

Filed 10/18/18 In re M.B. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.B. et al., Persons Coming  
Under the Juvenile Court Law.

B288455  
(Los Angeles County  
Super. Ct. No. DK06788)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

S.G. (mother) appeals from the order terminating her parental rights to seven-year-old twins and a five-year-old daughter. She contends that the juvenile court erred in finding that the beneficial parent-child relationship exception to termination did not apply. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> We discern no error and affirm the order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Referrals**

The Department of Children and Family Services (the Department) had received 14 child welfare referrals about this family before the events that led to the initiation of this case. In August 2014, the Department filed the petition that triggered this dependency after father was arrested for attacking mother.

The children remained in mother's care because her residence appeared appropriate and the children were healthy and happy. However, the Department recommended further investigation into mother because of previous referrals alleging her drug abuse and father's claim that the two smoked methamphetamines at home. Although mother denied using drugs or alcohol, she declined several on-demand drug tests, and missed three scheduled tests, which count as positive results.

By late 2014, mother had lapsed into drug use. Despite enrolling in an outpatient drug rehabilitation program and increased involvement by the Department to enable the children to remain with her, mother continued to miss tests and produced one positive result in the first two months of 2015.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## II. Adjudication and disposition

In February 2015, the juvenile court adjudged the children dependents (§ 300, subds. (a) & (b)) and removed them from mother's custody (§ 361, subd. (c)). It awarded mother monitored visitation for two hours, twice weekly. The court ordered mother to undergo individual counseling to address myriad issues, to complete parenting classes, domestic abuse and alcohol counseling, and to submit to weekly random testing. The Department placed the children with L.F. where they remained throughout the dependency.

While the quality of mother's visits created no concerns, they occurred sporadically. The children were bonded with mother. They were excited to see her and "emotional[ ]" at the end of the visits.

## III. The six-month through 12-month period

Mother's visits remained "inconsistent" between the six- and 12-month review hearings, August 2015 and February 2016. When she visited, mother behaved appropriately. However, the children's therapist reported that they displayed greater behavioral difficulties, including more frequent bedwetting, after visits or telephone calls with mother. The therapist advised that the children would benefit from having mother participate in mental health services once she demonstrated more stability and her visits occurred more consistently.

The juvenile court terminated reunification services in April 2016 because mother failed to comply with her case plan.

#### IV. Postreunification

##### A. 2016

L.F. wanted to adopt. The Department found that the children were highly likely to be adopted as they had formed a strong attachment to L.F. and were well-adjusted and happy. L.F. was taking good care of them and meeting all of their emotional and physical needs. She also worked to preserve the children's connection to their biological family.

The Department was concerned that the children were negatively affected by their exposure to mother because of a positive correlation between visits and increased tantrums and bedwetting. Mother was coaching the children to report allegations to the social workers about L.F. Those visits monitored by the maternal uncle were more of a social event for adults than a time for mother to spend with the children. In June 2016, mother and her boyfriend arrived at L.F.'s house unannounced and began an argument in front of the children. Mother told the children not to listen to L.F. and, if "something happens," that mother "was going to fuck [L.F.] up." In July 2016, the social worker appeared unannounced during one of mother's visits and discovered that the person supervising the visit was a stranger to the Department and smelled of marijuana.

To better monitor mother's interaction with the children, the Department moved the visits to its offices. After that, mother stopped visiting the children for approximately three weeks, during which time the children were happier and the frequency and severity of their tantrums diminished. After she resumed visitation, mother's attendance was inconsistent and not without difficulty. The social worker noted, although mother was affectionate with the children, that visits were chaotic as the

children ran around, refused to follow directions, and threw tantrums. Mother believed she did not need to correct this behavior because she spent so little time with them.

B. 2017

The regularity of mother's visits improved in the period between January and April 2017. Although mother behaved appropriately, she remained overwhelmed by the children's conduct and struggled to redirect their negative behavior. The children indicated they would like to live with her. In March 2017, visits were moved to a park. Thereafter, mother missed four visits.

