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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re CYNTHIA S., a Person Coming
Under the Juvenile Court Law.

B237266
(Los Angeles County
Super. Ct. No. CK79883)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry Truong, Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Melinda White-Svec, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

R.S., presumed father of now two-and-a-half-year-old Cynthia S., appeals from the juvenile court's order terminating his parental rights to Cynthia. Father contends that the juvenile court erred by failing to find the beneficial parental relationship exception to the termination of parental rights under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i)¹ (section 366.26(c)(1)(B)(i)). We affirm.

BACKGROUND

On October 26, 2009, the San Bernardino County Department of Children and Family Services (CFS) filed a section 300 petition that alleged, as amended and sustained, that Cynthia came within the jurisdiction of the juvenile court because mother had a history of mental illness with violent outbursts that limited her ability to provide adequate care for and supervise Cynthia; mother's mental illness caused her to be hospitalized seven times during her pregnancy with Cynthia; mother threatened to drop Cynthia on the sidewalk; father had difficulty protecting Cynthia from mother; and mother had been hospitalized, released, and was unable to provide care or support for Cynthia.

The October 27, 2009, Detention Report stated that Cynthia was born in early October 2009. Mother had a history of violent behavior and hospitalizations due to mental health issues. At the time Cynthia was born, mother was hospitalized because she had been violent with her boyfriend (presumably father). Mother appeared to be unable to care for Cynthia. Father was reported to be unemployed and thus available to care for Cynthia. Maternal grandmother was reported to be moving into mother and father's home to assist in caring for Cynthia.

The Detention Report stated that mother reported having been hospitalized at least 30 times for mental health issues. Mother took Haldol while pregnant with Cynthia and

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

was prescribed Haldol and Prozac when she was discharged from the hospital. Mother stated that Haldol made her sleepy and that she might stop taking it. Father asked if mother's condition could be treated with herbs. The parents were advised to consult with a psychiatrist before making decisions about mother's medication.

Shortly after Cynthia was born, mother became angry with maternal grandmother and threw Cynthia on the bed roughly. The next morning, when maternal grandmother was leaving the family's home, mother walked outside and said that she would drop Cynthia on the sidewalk if maternal grandmother left. Maternal grandmother asked mother to take Cynthia inside because the baby was not properly dressed for the cold weather. Mother became "insistent in dropping the baby" and father called law enforcement. Mother was taken into custody and hospitalized apparently pursuant to section 5150.²

At the October 27, 2009, detention hearing, the juvenile court found a prima facie case that Cynthia came within the provisions of section 300. The juvenile court detained Cynthia from mother and placed her with father.

At the November 25, 2009, jurisdiction/disposition hearing, the juvenile court declared Cynthia to be a dependent of the court. The juvenile court ordered Cynthia removed from mother's custody and placed in father's custody on the condition that mother not reside in the family home. Mother was ordered to participate in reunification services. Father was ordered to participate in family maintenance services.

² Section 5150 provides, in relevant part:

"When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation."

The January 25, 2010, Interim Review Report stated that it was very unlikely that mother was able to participate in or benefit from court-ordered services due to her mental health issues. The report stated that mother's supervised visits with Cynthia were detrimental to the child. Father reportedly had difficulty caring for Cynthia by himself. Father had not participated in any of his case plan services and was reported to be "fixated" on and to be spending an inordinate amount of time attempting to solve mother's problems and not his own problems. Father wanted to retain custody of Cynthia, but appeared to be depressed by his circumstances. Often, father relied on maternal grandmother to care for Cynthia. Maternal grandmother complained about caring for Cynthia and, more than once, left Cynthia in the care of a male neighbor whom father did not know well. The social worker told father that maternal grandmother could no longer care for Cynthia. At the January 25, 2010, hearing, the juvenile court suspended mother's visits with Cynthia.

On May 24, 2010, CFS filed a subsequent (§ 342) and supplemental (§ 387) petition alleging that the previous disposition had been ineffective in protecting Cynthia because father had neglected her. The petition alleged that father had failed to provide adequate and regular care for Cynthia for six weeks, had left Cynthia with a caregiver without providing advance medical consent to treat her, and had visited Cynthia on three brief occasions. The petition further alleged that father had resumed a relationship with mother and had not acknowledged the risks mother presented to Cynthia. The petition also alleged that father lacked housing.

