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

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

B282076

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK02776)

Plaintiff and Respondent,

v.

ANGELICA E. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Remanded in part; affirmed in part.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant Angelica E.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant Brian B.

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

Patti L. Dikes, under appointment by the Court of Appeal, for Appellant E.M.

* * * * *

This appeal concerns three minor children who are half siblings: E.M., M.B. and A.B. Appellant Angelica E. (mother) is the mother of all three children. Appellant Brian B. (father B.) is the father of M.B. and A.B. Appellant E.M. is the eldest sibling, and her father, Felix M., is not a party to this appeal.¹ After a contested joint permanency planning hearing on May 9, 2017, M.B. and A.B. were freed for adoption, with their foster parents identified as the prospective adoptive parents. E.M. was placed in legal guardianship with her paternal grandmother.

E.M., who was granted standing to participate in the permanency planning hearing as to her two half siblings, appeals the juvenile court's denial of her claim that the sibling relationship exception applied to preclude adoption of M.B. and A.B.

Mother appeals the termination of her parental rights as to M.B. and A.B., contending the sibling relationship exception applied. Mother also appeals the juvenile court's visitation order as to E.M. on the grounds the order improperly delegates discretion to the legal guardian and requires visitation to be monitored. Mother joins in E.M.'s arguments.

¹ By order dated July 13, 2017, we granted mother's motion and consolidated the appeal filed under B282076 with the appeals filed under B282764.

Father B. joins in the arguments of both E.M. and mother, but raises no contentions of his own.

We order a limited remand to allow the juvenile court to clarify the duration of parental visits with E.M., and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2013, E.M. was six years old, M.B. was one year old, and A.B. was five months old. E.M.'s father, Felix, was incarcerated. Mother, father B. and the three children were living in the home of Mary E. (maternal grandmother).

On December 16, 2013, a referral was made to the Los Angeles County Department of Children and Family Services (Department) concerning E.M., M.B., and A.B. Maternal grandmother called the police to report that father B. had punched mother in the face in front of all three children. It was also reported that father B. had struck mother several months earlier, chipping her front teeth. When police arrived at the home on December 16, mother denied medical attention and refused an emergency domestic violence protective order. The responding police officers notified the Department.

The Department filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b),² alleging the children were at risk due to the domestic violence between the parents in the presence of the children.

After talking with the social worker, mother apologized for her initial response and promised to cooperate. She signed a safety plan and agreed that father B. would not have contact with

² All further undesignated section references are to the Welfare and Institutions Code.

the children. The children generally appeared to be healthy and without marks or bruises. Mother admitted she abused methamphetamines as a teenager, but said she had been sober since her release from prison.

The juvenile court sustained the amended petition under section 300, subdivisions (a) and (b), and released all three children to mother with family maintenance services. Mother and the children continued to reside in the home of maternal grandmother. The court issued a restraining order against father B. to protect mother.

In May 2015, the Department filed a supplemental petition pursuant to section 387 alleging that mother had “failed to enroll, participate and complete domestic violence treatment, individual counseling and parenting.” The Department alleged that mother’s failure to comply with services endangered the health and safety of the children. The Department reported the social worker would meet with mother on a weekly basis to aid with her compliance, but mother was not taking advantage of services and “did not show much interest” in doing so. Mother told the social worker she is a “very forgetful person” and said she did not know why that mattered because she took good care of her children. During visits to the home, social workers found mother to be “overwhelmed” and “anxious.” Among other things, M.B., who had significant speech delays, was not being taken regularly for therapy. And, A.B., who has asthma, was observed in the home with a serious cough, but mother did not know where her asthma medicine was and had not taken her to see a doctor.

The Department obtained a removal order from the court. E.M. was placed with her paternal grandmother, Sandra Z., with whom she had lived for several years. When E.M. was born,

mother was living in the home of paternal grandmother. When E.M. was three months old, mother “abruptly” left her in the sole care of paternal grandmother until she was four years old. M.B. and A.B. were placed with maternal grandmother. Shortly thereafter, maternal grandmother’s health began to decline, so M.B. and A.B. were placed with foster parents, Mr. and Mrs. H.

On July 21, 2015, the court sustained the section 387 petition. Mother was provided reunification services and monitored visitation with all three children. The Department reported that during visits, mother often did not demonstrate nurturing behavior toward the children, especially with M.B. When mother did engage with the children, her focus was primarily on A.B. The Department continued to recommend that mother’s visits remain monitored “until mother is able to demonstrate an ability to make sound judgement [*sic*] when it comes to the safety and wellbeing of her children.”

E.M. was reported to be thriving in the home of paternal grandmother and was closely bonded to her large paternal family, including her paternal aunt and two young cousins who also lived in the home. M.B. and A.B. were doing well in their foster placement, and appeared to be forming a strong attachment to Mr. and Mrs. H., and their three biological children. M.B. regularly attended therapy for his speech delays and was finally speaking in complete sentences.

