the court’s determination whether termination of the relationship would be detrimental to the child. (*In re Bailey J.*, *supra*, at

¹² There was no dispute that K. was adoptable.

p. 1315.)¹³ For the reasons discussed, we find no abuse of discretion.

A. Parental Benefit Exception

A parent seeking to forestall termination of parental rights under the parental benefit exception must establish: (1) “the existence of a beneficial parental . . . relationship” and (2) that “the existence of that relationship constitutes a ‘compelling reason for determining that termination would be detrimental.’” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315, italics omitted, quoting § 366.26, subd. (c)(1)(B); accord, *In re Logan B.* (2016) 3 Cal.App.5th 1000, 1013.)

Satisfying the exception “requires the parent to prove 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,’” and that the relationship ““promotes the well-being of the child to such a degree as to outweigh the well-being the child

¹³ Some courts instead apply the substantial evidence standard of review (see, e.g., *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166; *In re S.B.* (2008) 164 Cal.App.4th 289, 297) or the abuse of discretion standard of review (see, e.g., *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351) to the entire determination. We apply the hybrid standard, recognizing that as a practical matter, the differences between the standards of review will rarely impact the outcome of an appeal. (See *In re G.B.*, *supra*, at p. 1166, fn. 7.)

would gain in a permanent home with new, adoptive parents.”” (In re Marcelo B. (2012) 209 Cal.App.4th 635, 643, italics omitted.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (In re Angel B. (2002) 97 Cal.App.4th 454, 466.) In determining whether to apply the exception, the court should “balance[] 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. (1994) 27 Cal.App.4th 567, 575.) “[A] parental relationship is necessary for the exception to apply, not merely a friendly or familiar one.” (In re Jasmine D., supra, 78 Cal.App.4th at p. 1350.) “[A] child needs [a] parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.” (Ibid.) In determining whether the exception has been established, the court may consider such factors as “the age of the child, the portion of the child’s life spent in the parent’s custody, . . . and the child’s particular needs.” (Ibid.)

K. was four months old when she was detained from Mother. She was two and a half by the time of the section 366.26 hearing, and had been living with Ms. W. for over two years. Mother had visited consistently, but for no more than a few hours per week, even during the brief period the visits

were unmonitored. During visits, Mother played with the girl and fed her, but had not had a truly parental relationship with her for some time. K. looked to Ms. W. for comfort and affection, and, according to the caseworker, stayed close to her during Mother's visitation. After more than two years in the dependency system waiting for Mother to become an adequate parent, K. was entitled to the permanence and stability offered by a loving adoptive home. The court did not abuse its discretion in concluding that termination of K.'s relationship with Mother would not greatly harm K. or outweigh the benefit of adoption by Ms. W.

B. Sibling Exception

The statute governing the sibling exception requires the court to "tak[e] 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)), "strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) In enacting the sibling exception provision, the Legislature was primarily concerned with "preserving long-standing relationships between siblings

which serve as anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404; accord, *In re Isaiah S.* (2016) 5 Cal.App.5th 428, 437.) “Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) Moreover, even if the sibling relationship is strong enough that its severance would cause the child some detriment, before applying the exception, the court must find the benefit of continuing that relationship outweighs the benefit to the child adoption would provide if parental rights were terminated. (*Id.* at pp. 952-953.) Accordingly, application of the sibling relationship exception will be rare, “particularly when the proceedings concern a young child . . . whose need for a competent, attentive and caring parent is paramount.” (*In re Michael G.* (2012) 203 Cal.App.4th 580, 593; accord, *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

For the first time, Mother contends that K.’s relationship with her older siblings supported application of the exception. Section 366.26, subdivision (c)(1) exceptions cannot be raised for the first time on appeal, as their applicability “depends entirely on a detailed analysis of the relevant facts by the juvenile court.” (*In re Erik, supra*, 104 Cal.App.4th at p. 403.) In any event, K. had been removed from her home in infancy and thus had no appreciable relationship with any of her older siblings.

As for a sibling relationship with D., both were very young, and their interaction with each other was necessarily

limited. As the record demonstrates, K.'s primary attachment was to her foster mother. A juvenile court may not derail an adoption "that is in the adoptive child's best interests because of the possible effect the adoption may have on a sibling." (*In re Celine R.*, *supra*, 31 Cal.4th at p. 54.) On the record before it, the court did not abuse its discretion in concluding the benefit to K. of being in a stable adoptive home outweighed the benefit of continuing her sibling relationship with D.

DISPOSITION

The order terminating parental rights is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.