Filed 7/27/12 In re M.R. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.R., a Person Coming Under the Juvenile Court Law.	B238344 (Los Angeles County Super. Ct. No. CK80018)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JOANN R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Daniel Zeke Zeigler, Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Joann R. (Mother) appeals from the October 25, 2011 juvenile court order terminating her parental rights over minor M.R., born in August 2007, pursuant to Welfare and Institutions Code section 366.26.[1] Mother contends that the court's determination that the relative caregiver exception to termination of parental rights does not apply is not supported by substantial evidence. Mother also contends that the court abused its discretion in determining that the parental relationship exception to termination of parental rights does not apply. M.R.'s father, David U. (Father), is not a party to this appeal. We disagree with Mother's contentions. We determine that substantial evidence supported the court's conclusion that the relative caregiver exception did not apply and that the court did not abuse its discretion in declining to apply the parental relationship exception. We affirm the order of the court.

BACKGROUND

On November 19, 2009, the Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivision (b) (failure to protect), and section 300, subdivision (g) (no provision for support), on behalf of D.R., who is not a party to this appeal, and M.R. The petition was filed against Mother, Father, and D.R.'s father, Josue C. As amended and sustained, under section 300, subdivision (b), the petition alleged that Mother has a history of illicit drug abuse and is a current abuser of marijuana, which renders her incapable of providing M.R. and D.R. with regular care and supervision and that Mother's substance abuse endangers M.R.'s and D.R.'s physical and emotional health and safety, placing them at risk of physical and emotional harm; and under section 300, subdivision (g), the petition alleged that Father is currently incarcerated and unable to provide for M.R. The court ultimately terminated jurisdiction with respect to D.R., born in 2006, and granted Josue C. sole legal and physical custody over her.

The events leading up to the filing of the petition were as follows. In July 2009, Mother was reported to be using marijuana and methamphetamine in the minors'

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

presence, and to be "'so high she was shaking'" while caring for the minors. Mother had "'wild parties' every day" and there was a "heavy flow" of people to the house, some of whom were affiliated with gangs. The minors were very dirty, Mother was not selective about with whom she left the minors, and Mother often left them in others' care without provisions. Mother also engaged in a physical altercation with the girlfriend of one of the minors' fathers while Mother was holding M.R. At the team decision making meeting in October 2009, Mother admitted that she used marijuana, had a criminal record, and had "severe" anger outbursts as a teenager. Mother failed to drug test as agreed at the team decision meeting and did not show for scheduled appointments with DCFS. The minors were removed and placed in a foster home.

At the time of the November 2009 detention hearing, at which the minors were ordered detained, Mother was in custody. In December 2009, the juvenile court released D.R. to Josue C. Mother was then incarcerated in Nevada. Father was also incarcerated. M.R. was ordered detained with maternal grandmother in December 2009.

Mother was released from jail on January 7, 2010. D.R. remained with Josue C. and M.R. remained with maternal grandmother. Mother tested positive for marijuana on January 14, 2010, and missed subsequent random drug tests. Mother submitted a waiver of rights, which the juvenile court accepted. The court held the counts against Josue C. in abeyance pending further court order. Mother enrolled in but was dismissed from a residential drug treatment program for noncompliance in August 2010.

M.R. was adjudged a dependent of the juvenile court in September 2010. At the contested disposition hearing, the court ordered twice weekly monitored visits for Mother.

In February 2011, maternal grandmother told DCFS that she "was not interested in providing [M.R.] with a long term permanent plan because she [was] through raising her own biological children." On March 7, 2011, maternal grandmother told DCFS that she "will be able to provide [M.R.] with a permanent plan and is willing to seek legal guardianship of [M.R.]" DCFS reported that "[maternal grandmother] doesn't want [M.R.] to go elsewhere since she has had [M.R.] for over a year and is willing to provide

him with his basic needs but also with a stable and nurturing home environment as she has done in the past year." DCFS reported that M.R.'s progress in following rules, directions, and focus was all due to maternal grandmother, who ensured that he had structure, limits, boundaries, guidance, and reassured him that he will be picked up on time from school and will not be dropped off with different people. M.R. appeared to listen to maternal grandmother more than to Mother.

