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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re P.A. et al., Persons Coming Under the Juvenile Court Law.	B285055
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CELIA A., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK11785)

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle Blackwell, Juvenile Court Referee. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

Celia A. appeals from a juvenile court order terminating her parental rights over two children, nine-year-old P.A. and two-year-old Angel A. Celia contends the court violated her right to due process by denying her request to present testimony on the parent-child relationship exception to the termination of parental rights under Welfare and Institutions Code section 366.26.[1] Even if Celia had presented the testimony she offered to give, Celia could not demonstrate the parent-child relationship exception applied because she did not maintain regular visitation with her children. Therefore, any error was harmless, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Celia's Visits with P.A. and Angel*

The Department of Children and Family Services detained P.A. and Angel on June 12, 2015, after Celia and Angel tested positive for amphetamines following Angel's birth on June 10, 2015. On August 12, 2015 Celia pleaded no contest to a dependency petition alleging jurisdiction over the children under section 300, subdivision (b). Between the children's detention and the jurisdiction hearing on August 12, 2015, Celia regularly visited with her children and had almost daily phone contact with P.A.

During September 2015 Celia missed most of her scheduled visits with Angel, who was placed in a different foster home than

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

P.A. The juvenile court, however, found the Department had failed to comply with its order to prepare and provide to Celia a written visitation schedule. The court ordered the Department to include in its written visitation schedule the visits Celia missed. On October 20, 2015 the juvenile court declared the children dependents of the court and ordered family reunification services including monitored visits twice a week.

Between October 20, 2015 and March 25, 2016, the Department reported Celia was "fairly consistent" in visiting Angel. Out of 44 scheduled visits, Celia missed five and arrived late to three. Her visits with P.A. were less regular and frequent. During an 18-week period from November 2015 to March 2016, Celia visited P.A. 13 times. P.A.'s foster mother reported Celia was "consistently late to the visits; sometimes up to two hours late."

The juvenile court set the review hearing for June 14, 2016. During the seven-week period from April 14 to June 3, 2016, Celia visited Angel seven times, missing six scheduled visits (two of which because Celia said she was hospitalized). The case social worker cancelled two additional visits because of scheduling conflicts. P.A.'s foster mother reported Celia's visits with P.A. were "mostly consistent" during this time. The Department recommended the court terminate reunification services because Celia had failed to participate regularly in the court-ordered drug treatment plan. The court, however, found the Department had not made reasonable efforts to provide Celia reunification services, among other things, and again ordered the Department to provide monitored visits twice a week for both children. The court set another review hearing for January 2017.

The Department eventually placed Angel in the same foster home as P.A., but Celia visited the children only seven times between June 2016 and December 2016. The duration of those visits is unclear from the record, but the Department reported Celia was often a "no-show[ ]" or "extremely late." On January 9, 2017, the juvenile court found that Celia had not complied with her case plan, including a drug treatment program, and that Celia's visits with her children had not been regular or consistent. The court informed Celia that, if "she would like to reunify with [her children], the visits must be regular, they must be occurring in a frequent manner." The court terminated reunification services, found no substantial probability the children could be returned to Celia within six months, and set a hearing pursuant to section 366.26 to consider whether to terminate Celia's parental rights.

B. *The Section 366.26 Hearing*

The Department's May 8, 2017 report for the hearing under section 366.26 stated that P.A. and Angel "continue to have regular visitation with [Celia]." "Although [Celia] has inconsistently attended visits in the past," the report stated "she has been more consistent lately." The report did not identify specific dates on which Celia visited her children or missed scheduled visits. A July 10, 2017 status review report stated, "[Celia] continues to be inconsistent and often no shows." The Department's final report before the section 366.26 hearing did not address Celia's visitation with her children. Instead, the Department advised the juvenile court that P.A. and Angel were matched with an adoptive family in June 2017. The family had

completed an adoption home study in February 2017 and began pre-placement visits with P.A. and Angel in July.

At the August 29, 2017 hearing counsel for Celia asked to call Celia to testify. The court asked for an offer of proof because the hearing was not contested. Counsel for Celia said Celia would "speak to the bond between her and the child" and address "her visits, . . . the quality of the bond between her and [P.A.] and Angel." The court denied the request, stating Celia had not provided "an appropriate offer of proof to indicate that the parental bond exception would apply." The court continued, "You have given no indication . . . it would be detrimental to these children to terminate parental rights." Counsel for Celia objected and stated, "[Celia] would have testified to the kind of activities that she does conduct [with the children]." Counsel conceded the consistency of Celia's visits "ha[d] somewhat fallen," but he argued Celia had "always maintained" them. Counsel argued, "[The] [k]ids do call her 'Mom.' The younger boy does know who his mother is. And [Celia] argues they would be negatively impacted if the court were to sever this relationship."

The court found by clear and convincing evidence that the children were likely to be adopted. The court also found Celia's visits "continue to be inconsistent and there are often no-shows." The court acknowledged P.A. enjoyed visiting with her mother, but the court found no evidence supporting the parent-child relationship exception. "There must be evidence showing that the parent has taken a parental role towards the children, the children acknowledge that parental role, and that it would be detrimental to the child's well-being to terminate the parent's rights. [¶] At this time there's no evidence to indicate that it would be detrimental to either of these children to terminate

parental rights." The court terminated parental rights, and Celia timely appealed.[2]

DISCUSSION

A. *Applicable Law and Standard of Review*

Section 366.26 governs termination of parental rights. At the hearing to consider termination of parental rights, the court "shall review the report [required by statute], shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders." (§ 366.26, subd. (b).) "If the parents have failed to reunify and the court has found the child likely to be adopted, the burden shifts to the parents to show exceptional circumstances exist such that termination would be detrimental to the child." (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611; see *In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.)