At the contested 18-month review hearing in December 2016, the court terminated family reunification services and set a hearing for March 27, 2017 to select permanent plans for the children.

The Department prepared an assessment report pursuant to section 366.26 with legal guardianship recommended for E.M., and adoption recommended for M.B. and A.B.

The Department reported that mother had maintained consistent visitation with the children since removal. Initially mother visited with all three children on Saturdays in Lancaster, monitored either by E.M.'s paternal grandmother, paternal aunt, or Mrs. H. In mid-2016, mother began visiting separately with E.M. in Lancaster, and M.B. and A.B. in Rancho Cucamonga, because weekly joint visits were difficult due to the distance between the H.'s home and paternal grandmother's home.

The report further noted that sibling visits were consistently facilitated to occur once a month. The Department reported that both the paternal grandmother and the H.'s had stated their willingness to continue with sibling visitation post-adoption/post-legal guardianship so that the children could maintain their relationships. The H.'s also stated their willingness to allow M.B. and A.B. to maintain a post-adoption relationship with mother.

The report discussed some minimal visitation by father B., and phone calls between E.M. and her father, who had been deported to Mexico after his release from prison.

The Department also reported that mother completed a domestic violence program. However, the Department was concerned that mother had "not internalized what she learned." Throughout most of 2015 and into 2016, mother concealed her ongoing relationship with father B., including the fact she had become pregnant by him again. She did not admit to the relationship until he was arrested and incarcerated in February 2016. In October 2016, mother gave birth and the Department

filed a separate petition as to that child. The Department expressed concern over mother's "revolving pattern" of going back to father B. despite the domestic violence history. The Department further reported that mother "is still not capable of caring for her young children on her own without constant hand holding and supervision." Mother has made "very little significant" progress in demonstrating the ability to manage her children's "medical and developmental needs."

The Department reported that E.M. had a strong, positive attachment to her paternal grandmother with whom she has lived a majority of her life. M.B. and A.B. were reported as thriving under the care of the H.'s and strongly bonded to them, referring to them as "mommy" and "daddy." The H.'s were committed to adopting both children, and their three biological children were reported to be emotionally attached to them and considered them "integral" to the family.

On April 5, 2017, E.M. filed a section 388 petition requesting standing to participate in the permanency planning hearing as to her half siblings so that she could assert the sibling relationship exception to adoption.

On April 6, 2017, the court granted a hearing on E.M.'s petition, and continued all of the section 366.26 hearings to be heard together on May 9, 2017. The court denied mother's requests for a sibling bonding study and to be allowed to call four-year-old M.B. as a witness at the section 366.26 hearing. The court noted for the record that the home study for the H.'s had been approved.

On May 5, 2017, the juvenile court ordered all three children to be referred to the Consortium for Children for a post-adoption contract regarding sibling visitation.

The Department filed a last minute information report on May 9, 2017 in response to E.M.'s section 388 petition. The report stated that both M.B. and A.B. were young when placed separately from E.M. in July 2015. M.B. was just three years old, and A.B. was two years old. Sibling visitation was provided as often as possible, but visitation was somewhat limited due to the distance between the placements for the children. Paternal grandmother's work schedule did not permit her to take E.M. to the H.'s home in Rancho Cucamonga, so most of the sibling visits had to be facilitated by the H.'s driving M.B. and A.B. to Lancaster. The social worker reported that the younger children did not appear to have a very strong bond with E.M., although they got along well at visits.

The contested section 366.26 hearing proceeded on May 9, 2017. The court granted E.M.'s section 388 petition for standing to participate in the hearing as to M.B. and A.B. The court denied E.M.'s oral request for a sibling bonding study, made purportedly as a belated "joinder" in mother's previous request that had been denied on April 6. E.M. made an oral request and mother renewed her request to have four-year-old M.B. testify as a witness. M.B.'s counsel objected to him being called. The court denied the request.

The court heard testimony from nine-year-old E.M. in chambers. She said she visits with M.B. and A.B. every "Saturday to Sunday" for "two hours." They watch movies, or color together or have something to eat. E.M. said they smiled when they saw her and called her "Naina," a nickname her mother uses for her. When asked how M.B. and A.B. tell her they love her, E.M. said "with smiles." She said she did not want them to be adopted because she wants them to live together again.

E.M. said M.B. told her he missed her a couple of weeks ago and A.B. tries to hold her hand at visits. E.M. knew M.B. was four and A.B. was three but did not know their favorite colors or their favorite games to play.

Mother testified she had been visiting weekly with her children since they were removed from her care in July 2015 and she also called them every day. Her visits are monitored by maternal grandmother. They often go to the park or take the children to see a movie. Mother said she brings them lots of chips and candy to eat. M.B. particularly likes bugs so she bought him a bug catcher. They also fly kites and play ball. A.B. is very affectionate and likes to sing. She is putting together a little book of song lyrics that A.B. likes. Mother said all three children interact well with each other and enjoy playing together. Mother admitted she has never had unmonitored or overnight visits.