On March 8, 2011, the juvenile court terminated jurisdiction over D.R., with sole legal and sole physical custody of D.R. granted to Josue C. Also, the court terminated Mother's reunification services as to M.R., after DCFS reported that Mother did not comply with her programs.

In March 2011, Mother was in a new relationship and was five months pregnant. That month, Mother enrolled in an outpatient drug program after a "second referral request." Mother visited the minors once or twice a week on a regular basis. Mother was punctual and the visits went well. Maternal grandmother, who worked in a child care center, was teaching Mother parenting techniques and how to be consistent with the minors. Mother began to use the techniques during her visits with the minors.

In May 2011, DCFS reported M.R. was comfortable and happy with maternal grandmother, who was "willing and able to adopt [M.R.]" Maternal grandmother stated, "'He has lived with me all his life and no one knows him better than I do,'" and, "'I would hate for him to be placed with anyone else and have him go through a mental ordeal again.'" Maternal grandmother loved M.R. and wanted to care for him, protect him, and provide him with a permanent home. They were closely bonded and she loved him like a son. DCFS reported "maternal grandmother had initially stated to [DCFS] that she did not want to adopt [M.R.] in the hopes that [M.R.] would be returned to [Mother's] custody. However, in seeing that [Mother] has not fully complied with the Court orders, she is requesting to adopt [M.R.]" Maternal grandmother stated that she "never actually wanted [M.R.] to leave her home." M.R. enjoyed being with Mother, who visited him on weekends for several hours. Mother was enrolled in outpatient classes, including parenting, drug diversion, counseling, domestic violence, and AIDS prevention. Mother

had matured and acted appropriately with M.R., providing him with structure, discipline, and consistency. During monitored visits, she read to him and played with him, giving him her full attention while he sat on her lap. Mother stated that if M.R. were not returned to her custody, she wanted him placed with maternal grandmother because M.R. had resided with maternal grandmother "most of his life since his birth," except for one three-month period where Father refused to return M.R. after a visit.

On September 6, 2011, DCFS reported that maternal grandmother "had changed her mind several times about the adoption; therefore, there were never any interviews scheduled. [Maternal grandmother] is now in agreement to move forward with the adoption process." M.R. continued to thrive in maternal grandmother's care and to have all his needs provided for in a loving environment. Maternal grandmother was looking forward to adopting M.R. and providing him with a life-long home and family.

Father, who had been released from prison on August 5, 2011, told DCFS that he wanted to become a part of M.R.'s life and did not understand why he was going to be put up for adoption. Maternal grandmother expressed hesitancy "about adoption as it seemed [M.R.] was going to be reunified with [Father]. [Father] changed his plan and [maternal grandmother] was back on board with the plan of adoption." Because another relative other than Father expressed interest in adopting M.R., the juvenile court ordered DCFS to identify a new placement prior to the section 366.26 hearing if maternal grandmother decided not to proceed with adoption.

In a last minute information, DCFS informed the court that maternal grandmother's home study would be complete on October 28, 2011.

On October 25, 2011, at the contested section 366.26 hearing, Mother testified that she visited M.R. weekly in monitored visitation. She had never had unmonitored visits. She stated that M.R. was always happy to see her and calls her "'mom.'" Mother stated that maternal grandmother takes M.R. to his doctor appointments, which she never attended "because [she is] in school." She stated that maternal grandmother "lets [her] know" of M.R.'s health care needs or educational needs. Mother currently lived by herself with her newborn baby. When she visited M.R., she brought D.R. and the

