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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.R., a Person Coming
Under the Juvenile Court
Law.

B296550
(Los Angeles County
Super. Ct. No. DK18204B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

M.R.,

Defendant and
Appellant.

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

Caitlin Christian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

M.R. (mother) appeals from the juvenile court's March 18, 2019 order terminating her parental rights under Welfare and Institutions Code section 366.26.¹ Mother contends the court erred in finding inapplicable the beneficial parental relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). We affirm.

FACTS AND PROCEDURAL HISTORY

Mother² has two minor children, Y.R., born November 2002, and D.R., born August 2008, that are the subject of the underlying dependency proceedings. Although the juvenile

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Mother's two children have different fathers. Neither father appeared in the dependency case.

court terminated mother's parental rights as to both minors, mother is only appealing the juvenile court's order as to D.R.

The Los Angeles County Department of Children and Family Services (Department) filed a petition based upon mother's drug abuse and her failure to protect the children from physical abuse by other family members, but it did not initially seek to detain the children from mother. After additional investigation revealed that mother suffered from multiple mental disorders and had recently failed a drug test, in addition to the presence of drug paraphernalia in her home, the Department amended the petition twice. In October 2016, the court removed the children from mother's custody, and in January 2017, it sustained the petition allegations. The court granted mother monitored visitation twice per week and ordered her to participate in various drug treatment and parenting programs and to attend individual counseling.

According to the Department's July 2017 six-month status review report, the children had been placed in the home of their maternal grandfather, and under the care of their maternal uncle. Mother had failed to enroll in any court-ordered reunification services. Mother's visitation with her children had been sporadic and inconsistent. Mother failed to comply with the agreed-upon visitation schedule; instead, she called the approved monitor (the minors' adult sibling) on short notice "once every other week requesting a visit." Y.R. expressed fear that if mother were to comply with the reunification orders, "everything will go

back to how it was before.” Y.R. instead wanted to remain in the care of uncle. D.R. was also happy living with uncle, but did not appear aware of the circumstances surrounding his family. The court continued mother’s family reunification services for an additional six months.

The Department’s January 2018, 12-month status review report indicated that the children were thriving with uncle, the children were receiving mental health services, and Y.R. did not want to reunify with mother. Mother’s visitation remained inconsistent. She ignored the visitation schedule, and instead had “quick visits” with the minors when she would arrive, unannounced, at the home where they resided, “in order to get a ride from maternal grandfather.” Also, mother was only in partial compliance with the case plan. Mother had tested positive for methamphetamine three times between the months of October and December 2017. Mother also failed to address her mental health issues through psychiatric evaluations and individual counseling.

At the 12-month review hearing on March 19, 2018, the court found mother had only made minimal progress with her case plan.³ It terminated mother’s reunification services and scheduled a permanency planning hearing under section 366.26.

³ Department filed a request for judicial notice of a last minute information dated March 13, 2018. We deny the request, as it is not necessary to the resolution of this appeal.

In July 2018, mother filed a section 388 petition seeking to reinstate reunification services based on her increased participation in drug treatment programs. In response, the Department noted that when asked about the possibility of returning to his mother's care, D.R. stated, "I wouldn't want to. I want to stay with them (referring to his aunt and uncle). Because it's just not the time to go. I don't really want to go because I'm doing fine with my Tio and Tia."⁴ I just don't feel like going with her [mother]. I want to stay with them. I still love her. I just don't want to live with her [mother]." Further, Y.R. no longer attended the weekly monitored visits with mother, and mother had missed three of such visits with D.R. Mother withdrew her first section 388 petition the day of the hearing on September 17, 2018, after the Department reported she had four positive drug tests, with the most recent positive test in March 2018. Mother explained that she had been temporarily living in an RV with her son, who is a methamphetamine user, and attributed her recent failed drug test to accidental inhalation. Mother filed a second section 388 petition in December 2018, and it was summarily denied.⁵

⁴ "Tio" and "Tia" means "uncle" and "aunt," respectively, in Spanish.

⁵ Mother separately appealed the court's summary denial of her second section 388 petition. We affirmed the court's order. (*In re Y.R.* (Nov. 13, 2019, B295611) [nonpub. opn.])