The May 25, 2010, Detention Report stated that on April 12, 2010, father requested CFS's permission to leave Cynthia with his sister for two weeks while he moved to a new apartment. Permission was granted provided that father was to visit Cynthia regularly and call daily to check on her. Six weeks later, father had not brought Cynthia home and had made "minimal" attempts to keep in contact with her. Father visited Cynthia only three times in six weeks. Father did not call daily and contacted his sister "only once a week sometimes."

According to the Detention Report, Cynthia became ill at the end of April 2010, with an infection that required antibiotics. Father took Cynthia to the doctor, but did not thereafter fill her prescription, visit her, or call to check on her condition. The antibiotics did not fully cure Cynthia's infection, and she became ill with a high fever in the middle of May 2010. Paternal aunt attempted to contact father to take Cynthia to the doctor, but was unsuccessful. Paternal aunt took Cynthia to the doctor, but the doctor refused to treat Cynthia without parental consent. After several hours, father was contacted and he faxed written consent for the doctor to treat Cynthia. Once again, upon learning that his child was ill, father did not visit Cynthia or call paternal aunt to check on Cynthia's condition. When the second prescribed antibiotic caused Cynthia to break out in a rash, she was treated without "father involving himself in his daughter's care at all." As of May 20, 2010, father had not seen Cynthia for about three weeks.

The Detention Report stated that the social worker confronted father about his failure to visit Cynthia or to call regularly to check on her. Father stated that he was too busy moving to visit. Also, paternal aunt's home in El Monte was far from where father lived—reportedly 25 miles. Father stated that he was interested in moving to El Monte to be near paternal aunt so she could help him with childcare. After six weeks, father had been unable to find a suitable apartment in El Monte, and was homeless.

According to the Detention Report, mother told a social worker in April 2010, that she and father planned to resume their relationship when the dependency case was over. In May 2010, father reported that he had an ongoing relationship with mother, taking her to appointments, church, and other activities. Father did not perceive the risk that his continuing relationship with mother posed to Cynthia. Father argued with the social worker that mother had changed and was no longer dangerous. Father did not hold mother responsible for her behavior and made excuses for her. Father's therapist reported that father had made "limited progress toward treatment goals," was "overwhelmed by being a single parent," and continued to "obsess about [mother] in a way which prohibits his ability to provide a safe and secure environment for his child."

Father agreed that Cynthia would stay with paternal aunt pending a hearing on the petition and CFS's recommendation that Cynthia be removed from father's custody. On May 20, 2010, Cynthia was placed with paternal aunt. Father continued to have unsupervised visitation with Cynthia. Paternal aunt and uncle were willing to facilitate Cynthia's reunification with her parents or to adopt Cynthia if reunification failed.

At a hearing on May 25, 2010, the juvenile court removed Cynthia from father and placed her with paternal aunt and uncle. The juvenile court granted father two hours per week of unsupervised visits with Cynthia.

The June 15, 2010, Jurisdiction/Disposition Report stated that father reported on June 7, 2010, that he was homeless. Father had visited Cynthia twice since the May 25, 2010, hearing. The "caretaker" reported that father was appropriate during both visits and had called a few times to inquire about Cynthia. Cynthia reportedly responded well to father's visits and enjoyed his attention. Father had not seen Cynthia since May 28, 2010. Father injured his ankle in a rollerblading accident and missed two visits with Cynthia because he had been in too much pain to walk or drive. As of June 7, 2010, father's ankle was feeling better and he intended to resume visiting with Cynthia.

According to the report, paternal aunt and uncle reported that Cynthia was flourishing in their care and they were happy to continue to care for her as long as needed. Paternal aunt and uncle's home was described as supportive and loving. Paternal aunt and uncle both worked full-time and employed a live-in nanny to care for their two youngest children. The nanny was willing to care for Cynthia during the day.

At the June 23, 2010, jurisdiction/disposition hearing, the juvenile court found that Cynthia came within sections 342 and 387. Father was granted unsupervised visitation with Cynthia of a minimum of two visits per week. Mother and father were ordered to participate in reunification services.

In its July 8, 2010, Interim Review Report, CFS recommended that the case be transferred to the Los Angeles Department of Children and Family Services because Cynthia and her parents were then residing in Los Angeles County. On July 27, 2010, the juvenile court found Cynthia to be a resident of and transferred the case to Los

Angeles County. On August 20, 2010, the Los Angeles County Superior Court accepted jurisdiction of the case from San Bernardino County.