"One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if '[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.' The exception requires the parent to prove both that he or she has maintained regular visitation and that 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

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[2] Neither P.A.'s father, whose identity is unknown, nor Angel's father, whose whereabouts are unknown and who made no appearance in juvenile court proceedings, is a party to this appeal.

a permanent home with new, adoptive parents.'"'" (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646, quoting *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) "The parent has the burden of proving the statutory exception applies. [Citations.] The court's decision a parent has not satisfied this burden may be based on any or all of the component determinations," including whether the parent has maintained regular visitation. (*In re Breanna S.*, at pp. 646-647.)

"A parent has a right to due process at a section 366.26 hearing resulting in the termination of parental rights, which includes a meaningful opportunity to be heard, present evidence, and confront witnesses. However, these procedural rights are subject to evidentiary principles. Due process is 'a flexible concept dependent on the circumstances.' [Citations.] Since due process does not authorize a parent 'to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest.' [Citation.] 'The trial court can therefore exercise its power to request an offer of proof to clearly identify the contested issue(s) so it can determine whether a parent's representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses.' [Citation.] The parent's 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 Grace P.*, *supra*, 8 Cal.App.5th at p. 612.)

We review the court's denial of a contested hearing for an abuse of discretion. (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 611; *In re A.B.* (2014) 230 Cal.App.4th 1420, 1434.) Even if the juvenile court abused its discretion by denying a contested

hearing, however, that error does not require reversal unless the outcome of the proceeding is affected. (See *In re James F.* (2008) 42 Cal.4th 901, 918 ["[i]f the outcome of a proceeding has not been affected, denial of a right to notice and a hearing may be deemed harmless and reversal is not required"]; *In re J.P.* (2017) 15 Cal.App.5th 789, 798 ["[t]he harmless error analysis applies in juvenile dependency proceedings even where the error is of constitutional dimension"].)

B. *Any Error in Denying Celia's Request To Present Evidence Was Harmless*

Even if the court had granted Celia's request to present live testimony at the hearing in support of her contention the parent-child relationship exception applied, "the court may still find that the parent-child relationship is not significant enough to 'outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 615.) "The contested hearing solely provides the parent the opportunity to make his or her best case regarding the existence of a beneficial parental relationship that has been fostered by the continued and regular contact." (*In re Grace P.*, at p. 615.)

As noted, "[o]vercoming the statutory preference for adoption and avoiding the termination of parental rights requires the parent to show both that he or she has maintained regular visitation with the child and that the child would benefit from continuing the relationship." (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643; § 366.26, subd. (c)(1)(B)(i).) "The first prong is quantitative and relatively straightforward, asking whether visitation occurred regularly and often." (*In re*

Grace P., *supra*, 8 Cal.App.5th at p. 612.) "Regular visitation exists where the parents visit consistently and to the extent permitted by court orders." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; see *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537.) "'Sporadic visitation is insufficient to satisfy the first prong.'" (*In re Marcelo B.*, at p. 643, quoting *In re C.F.* (2011) 193 Cal.App.4th 549, 554; see *In re I.R.,* at p. 212 [significant lapses in visitation "fatally undermine any attempt to find the beneficial parental relationship exception"].)

Uncontroverted evidence supports the juvenile court's finding that the parent-child relationship exception does not apply because Celia cannot show she visited regularly and often with her children. Over a two-year period, from June 2015 to July 2017, Celia missed more than half of the visits to which she was entitled by court orders. Even after the court ordered the Department to provide Celia a written visitation schedule and gave Celia an additional six months of reunification services, she visited with the children only seven times in six months, far less than twice a week. This level of visitation falls well below the regular and consistent visitation required to demonstrate the first prong of the parent-child relationship exception. (See *In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 641-642, 647; *id*. at p. 643 [regular visitation not shown where mother visited with the children twice in two months, "infrequent[ly]" during the next six months, then five times in the next five months]; *In re I.R.*, *supra*, 226 Cal.App.4th at p. 212 [visitation insufficient where the parents did not visit their children to the extent permitted by court order].) Even if Celia's visits were more consistent as the date of the section 366.26 hearing approached, they still fell well below the twice-a-week visits permitted by the

court. (See *In re Breanna S.*, at p. 647 ["[w]hile [the mother's] visits apparently became more regular during the final six months before the section 366.26 hearing, even then they occurred only once a week for two hours per visit"]; *In re C.F.*, *supra*, 193 Cal.App.4th at p. 554 [parent's increased visitation as the section 366.26 hearing neared did not change the overall sporadic nature of the visits].)

Therefore, Celia cannot show that, even if the juvenile court had permitted her to testify about her visits with her children and their bond with her, the court would have found the parent-child relationship exception applied. Therefore, any error by the juvenile court in denying Celia's request for a contested hearing was harmless.

DISPOSITION

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

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.