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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.B., a Person Coming
Under the Juvenile Court Law.

B287388
(Los Angeles County
Super. Ct. No. CK71490)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

Q.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Joshua D. Wayser, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Q.S. (Mother) appeals from the juvenile court's order terminating her parental rights to her daughter A.B. (then, nearly three years old). Mother contends the court erred in finding the parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) did not apply to the relationship between her and A.B. We affirm.

BACKGROUND

On June 3, 2015, the juvenile court adjudicated a first amended dependency petition in this case, sustaining allegations against Mother regarding (1) her history of violent altercations with Alan B. (Father) in A.B.'s presence (counts a-1 & b-1), and (2) her history of phencyclidine (PCP) use and alcohol abuse and her criminal history (count b-2).² A.B., who was then four and a half months old, had been residing with various relatives for about two months prior to the adjudication hearing. On June 15, 2015, DCFS placed A.B. in foster care after Mother made numerous complaints about the care her daughter received from those relatives (the paternal grandmother and maternal aunt).

At the July 8, 2015 disposition hearing, the juvenile court declared A.B. a dependent of the court and removed her from Mother's (and Father's) custody. The court granted reunification

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

² The juvenile court also sustained additional allegations against Father, who is not a party to this appeal.

services and ordered Mother to participate in a drug and alcohol program, random drug and alcohol testing, domestic violence and parenting programs, individual counseling, and mental health counseling with a psychological assessment, a psychiatric evaluation, and psychotropic medication, if prescribed.³ The court also ordered monitored visitation for Mother to occur at a DCFS office and granted DCFS discretion to liberalize the visits.

Mother's Compliance with Court Orders During Reunification Period

Mother's reunification period lasted from July 8, 2015 to June 19, 2017, nearly two years after the disposition hearing.

In May 2016, the juvenile court granted Mother unmonitored visitation with A.B.⁴ In the summer of 2016, one year into the reunification period, DCFS reported that Mother was in compliance with her case plan. She had moved into a one-bedroom apartment after being homeless, and was searching for a job.

Mother did not participate in mental health counseling, although it was part of her court-ordered case plan. Mother provided DCFS with copies of letters from the County of Los Angeles Department of Mental Health, dated December 31, 2015

³ Mother engaged in behavior which indicated her mental health might be an issue. For example, on multiple occasions, she made formal complaints to DCFS that the paternal grandmother was intentionally injuring, even torturing, A.B. When DCFS and law enforcement checked on A.B., they found her unharmed.

⁴ Mother's visitation and her relationship with A.B. will be addressed in more detail in the following section of this opinion.

and March 16, 2016, stating Mother did not meet the criteria to receive mental health services from the County.

On July 1, 2016, A.B. (now nearly one and one-half years old) moved into the home of foster parent, Ms. Allen (the prospective adoptive parent at the time Mother's parental rights were terminated in December 2017). A.B. was receiving regional center services twice a week for developmental delays.

In early August 2016, DCFS liberalized Mother's visitation to unmonitored overnight visits. Less than a month later, however, DCFS recommended the juvenile court restrict Mother to monitored visitation due to its concerns about Mother's mental health.

In early September 2016, DCFS reported Mother contacted social workers nearly every day, and sometimes multiple times per day, "obsessively checking" on A.B. and stating "unsubstantiated gossip regarding the father, paternal grandmother and other unknown individuals." It sometimes appeared to the social workers that Mother was "confused and unable to understand what [was] being told to her." Mother accused DCFS of having staff follow her and spread rumors about her.

On September 8, 2016, DCFS filed a section 388 petition, requesting the juvenile court order Mother to undergo a psychological evaluation and restrict Mother to monitored visitation, based on DCFS's concerns about Mother's mental health. The court set the petition for a hearing and ordered monitored visitation for Mother in the meantime. On November 1, 2016, the juvenile court issued an order, appointing an expert to conduct a psychological examination and evaluation.

On November 28, 2016, a forensic psychiatric fellow examined Mother and issued a report on December 6, 2016. After meeting with Mother, speaking with social workers, and reviewing DCFS's reports, the fellow concluded Mother "demonstrate[d] symptoms consistent with Borderline Personality Disorder" and should submit to "weekly psychotherapy for an extended period." The fellow explained: "Given that the child has been reported to have developmental delays, her care will be significantly more challenging. As such, it would be even more important that [Mother] learn the skills to deal with these stressors without the emotional reactivity, which she has previously displayed and is characteristic of individuals that have Borderline Personality Disorder. As treatment is a lengthy process, if steps are taken towards reunification, they should be taken with this in consideration." The fellow also suggested Mother and A.B. be assessed for child-parent psychotherapy or child-parent interactional therapy.