Mother's behavior became erratic in the summer of 2017. In July, mother left halfway through a visit, abandoning the children in the park. In August, the maternal grandmother came to the park smelling of marijuana. By October 2017, however, visits had become regular, once weekly events. Mother began to behave appropriately and provided a picnic-like setting to engage the children. She was learning to redirect the children when they become aggressive and to reach out to the social worker for help in controlling them.

Meanwhile, the children had adjusted well to L.F. who was doing an "excellent" job safeguarding their safety, attending to their needs, and addressing their anxiety. The children stated that *they liked living with L.F.* because "they do fun things." The Department recommended the children be adopted.

In late 2017, the Department received another in a series of referrals alleging physical abuse by L.F. The allegations were determined to be unfounded. The Department reported no concerns about L.F. or her care of the children and noted that

“[t]he children have a history of making these allegations *especially after visitation with biological mother.*” (Italics added.)

V. Mother’s petition for modification

Mother filed a petition for modification (§ 388) in October 2017, nearly three years after the children were removed from her custody. She sought their return to her care or resumption of reunification services and overnight visits. Mother asserted that she had completed her court-ordered programs and the children loved her. The court granted mother a hearing.

In response to mother’s section 388 petition, the Department explained it was unable to assess mother’s sobriety. She missed 13 of 37 on-demand drug tests and did not provide any information about attendance in an aftercare program. About visits, the children reported that they felt “pretty great,” and “happy” if they were able to spend more time with mother at her house. About L.F., one twin stated that “we got two houses, we feel safe in two houses and we got a dog. *I prefer to live here* but someday we are going to live with my mom.” (Italics added.) The other twin was “happy, excited, surprised” during the most recent visit with mother. She then switched topics and stated that L.F. was going to buy her a purple toy car. She felt “pretty great” about living with L.F. and felt safe and happy with both mother and L.F. The younger child reported that the visit with mother, which had just ended, was “good.” She would feel “good” if she spent more time with mother and felt safe with both mother and L.F. The Department opined that it would be in the children’s best interest to remain in L.F.’s stable care, where they had been since February 2015. They had bonded with L.F. and removing them might jeopardize their well-being.

## VI. The ruling

The hearing on mother's section 388 petition and under section 366.26 occurred on the same day. Mother did not appear. The juvenile court denied mother's petition because it demonstrated neither a change in circumstances nor that it was in the children's best interest to return them to mother or to resume reunification services. Turning to the section 366.26 hearing, the court found clear and convincing evidence that the children were adoptable and that the beneficial parent-child relationship exception to adoption did not apply. (§ 366.26, subd. (c)(1)(B)(i).) The court found, although mother had regular contact with the children, that it occurred only once a week, and mother did not occupy a parental role for them. Accordingly, the court terminated mother's parental rights. Mother's appeal ensued.

## DISCUSSION

“The selection and implementation hearing under section 366.26 takes place after the juvenile court finds that the parents are unfit and the child cannot be returned to them.’” (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611.) At that hearing, the court must order one of three dispositional alternatives: adoption, guardianship, or long-term foster care. Adoption is the only plan that requires the termination of parental rights.

Adoption is the plan strongly preferred by the Legislature. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) Section 366.26 directs, if the court finds that the children are adoptable, a finding mother does not challenge, that “the court *shall* terminate parental rights unless” it “finds a compelling reason for determining that termination would be detrimental to

the child due to” one of the six statutory exceptions. (§ 366.26, subd. (c)(1) & (c)(1)(B), italics added.) Only “ ‘in *exceptional circumstances*,’ ” may the court “ ‘choose an option other than the norm, which remains adoption.’ ” (*In re Anthony B.*, at p. 395.)

We review the juvenile court’s determination whether a beneficial relationship exists for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) We view the evidence in the light most favorable to the judgment. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) We review for abuse of discretion the juvenile court’s determination whether the cited relationship constitutes a “ ‘compelling reason for determining that termination [of parental rights] would be detrimental.’ ” (*In re Bailey J.*, at p. 1314.)