newborn. Maternal grandmother testified that M.R. loves Mother, who had visited every weekend from the time she was released from prison. M.R. called maternal grandmother "'grandma.'" Maternal grandmother always spoke with Mother about M.R.'s health and educational concerns. Maternal grandmother explained that she was choosing to adopt M.R. "[b]ecause they asked me if I would adopt him if my daughter wouldn't complete the programs." When asked if her preference would be legal guardianship over adoption, maternal grandmother stated, "If I had the choice, yes, so it would — he would still have [Mother] as his mother." When the court asked if maternal grandmother felt pressured or forced to adopt, maternal grandmother replied "no." She stated that she was willing to adopt. When asked if she did not want to do legal guardianship because she did not want M.R. being removed from her care, she stated, "Yes. If you want to say — I love my grandson, and I want him in the family with me. I want him to still be part of my family and not be taken away and living with strangers." When asked if she felt she did not have an option, maternal grandmother stated, "And it's fine with me." Maternal grandmother also stated that Mother was a good mother and that M.R. would be devastated if he could never see Mother again.

The juvenile court concluded that M.R. was adoptable. The court determined that the "exceptions, to the extent they may apply, outweigh the permanence of finalization in adoption for [M.R.]" The court noted that while Mother and M.R. had maintained regular visitation of two hours a week on the weekend, she had not shown a parental relationship. And although maternal grandmother consulted Mother regarding educational and medical decisions, Mother did not attend doctor appointments. The court also determined that the relative caregiver exception did not apply because although maternal grandmother "may prefer guardianship . . . she has indicated a willingness to adopt [M.R.]" The court also rejected a sibling relationship exception to termination of parental rights. The court terminated Mother's parental rights.

Mother appealed.

DISCUSSION

A. There was substantial evidence to support the juvenile court's determination that the relative caregiver exception did not apply

Mother contends that the juvenile court's determination that the relative caregiver exception did not apply was not supported by substantial evidence. We do not agree.

Once the juvenile court has determined 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).) "Adoption, where possible, is the permanent plan preferred by the Legislature. [Citations.] 'Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child's best interests are other, less permanent plans, such as guardianship or long-term foster care considered.' [Citation.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573–574.) Pursuant to section 366.26, subdivision (c)(1)(A), the court shall terminate parental rights unless "[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." (§ 366.26, subd. (c)(1)(A).)

We review the juvenile court's determination of whether the relative is unable or unwilling to adopt the child under the sufficiency of the evidence standard. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576.) "'"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]"' [Citation.] While substantial

evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

The evidence shows that maternal grandmother was willing and able to adopt M.R., although she may have expressed hesitancy early in the dependency proceedings in the hope that Mother would complete her programs and reunify with M.R. and when Father declared an interest in gaining custody of M.R. We cannot fault maternal grandmother for hoping that M.R.'s natural parents would step up to the plate and claim responsibility. Ultimately, at the section 366.26 hearing, maternal grandmother testified that she was willing and able to adopt M.R., that she loved him like a son, and that she did not feel pressured to adopt him.

Nevertheless, Mother argues that the relative caregiver exception applied because maternal grandmother's "'willingness'" to adopt was "based upon her belief she would lose [M.R.] forever if she did not commit to adoption," citing *In re K.H.* (2011) 201 Cal.App.4th 406. *In re K.H.* does not assist Mother. *In re K.H.* states that "[i]t is apparent from the legislative history the Legislature intended that a relative caregiver's preference for legal guardianship over adoption be a sufficient circumstance for application of the relative caregiver exception as long as that preference is not due to an unwillingness to accept legal or financial responsibility for the child." (*Id.* at p. 418.) In that case, the juvenile court determined that the relative caregiver exception applied where the grandparents "testified they were unwilling to adopt the children because they wanted to remain the children's grandparents. There was also evidence the grandparents were willing to accept legal and financial responsibility for the children. This evidence was sufficient to satisfy the element of the relative caregiver exception that they were unwilling to adopt because of circumstances that do not include unwillingness to accept legal or financial responsibility." (*Id.* at p. 419.) Thus, *In re K.H.* is distinguishable because the grandparents in that case consistently and firmly stated that they were unwilling to adopt the minors. In *In re K.H.*, the minors failed to show that substantial

evidence did not support the court's determination that the relative caregiver exception applied. (*Ibid.*)