The September 24, 2010, Interim Review Report stated that father had visited Cynthia at his sister's home. Father's visits had not, however, been consistent or planned in advance. At the September 24, 2010, hearing, the juvenile court ordered father to visit Cynthia at least twice a week.

The January 6, 2011, Status Review Report stated that Cynthia was in good health and bonded to paternal aunt. Cynthia was reported to be receiving appropriate care. Cynthia's needs were being met, she was doing well, she had no developmental issues, and she was a happy child. Cynthia's adjustment in paternal aunt's home was going well. The report stated that father did not visit Cynthia twice a week as ordered on September 24, 2010. Father visited Cynthia twice in October 2010, did not visit in November 2010, and visited twice in December 2010. Paternal aunt "made it clear" that father could visit at any time, father only had to notify her so that she could make Cynthia available.

According to the report, a team decision making meeting was held on December 27, 2010, to discuss family reunification. Cynthia apparently was at the meeting. The report noted that father was comfortable with Cynthia and she went to father eagerly. Father stated that he was not ready to provide a home and care for Cynthia.

On January 6, 2011, the juvenile court terminated mother's reunification services. The juvenile court ordered that father was to continue to have unmonitored visits with Cynthia.

The February 9, 2011, Interim Review Report stated that father visited Cynthia whenever he was able. Father and paternal aunt arranged a schedule pursuant to which father would visit Cynthia on Mondays and Wednesdays from 9:00 a.m. to 2:00 p.m. However, father's visits with Cynthia continued to be inconsistent, and he visited Cynthia only four times in January.

The February 16, 2011, Status Review Report stated that Cynthia was "very bonded" with paternal aunt with whom she had been placed since April 2010. Cynthia was receiving appropriate care, her needs were being met, and she was in good health.

Paternal aunt had provided Cynthia with a nurturing and safe home environment and Cynthia was reported to be very active and happy. Father's visits with Cynthia were inconsistent, and father had "minimal bonding" with Cynthia. Paternal aunt reported that father's visits with Cynthia lasted less than an hour. Father did not share "any quality time" with Cynthia. Father's focus was on mother.

On February 16, 2011, the juvenile court found that father had not consistently and regularly visited Cynthia. The juvenile court also found that father was in partial compliance with the case plan, but that he had not demonstrated the "capacity and ability" to complete the objectives of the treatment plan or to provide for Cynthia's needs. The juvenile court terminated father's reunification services and set the matter for a hearing on June 16, 2011, to select and implement a permanent plan under section 366.26.

The June 16, 2011, Section 366.26 Report stated that father was scheduled for twice weekly visits with Cynthia, but sometimes missed visits. Paternal aunt was willing to adopt Cynthia.

The August 11, 2011, Addendum Report stated that Cynthia appeared to be well adjusted. Cynthia's bonding with paternal aunt and her family had gotten stronger. Paternal aunt had provided Cynthia a safe and nurturing home environment. Cynthia appeared to feel safe and secure with paternal aunt and her family. Cynthia did not show any hesitation in her prospective adoptive family's presence. Instead, Cynthia was affectionate and sought her prospective adoptive family's warmth and love. Cynthia and paternal aunt's relationship was described as warm and affectionate, and Cynthia referred to paternal aunt as "mommy." Paternal aunt stated that she loved Cynthia, considered Cynthia as her own child, and wanted to provide Cynthia with a permanent home as soon as possible.

The August 11, 2011, Status Review Report stated that father continued to "share" minimal bonding with Cynthia, and that father was concerned about mother and not focused on establishing a bond with Cynthia. Father visited Cynthia three times in July 2011. Paternal aunt's home provided an environment for Cynthia that was healthy,

stable, and comfortable. Cynthia was reported to be very comfortable and happy living with paternal aunt with whom she had a “special bond.”

The permanent plan hearing ultimately took place on September 8, 2011. At the hearing, among other evidence, the juvenile court admitted a visitation log that paternal aunt prepared that listed father’s visits with Cynthia during the period from January 12, 2011, through August 29, 2011. The log reflected that father visited Cynthia 26 times during that period—four times in January, twice in February, five times in March, four times in April, three times in May, twice in June, four times in July, and twice in August. During the same period, father did not attend 35 scheduled visits.