In a status review report filed March 5, 2019, the Department indicated that both children remain in the family home of their grandfather under the care of their uncle and aunt, and that the minors “have consistently presented as well cared for and are up to date with all necessary well checks and immunizations.” Also, while under the uncle’s care, the children had completed therapy, but had resumed therapy to address their feelings toward adoption. Mother had been consistent in her monitored visitation with D.R. Recently, “mother brought up the pending permanency plans to [D.R.] during a visit and told him to choose legal guardianship when asked because, if [D.R.] is adopted, mother will never see him again.” The Department reported that “[t]his instance has caused confusion in [D.R.] who is reportedly now questioning the adoption although he had previously worked in therapy to be comfortable with the permanent plan.” The Department recommended that the juvenile court terminate mother’s parental rights and order the minors to remain permanently placed in their uncle’s home, “with the goal of adoption.”

The permanency planning hearing was held on March 18, 2019. Mother testified that she visits D.R. every Sunday for two hours. During the visits, they talk about topics like school and what D.R. wants to be when he grows up. When asked by her counsel whether D.R. “[has] any kind of emotional issues that you’re aware of,” mother responded “[w]e try not to talk about emotional feelings,” because D.R.

is “very sensitive.” Mother insisted that she had “a very strong bond” with D.R., despite the brevity of her visits.

On cross-examination, mother admitted she had not attended a medical appointment with D.R., or spoken to any of D.R.’s teachers, since 2016. Further, in addressing her recent discussion with D.R. regarding the instant proceedings, she provided the following clarification: “I said, ‘Adoption, I’m not going to be in your life. [¶] Legal guardianship, I could still fight for you.’ [¶] I said, ‘If you want me to be with you, then it’s legal guardianship.’”

D.R. testified in chambers. He expressed that his mother is “important in [his] life,” that he loves her, that he views her as his “mom” and not like a “friend,” and he would not be happy if he could not see her. Although D.R. stated generally that he could talk to his mother about things that upset him, he could not give any example, stating he has not had any problems. He said he gets advice from his mother about things like whether he should become a soccer player or a singer. When asked if he had a choice between legal guardianship and adoption, he stated that he would choose “adoption” “[b]ecause my tio is the best tio I know.” “Because he protects me. He cares about me, and he loves me.” D.R. believed he would still see his mother were he adopted by his uncle. D.R. confirmed he did not feel pressured to choose between adoption and guardianship.

During argument, mother’s counsel asked the court not to terminate mother’s parental rights based on the beneficial parental relationship exception. D.R.’s counsel argued that

the exception did not apply, and the Department joined in D.R.'s argument.

The court found that the exception did not apply and that returning D.R. to mother would be detrimental. The court reasoned that although mother had “maintained regular visitation with [D.R.],” she had “not established a bond with [him].” Further, the Court found that “any benefit accruing to [D.R.] from his[] relationship with [mother] is outweighed by the physical and emotional benefit [D.R.] will receive through the permanency and stability of adoption, and that adoption is in the best interests of [D.R.]” In finding that D.R. was adoptable, the court terminated mother’s parental rights.

Mother filed a notice of appeal on February 8, 2019.

DISCUSSION

Mother contends the court erroneously denied application of the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree. “At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299 (*Noah G.*)). At this stage of the proceedings, the preferred plan is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645 (*Breanna S.*)). “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the

court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*Id.* at pp. 645–646.)

Standard of Review

In reviewing challenges to a court’s decision to deny application of a statutory exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, based on the nature of the challenge. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621–622.) For factual determinations, such as whether a parent has shown consistent visitation and the existence of a parental relationship, we apply a substantial evidence standard of review. (*Id.* at p. 622.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)) To obtain reversal, the appealing party must show there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.) Once the court has found adequate evidence of a parental relationship, it must determine whether termination of parental rights would be detrimental

to the child as weighed against the benefits of adoption. (*Noah G.*, *supra*, 247 Cal.App.4th at pp. 1299–1300.) Because the second determination requires the court to exercise its discretion, we apply an abuse of discretion standard of review. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 647; *Noah G.*, *supra*, at pp. 1299–1300.)