Here, on the other hand, the juvenile court determined that the relative caregiver exception did not apply, and the burden on appeal is on Mother to show that the relative caregiver exception does apply. We conclude Mother fails to show that the relative caregiver exception applies. At the section 366.26 hearing, maternal grandmother stated that although she preferred legal guardianship, so that Mother could still be M.R.'s mother, she was willing and able to adopt M.R. And Mother's claim that the juvenile court "threatened to remove [M.R.] from her care" if she did not adopt him is not supported by the record. Rather, the court ordered DCFS to identify any potential adoptive placement prior to the section 366.26 hearing because another relative had expressed interest in adopting M.R. at the time maternal grandmother vacillated on the adoptive home study. After Father declined to reunify with M.R., maternal grandmother proceeded with the adoptive home study. At the section 366.26 hearing, maternal grandmother denied feeling pressured or forced to adopt M.R. She stated that adoption was "fine" with her.

Accordingly, we conclude substantial evidence supports the juvenile court's determination that the relative caregiver exception did not apply.

B. The juvenile court did not abuse its discretion in determining that the parental relationship exception to termination of parental rights did not apply

Mother contends that the parental relationship exception to termination of parental rights applied because Mother maintained regular visitation and contact with M.R. and M.R. would benefit from continuing the relationship with Mother. We disagree.

"Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1)." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) Section 366.26 provides an exception to adoption when the juvenile court finds a compelling reason for determining that termination would be detrimental to the minor due to the following circumstance, among others: "The

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).)

The parental relationship must be more than "'frequent and loving contact.'" (*In re Cliffton B.* (2000) 81 Cal.App.4th 415, 424.) "[T]he 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 Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The 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 are some of the variables which logically affect a parent/child bond." (*Id*. at pp. 575–576.)

"[T]he juvenile court's decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists, although section 366.26 does contain other exceptions—is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes 'a compelling reason for determining that termination would be detrimental to the child.' (§ 366.26, subd. (c)(1)(B); [citation].) This '"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,' is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]" (*In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1316–1317 [mother must show juvenile court abused its discretion in

finding relationship between mother and child did not constitute a compelling reason for finding that adoption would be detrimental to child].)

We conclude Mother failed to show that there was a beneficial parental relationship and its termination would be detrimental to M.R. At the time of the section 366.26 hearing, he had lived most of his life with maternal grandmother. M.R. was happy, thriving, and bonded to maternal grandmother, who loved him like a son. M.R. appeared to listen to maternal grandmother more than to Mother. Maternal grandmother demonstrated that she was able to care for M.R. and to meet all of his medical, developmental, and emotional needs, and M.R. has done well in his placement with maternal grandmother.

Nevertheless, Mother urges that she shared a close, parental bond with M.R., citing DCFS's reports that she was learning to set limits and boundaries with M.R.; the monitored visits went well; she was appropriate with M.R.; she had a bond with M.R.; and she played affectionately with M.R. She points to her testimony that M.R. called her "'mom'" and to maternal grandmother's description of how closely attached M.R. was to Mother. Mother cites *In re S.B., supra*, 164 Cal.App.4th 289, where the appellate court reversed the juvenile court's order terminating the father's parental rights. But that case does not advance her argument. There, the father complied with every aspect of his case plan; a bonding study revealed a potential for harm if the parental relationship were severed; the father and the minor had an "'emotionally significant relationship'" (*id.* at p. 298); the father visited with the minor three times a week; the minor tried to leave with the father when visits were over; the minor initiated physical contact with father; the minor loved the father and wanted the relationship to continue; the minor stated she wanted to live with the father; and the evidence supported "the conclusion [the father] continued the significant parent-child relationship *despite* the lack of day-to-day contact with [the minor] after she was removed from his care" (*id.* at p. 299). Here, Mother did not comply with every aspect of her case plan, no bonding studies were introduced into evidence, she did not attend M.R.'s medical appointments, and her visits never progressed beyond once a week, monitored. We conclude Mother failed to show the

necessary beneficial parental relationship existed and that the juvenile court abused its discretion in concluding that termination of parental rights would not result in a detriment that would outweigh M.R.'s need for a permanent, stable home.

Accordingly, we affirm the juvenile court's order terminating parental rights.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.