Father’s counsel argued that the section 366.26(c)(1)(B)(i) exception to the termination of parental rights applied because father had visited Cynthia consistently and “definitely” had a relationship with her. The juvenile court found that the beneficial parental relationship exception did not apply because the evidence did not show consistent visits between father and Cynthia or that Cynthia would benefit from continuing her relationship with father. Accordingly, the juvenile court terminated father’s and mother’s parental rights.

DISCUSSION

Father contends that the juvenile court erred in failing to find the beneficial parental relationship exception to the termination of parent rights under section 366.26(c)(1)(B)(i). The juvenile court did not err.

A. Standard of Review

Some courts have held that challenges on appeal to a juvenile court’s determination under section 366.26(c)(1)(B)(i) are governed by a substantial evidence standard of review. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 & fn. 4.) Under a substantial evidence standard of review ““the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or

uncontradicted,” to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ [Citation.]” (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on other grounds as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D., supra*, 70 Cal.App.4th at pp. 52-53.)

Other courts have applied an abuse of discretion standard of review. (See, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) Under an abuse of discretion standard of review, we will not disturb the juvenile court’s decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) In this case, we need not decide whether a juvenile court’s ruling on the section 366.26(c)(1)(B)(i) exception is reviewed for substantial evidence or abuse of discretion, because, under either standard we affirm the juvenile court’s decision.

B. Application of Relevant Principles

Once a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, parental rights may be terminated unless the court finds a compelling reason for determining that doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R.* (2003) 31 Cal.4th 45, 52-54.) These “exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Id.* at p. 53; *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350 [“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary

case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement”].)

The beneficial parental relationship exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Application of the beneficial parental relationship exception consists of a two-prong analysis. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at pp. 449-450.) The first is whether there has been regular visitation and contact between the parent and child. (*Id.* at p. 450.) The second is whether there is such a strong bond between the parent and child that the child would suffer detriment from its termination. (*Ibid.*)

The parent/child relationship must promote “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 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. 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; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

To establish the beneficial parental relationship exception, “the parents must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A relationship sufficient to support the beneficial parental relationship exception “aris[es] from day-to-day interaction, companionship and shared experiences.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

Whether the exception applies is determined “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.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) A parent must show that he or she has maintained regular visitation and contact with the child and that a benefit to the child would result from continuing the relationship. (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 821; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The juvenile court found that the beneficial parental relationship exception did not apply because the evidence did not show that father had visited Cynthia consistently or that Cynthia would benefit from continuing her relationship with father. Substantial evidence supports the juvenile court's determination that father failed to meet his burden of establishing that the beneficial parental relationship exception to the termination of his parental rights applied. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.)

There is evidence that father failed to visit Cynthia regularly. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 450.) Father acknowledges that he failed to visit Cynthia twice a week as authorized, but contends that he nevertheless visited Cynthia regularly because he visited her once a week. There is evidence that father overstates the frequency of his visits with Cynthia. For the eight month period of visits that paternal aunt logged from January to August 2011, father failed to visit Cynthia once a week in four of those months—February, May, June, and August. As for the scheduled visits that father attended, the vast majority lasted less than the permitted two hours. Accordingly, the juvenile court did not err in finding that father failed to visit Cynthia regularly.

Even assuming that the juvenile court erred in finding that father failed to visit Cynthia regularly, father did not provide sufficient evidence that he had such a strong bond with Cynthia that Cynthia would suffer detriment from its termination. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 450.) On appeal, father fails to identify any evidence from which the juvenile court could have found that Cynthia had a “substantial, positive emotional attachment” with father. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) Father also fails to identify

any evidence that his relationship promoted Cynthia's well-being to such a degree that it outweighed the well-being Cynthia would gain in a permanent home with paternal aunt. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229). Instead, there is substantial evidence that Cynthia's well-being would be promoted by her adoption by paternal aunt. There is evidence that Cynthia had bonded with paternal aunt and her family; Cynthia and paternal aunt had a warm and affectionate relationship; paternal aunt loved Cynthia and considered her as her own child; Cynthia referred to paternal aunt as "mommy"; and paternal aunt provided Cynthia with a safe and nurturing home environment. Cynthia felt safe and secure with paternal aunt and her family. Thus, the juvenile court did not err in finding that father failed to establish that there was such a strong bond between father and Cynthia that Cynthia would suffer detriment from its termination.

A juvenile court may choose an option other than adoption only in "exceptional" circumstances. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) There was sufficient evidence before the juvenile court that such exceptional circumstances did not exist.

DISPOSITION

The order is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.