Mother had the burden to prove the existence of a statutory exception. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*)). She relied on the beneficial parent-child relationship exception found in section 366.26, subdivision (c)(1)(B)(i). This exception involves two parts: “[t]he 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), italics added.) The juvenile court found that mother satisfied the first part of the test but concluded that the children would not benefit from continuing their relationship with mother.

The phrase “ ‘benefit from continuing the . . . relationship’ ” is understood by courts to refer to a parent-child relationship that “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 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“In applying this exception, the court must take into account numerous variables, including but not limited to: (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 parent and child, and (4) the child's unique needs.” (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 613.) The parent asserting this exception meets her burden by showing that she occupied a parental role in the children's lives. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555; accord, *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) “The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation” and “arises from day-to-day interaction, companionship and shared experiences.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) It makes “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.) No single factor is dispositive; the inquiry is “robust” and “individualized.” (*Grace P.*, at p. 613.)

Here, the record supports the juvenile court's finding that mother failed to demonstrate the existence of a beneficial parent-child relationship. These children are very young and have been living with L.F. for nearly half of the twins' lives and three-

quarters of the younger child's life. Throughout the dependency, mother's visits were erratic. She never progressed to the point where she merited unsupervised visits, and she had no overnight visitation. At best, the children found contact with mother to be "good" or "great." But, to avoid adoption, the parent-child contact must be more than pleasant (*In re Elizabeth M.*, *supra*, 52 Cal.App.4th at p. 324) or even "frequent and loving" (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418).

Nor did mother occupy a parental role. She was not involved enough with the children to demonstrate knowledge of their emotional, physical, or educational development. There is no evidence she knew about the children's habits or daily routines. She was overwhelmed by their chaotic behavior during visits and for most of the dependency declined to correct it. Only in the latter part of 2017 did mother begin to redirect the children when they become aggressive, or to reach out to the social worker for help in controlling them. Generally, mother visited the children consistently. Mother notes that she brought food and played with them. But she did not attend to the children's day-to-day needs for physical care, nourishment, comfort, affection, and stimulation during those visits. "One can know a child's interests, enjoy playtime together, and be a loved relative, but not occupy a parental role in the child's life." (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413–414.)<sup>2</sup>

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<sup>2</sup> Mother relies on *In re Grace P.* Yet, the record here is devoid of evidence that she "parented all three children during visits." (8 Cal.App.5th at p. 614.) Nor did she adduce any evidence about whether the children saw her as a parent, or how they would feel if visitation with her ended. (*Ibid.*)

As evidence of harm to the children if her parental rights were severed, mother argues that the youngest child is undergoing counseling for loss trauma. But, that the children are suffering loss is not evidence of the strength of their bond with mother so much as of the harm they suffered by being removed from her because of her conduct. In fact, the Department's reports reflect concern about the negative effect on the children of interacting with mother. The social worker saw a correlation between mother's contact and increased tantrums and noted that the children were happier during the weeks when mother stopped visiting them. Mother coached the children to report allegations to the Department and threatened L.F. in front of them. Luckily, L.F. is reportedly doing an "excellent job" addressing the children's anxiety caused by their separation from mother.<sup>3</sup>

Mother observes that the children twice stated they would like to live with her. But one child stated just before the selection and implementation hearing that *he preferred to live with L.F.* Although the children derive some measure of benefit from their contact with mother, it is not enough to derail an adoption. (See *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1303; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The juvenile court reasonably concluded that the relationship mother had with these children

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<sup>3</sup> We disagree with mother that she complied with her reunification services. The juvenile court denied mother's section 388 petition because it *found no change in mother's compliance with her case plan*, and mother does not appeal that ruling. Just two months before the court terminated mother's parental rights, the Department could not confirm mother's sobriety because she missed one-third of her drug tests and provided no information about her participation in an aftercare program.

was not sufficiently significant to provide a “ ‘compelling reason for determining that termination [of parental rights] would be detrimental.’ ” (*In re Bailey J, supra*, 189 Cal.App.4th p. 1314.)

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.