Beneficial Parental Relationship Exception

The beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), applies only if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[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).) In analyzing whether a parent has met his or her burden to show application of the beneficial parental relationship exception, the dependency court considers two prongs. The first prong examines the quantitative question of how consistently a parent has maintained visitation with the child. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) “[T]he second prong involves a qualitative, more nuanced analysis, and cannot be assessed by merely looking at whether an event, i.e. visitation, occurred. Rather, the second prong requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination.” (*Id.* at p. 613.)

The parent asserting the beneficial parental relationship exception will not meet his or her burden by showing the existence of a “friendly and loving relationship,” or pleasant, even frequent, visits with the dependent child. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) The parent must show she occupies a parental role in the child’s life, and that “the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, at p. 555; see also *Breanna S.*, *supra*, at p. 646; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.) Courts consider “[t]he 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) A court must find that the parent-child relationship “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.” (*Id.* at p. 575.)

“The type of parent-child relationship sufficient to derail the statutory preference for adoption is one in which ‘regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.]” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396.) “Moreover ‘[b]ecause 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.’ [Citation.]” (*Breanna S., supra*, 8 Cal.App.5th at p. 646.)

Throughout the underlying dependency proceeding, mother was often late or entirely absent from her scheduled visits with D.R. However, in the months preceding the section 366.26 hearing, mother managed to consistently attend her weekly visitation with D.R. At the section 366.26 hearing, the juvenile court found that mother had “maintained regular visitation with [D.R.]” Even accepting the court’s finding that mother met the first prong of the beneficial parental relationship exception, mother has not shown that the court abused its discretion in deciding the beneficial parental relationship exception did not apply because the benefit to D.R. of permanency through adoption outweighed the benefits of his relationship with mother.

To carry her burden of proof under the second prong, mother must show not only a parental bond between herself and her children, but that the detriment to D.R. if mother's parental rights were terminated outweighs the benefits of adoption. (See *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Mother's evidence of a parental bond consisted of her testimony about the activities and conversations she shared with D.R. during her weekly, two-hour monitored visit. Mother acknowledged that during these visits, she and D.R. "try not to talk about emotional feelings," because D.R. is "very sensitive." D.R.'s testimony confirmed this; he could not think of any issue that upset him that he had discussed with mother. Mother also admitted that she had not attended a medical appointment or spoken to any of D.R.'s teachers since 2016. In contrast, D.R. had expressed to the social worker a desire to live with his uncle. He also testified at the section 366.26 hearing, and reiterated his preference for adoption by his uncle because his uncle was the person in his life who protects, cares for, and loves him. The Department report verified this: D.R. was well cared for by uncle and had been receiving appropriate medical care and therapy. Mother offered no evidence that any detriment D.R. would suffer if her parental rights were terminated would outweigh the benefits of being adopted by his uncle. Rather, as reported by the Department, D.R. was thriving in his maternal uncle's care and the uncle was committed to adopting him.

On this record, we cannot say the court abused its discretion in finding the parental relationship exception inapplicable.

Mother argues that “to the extent the court relied on the fact [m]other would likely continue to be a part of D.R.’s life, it erred.” “[T]he court cannot . . . terminate parental rights based upon an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and a biological parent, even if substantial evidence supports that expectation. The purpose of the parent-child relationship exception is to protect the parent-child relationship when its continuation is more beneficial to the dependent child than a permanent plan of adoption and, in such case, a court cannot leave the protection of such a relationship dependent upon the hoped-for goodwill of the prospective adoptive parents.’ [Citation.]” (*In re E.T.* (2018) 31 Cal.App.5th 68, 78.)

During the section 366.26 hearing, D.R. testified that he believed he would continue to see mother if he were adopted by his uncle. However, nowhere in its ruling did the juvenile court place any reliance on this testimony. Rather, the juvenile court found that D.R. simply does not “have a substantial and positive attachment to [m]other such that terminating their familial relationship would cause [him] great harm.” (*In re E.T.*, *supra*, 31 Cal.App.5th at p. 77.) On the record before us, we find no error.

DISPOSITION

The order terminating mother's parental rights as to D.R. is affirmed.

MOOR, J.

We concur:

BAKER, Acting P. J.

KIM, J.