Over the next six months, DCFS encouraged Mother to enroll in psychotherapy services. Mother informed DCFS she did not believe she had Borderline Personality Disorder and wanted a second opinion. During an in-person meeting in March 2017, DCFS provided Mother with a therapy referral packet, but Mother refused to accept it. DCFS mailed the packet to Mother's home. In April 2017, DCFS recommended the juvenile court terminate Mother's reunification services.

Also in April 2017, the juvenile court appointed foster mother Ms. Allen the educational rights holder for A.B.

By June 2017, Mother still had not enrolled in psychotherapy services. DCFS referred Mother to a specific agency, and when Mother went to a meeting there, she told the

staff she did not need therapy and refused to provide the documentation necessary to enroll (identification, proof of income and residency). According to Mother, she contacted numerous agencies but, for one reason or another, they could not accommodate her.

At a contested hearing on June 19, 2017, during which Mother testified, the juvenile court terminated Mother's reunification services due to Mother's failure to address mental health issues.⁵

Mother's Visitation and Relationship with A.B.

At the time of the December 18, 2017 section 366.26 permanency plan hearing, Mother was having monitored visitation with A.B. once a week for two hours.⁶ Mother was attentive to A.B. during visits, and A.B. appeared happy to interact with Mother. Mother brought toys, food, and clothing to the visits and worked with A.B. on motor and other developmental skills. DCFS staff observed A.B. refer to both Mother and foster mother Ms. Allen as "mommy."

During visits, Mother attended to A.B.'s medical needs. For example, during an overnight visit in early September 2016, Mother took A.B. to the doctor, and the child was diagnosed with an ear infection and prescribed medication. Mother also pointed out during visits that A.B. needed medical treatment for diaper rash. Mother did not attend A.B.'s other doctor appointments.

⁵ The juvenile court previously terminated Father's reunification services.

⁶ Mother previously was having twice weekly monitored visits, for a total of six hours. In or about June 2017, when she enrolled in school, her visits changed to once a week.

She claimed during her testimony at the June 19, 2017 contested hearing (referenced above) that DCFS failed to provide her with notice of A.B.'s appointments, but she acknowledged that she refused to provide DCFS with a telephone number where she could be contacted.

Mother sometimes became upset during monitored visits about the level of care she perceived A.B. to be receiving in Ms. Allen's home. She complained about A.B.'s appearance (hair style and clothing) and the status of her diaper rashes. She also complained about DCFS's involvement in her life. On these occasions, according to the monitor, Mother "rant[ed] and raved" about her concerns in front of A.B. and sometimes terminated the visits early. A.B. did not react negatively to Mother's behavior and appeared happy during these visits.

Mother did not call Ms. Allen for updates on A.B.'s care (e.g., regional center services). At the time of the June 19, 2017 contested hearing, A.B. had been in Ms. Allen's care for over a year and Mother had only spoken with Ms. Allen about three times.

Termination of Parental Rights

Foster mother Ms. Allen was meeting A.B.'s needs and was interested in adopting her. DCFS recommended the juvenile court identify adoption as the permanent plan for A.B.

In October 2017, Mother filed a section 388 petition, requesting the juvenile court return A.B. to her care. Mother stated in the petition that she had complied with her case plan and court orders (except the order that she enroll in psychotherapy) and was attending school. She attached an October 10, 2017 form from the County of Los Angeles Department of Mental Health, stating she did not meet the

criteria for mental health services from the County.⁷ She also stated she believed it was in A.B.'s "best interest to return to her biological mother who is able to provide love and care for her." The court set the matter for a hearing.

On December 18, 2017, the juvenile court held a hearing on Mother's section 388 petition and also held the section 366.26 permanency plan hearing. The juvenile court denied Mother's section 388 petition. As the court was stating its ruling, Mother interrupted the court, arguing that she did not have a mental health issue, that DCFS was lying about her, that she had a recording of a social worker she wanted to play for the court to prove DCFS was lying, and that the social worker did not want her to have custody of A.B. because the social worker was jealous of her and was having sexual relations with Father.⁸ The court asked Mother to leave the courtroom and she complied.

