Filed 7/20/18 In re P.M. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 P.M., a Person Coming Under the Juvenile Court Law.	B285870 (Los Angeles County Super. Ct. No. DK08974)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.E. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Steff Padilla, Commissioner. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant J.E.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant A.M.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

The parents of four minor children, appeal from a juvenile court order terminating their parental rights, contending the court erred in refusing to apply the parental relationship exception to termination of parental rights. We affirm.

BACKGROUND

J.E. (mother) and A.M. (father) are the parents of four minor children, P.M., born in 2010, A.M., born in 2011, L.M., born in 2013, and C.E., born December 27, 2014. Mother also has three other minor children from a prior relationship. They are not part of this appeal.

On January 2, 2015, the Los Angeles County Department of Children and Family Services (DCFS or the department) filed a Welfare and Institutions Code section 300 petition on behalf of all seven children.[1] The petition alleged that mother's use of illicit drugs resulted in the youngest child, C.E., testing positive for amphetamines and methamphetamines at birth, and mother's history of substance abuse and both fathers' failure to protect the child from this abuse placed all the children at risk of physical harm. The juvenile court detained the children from mother and released them to their respective fathers.

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[1] All further statutory references will be to the Welfare and Institutions Code.

In March 2015, the juvenile court set forth case plans for father and mother that required random drug testing and the completion of Al-Anon, parenting, drug and alcohol, and 12-step programs. Mother was granted monitored visitation, with father not to serve as the monitor.

In September 2015, DCFS reported that since March, mother had attended only three individual counseling sessions before stopping, and had failed to enroll in any program. Between February 2015 and August 2015, she tested positive for amphetamines and/or methamphetamines on seven occasions, and missed 11 tests. Over this same time span, father claimed to have been attending an Al-Anon program at his church, but provided no documentation to support the claim. He had enrolled in a parenting program but not family counseling.

In August 2015, DCFS learned that mother had been living with father for several months, and watched all seven children while father was at work. Additionally, father, mother and the children had been living in a filthy and unsanitary church basement. DCFS filed a section 387 petition alleging father had allowed mother unlimited and unmonitored contact with the children.

The court ordered the four younger children detained from both parents and placed with their maternal aunt. The court granted father unmonitored visits and mother monitored visits. The parents' visits were to occur for a minimum of six hours per week, and father was not to serve as the monitor at mother's visits.

Between November 2015 and April 2016, mother had completed one parenting class and enrolled in a drug and alcohol program. However, she still had failed to enroll in individual

counseling or appear at several drug tests, and tested positive for amphetamines and methamphetamines in February 2016. Father was living in the garage of his place of employment and had failed to visit the four younger children or enroll in family counseling. In April 2016, DCFS reported that the maternal aunt was bonding with the children and meeting their physical and emotional needs.

In November 2016, DCFS reported that the maternal aunt was taking good care of the four younger children. Since the April report, mother had dropped out of her drug and alcohol program, failed to appear at numerous drug tests, and tested positive for amphetamines and methamphetamines on three occasions. Father reported he had finished his Al-Anon program, but again provided no documentation to support the claim, and he still had not enrolled in family counseling. According to the maternal aunt, both parents were often very late to scheduled visits with the children, and had cancelled some visits. The aunt said that during the visits that did occur, the children generally enjoyed their time, as mother would bring presents and snacks. However, the children were indifferent to father.

Between February and May 2017, mother tested negative for drugs eight times, failed to appear at five tests, and tested positive twice.

In May 2017, the maternal aunt reported that both father and mother had problems regarding disciplinary issues, and would let the children "run around and lose control" during visits. Both frequently missed visits or left early, and sometimes tried to persuade the aunt to cancel visits, so that missed visits would not count against mother.

The maternal aunt and her long-time partner, Mr. A., continued to provide for the children's basic needs, and they did well in their care and were comfortable and well-bonded to them. DCFS reported that the four children loved the aunt and Mr. A., and had become part of their family and were thriving.

At a contested section 366.26 hearing, father testified he had never canceled any visits, he played with and hugged the children during the visits, and he sometimes brought snacks. He testified he could not currently speak with the children by telephone because the maternal aunt would not answer her phone when he or mother had called.

Mother testified that she visited the children for three hours per visit, but admitted the older children had not lived with her for more than two years, and C.E. had never lived with her.

In October 2017, the juvenile court found it was likely the children would be adopted. Relying on evidence that the children had not lived with their parents for years and that the parents failed to comply with their case plans, the court found the parents did not occupy a parental role in the children's lives. The court found, "They visit. They aren't parents. They're certainly not visits to [C.E. and L.M.], who were very young when they were placed in the [dependency] system. They're the aunt and uncle that come and visit. [¶] . . . [¶] [F]or any of the children they are not in a parental role." The court found that no exception to terminating parental rights applied, and terminated parental rights and set a review hearing for a permanent adoption plan.

Each parent timely appealed.

DISCUSSION

Mother and father contend the juvenile court erred in refusing to apply the beneficial parental relationship exception to terminating parental rights. We disagree.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, " '[f]amily preservation ceases to be of overriding concern' " and " 'the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability.' " (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subdivision (c)(1) provides that if the court finds 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); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the Legislature"].) The statutory preference favors adoption unless the parent opposing termination can demonstrate an enumerated statutory exception applies. As pertinent here, the adoption preference may be overcome by showing that termination of parental rights would be "detrimental to the child" because the parent 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 "benefit" prong of this exception requires the parent to prove 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 Marcelo B.* (2012) 209 Cal.App.4th 635,

643.) Even frequent and loving contact between a child and a parent is insufficient, 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 it "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 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.)

We review the juvenile court's factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court's 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. (*Ibid.*)

Mother and father argue they maintained regular visits with the children and had well-bonded, positive relationships with them. The children enjoyed the visits, and the oldest, A.M., called her parents "mommy" and "daddy" and wanted to live with them.

The record reflects that mother and father visited the children only semi-regularly, and with indifferent success. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 554 ["Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption"].) But even had the visits been regular and frequent, frequent visitation and loving contact do not establish a parental relationship.

Although the children had some emotional bond with the parents, such P.M. expressing a desire to live with them, nothing in the record suggests the parents had formed parent-child relationships with the children. For example, no evidence suggests the parents attended to the children's physical care, nourishment, or medical needs, or assisted in managing their school or personal lives. The children viewed their parents as their aunt and uncle "that come and visit."

Further, no evidence suggests that the bonds between the children and parents, or the benefit of continuing the relationships, was sufficient to outweigh the children's need for the stability that adoption would provide.

Therefore, the juvenile court was within its discretion to terminate mother's and father's parental rights.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.