The juvenile court continued with the section 366.26 permanency plan hearing. The court admitted into evidence DCFS's reports and Mother's testimony from the June 19, 2017 contested hearing. A.B.'s counsel and DCFS argued in favor of termination of parental rights. Mother's counsel argued the parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) applied to her relationship with A.B. Father's counsel also objected to termination of parental rights.

⁷ The form states: "Your mental health condition does not cause problems for you in daily life that are serious enough to make you eligible for specialty mental health services from the mental health plan."

⁸ Mother's claims are not substantiated in the record.

The juvenile court found A.B. was adoptable and no exception to termination of parental rights applied. Accordingly, the court terminated Mother's and Father's parental rights and identified adoption as the permanent plan.

DISCUSSION

Mother contends the juvenile court erred in finding the parent-child relationship exception to termination of parental rights did not apply to her relationship with A.B.

“At a hearing under section 366.26, the court is required to select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) When the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the court must terminate parental rights unless the parent opposing termination can show that one of the exceptions set forth in section 366.26, subdivision (c)(1) applies. (*Tabatha G.*, at p. 1164.) “Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

“The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions.’” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.) To satisfy the burden of proving the parent-child relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B), a parent must demonstrate that he or 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 second prong of this exception requires the parent to demonstrate 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 a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Even frequent and loving contact between a child and a parent is not sufficient, by itself, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one” because “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile “‘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 Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of the interaction between the parent and the child, and (4) the child’s particular needs.’” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

“Reviewing courts have applied various standards of review when considering trial court determinations of the applicability of these statutory exceptions to termination of parental rights. In *In re Jasmine D.* [, *supra*,] 78 Cal.App.4th [at page] 1351, the court observed that both the substantial evidence test and the abuse of discretion test have been applied, and the court stated that ‘[t]he practical differences between the two standards of review are not significant. “[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only ‘ “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.” . . . ’ ” [Citations.] However, the abuse of discretion standard is not only traditional for custody determinations, but it also seems a better fit in cases like this one, especially since the statute now requires the juvenile court to find a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)[(B)].) That is a quintessentially discretionary determination. The juvenile court’s opportunity to observe the witnesses and generally get “the feel of the case” warrants a high degree of appellate court deference. [Citation.]’ ” (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)

Other courts have applied a composite standard, reviewing the juvenile court’s factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard and the discretionary decision—whether the relationship constitutes a compelling reason for determining termination of parental rights would be detrimental to the

child—under the abuse of discretion standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.)

Under the substantial evidence, abuse of discretion, or a composite standard of review, we will not disturb the juvenile court’s decision terminating parental rights because Mother did not establish the parent-child relationship exception applied to her relationship with A.B. Mother demonstrated she maintained regular visitation with A.B., but she did not demonstrate her weekly visits promoted A.B.’s well-being in a manner that outweighed the well-being A.B. would gain through the permanence of adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Nor did she present evidence demonstrating A.B. would be “‘greatly harmed’” if her parental rights were terminated. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.)

The evidence showed Mother had positive interactions with A.B. She brought nutritious snacks to visits and fed A.B. She brought toys and educational items (e.g., flash cards) and worked with A.B. on her motor and other developmental skills. She was attentive to medical issues (ear infection, diaper rash) and alerted DCFS.

At the time of the December 18, 2017 permanency plan hearing, A.B. had been out of Mother’s custody for two years and eight months and had lived with Ms. Allen for almost a year and a half. A.B. was attached to Ms. Allen and was thriving in her care. Ms. Allen accompanied A.B. to medical appointments and regional center services. While Mother had a friendly, caring relationship with A.B., Ms. Allen occupied the parental role in A.B.’s life. This case does not present the “exceptional

circumstances” in which a court is warranted in preserving parental rights and choosing a permanent plan other than adoption. (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)⁹

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

⁹ Mother argues she satisfied the exception, but the juvenile court terminated her parental rights anyway because she failed to enroll in psychotherapy. For the reasons set forth above, we find Mother did not satisfy the parent-child relationship exception to termination of parental rights, regardless of whether she complied with court orders.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.