Father B. testified the children had not lived with him since December 2013. He admitted being incarcerated from March 2016 through February 2017, but said he had maintained regular, weekly supervised visits with the children for the seven weeks preceding the section 366.26 hearing. He believed the visits went well, saying “[i]t is like I never left.” He usually brought lunch for the children and a project or craft for them to do during the visit.

After hearing argument from all counsel, the juvenile court found the sibling relationship exception did not apply. The court found, by clear and convincing evidence, that M.B. and A.B. were adoptable and ordered adoption as the permanent plan, with the H.’s as the prospective adoptive parents.

As to E.M., the court ordered legal guardianship with paternal grandmother and issued letters of guardianship. The

court ordered monitored visitation for both mother and E.M.'s father as follows: "Parents to have visits and telephone calls the last Saturday of every month, or as often as can be arranged by the parties." The court terminated jurisdiction as to E.M.

This appeal followed.

DISCUSSION

1. The Juvenile Court Did Not Err in Terminating Parental Rights

The parties make several arguments related to the juvenile court's order terminating parental rights to M.B. and A.B. and freeing them for adoption. E.M. argues the Department's assessment report was inadequate as to the nature and quality of the relationship between the children, the court erred in denying a sibling bonding study, the court's denial of the request to have M.B. testify violated her right to due process, and the court erred in finding the sibling relationship exception to adoption did not apply. Mother also argues the court erred in finding the exception did not apply and joins in E.M.'s arguments. Father B. does not raise separate arguments of his own, but only joins in the arguments of E.M. and mother. We conclude none of these contentions has merit.

First, although the discussion of sibling visitations was scant in the Department's reports, the reports were adequate. Where, as here, a juvenile court sets a permanency planning hearing pursuant to section 366.26, it is, by statute, required to order the Department to prepare and submit an assessment report that includes information relevant to the court's determination of the appropriate permanent plan, including the nature of the contacts between the dependent child and his or her

parents and extended family members, which includes siblings. (See, e.g., § 366.21, subd. (i)(1)(B), § 366.22, subd. (c)(1)(B).)

Here, the section 366.26 report adequately describes the nature of the visits between the children, their parents and the relevant extended family members. There is sufficient information in the report, read as a whole and in conjunction with the last minute information dated May 9, 2017, to inform the court of the nature and quality of the familial relationships, and especially the sibling relationship between E.M. and her half siblings.

The reports indicated that M.B. and A.B. were very young when they were separated from E.M. They had joint visits with E.M. and their mother weekly, when possible, for the first year after they were detained from mother. Thereafter, because of the distance between their respective placements, the siblings had only monthly visits. The visits were reported to go well, and they enjoyed fun activities together, but the social worker did not believe they had a strong bond. The Department's reports were not deficient for failing to include additional details. (See, e.g., *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1337 [finding no statutory requirement for the social worker to “describe the ‘actual amount’ of time, by minutes, hours or other measure, that a parent and child have spent together during the dependency”].)

Moreover, the juvenile court did not abuse its discretion in denying a sibling bonding study. “There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order. In addition, although the preservation of a minor’s family ties is one of the goals of the dependency laws, it is of critical importance only at the point in the proceeding when the court removes a dependent

child from parental custody (§ 202, subd. (a)). Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to parental custody and the juvenile court terminates reunification services. Then, the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability.” (*In re Lorenzo C.*, *supra*, 54 Cal.App.4th at pp. 1339-1340.)

Here, a sibling bonding study was not sought until after the termination of reunification services. E.M. made an oral request at the start of the contested permanency planning hearing on May 9, 2017. Mother made a similar request a couple of weeks earlier. “Bonding studies after the termination of reunification services would frequently require delays in permanency planning. . . . The Legislature did not contemplate such last-minute efforts to put off permanent placement. [Citation.] While it is not beyond the juvenile court's discretion to order a bonding study late in the process under compelling circumstances, the denial of a belated request for such a study is fully consistent with the scheme of the dependency statutes, and with due process.” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1197.)

E.M. has not identified any compelling circumstances warranting a sibling bonding study in May 2017. By that point, it had been almost four years since the Department's intervention, and almost two years since the children had been removed from parental custody. All three children were thriving in their current placements. Given the late stage of the proceedings, the juvenile court was well within its discretion to deny the request for a bonding study and to move forward with obtaining stable, permanent placements for the children. The record reflects the court carefully considered the testimony at the

hearing and the reports describing the nature of the children's relationship. We see no error in the court's denial of the sibling bonding study.

We also reject E.M.'s contention the court's refusal to require four-year-old M.B. to testify at the permanency planning hearing denied her due process. M.B.'s counsel objected to him being required to testify. M.B.'s speech had improved, but he still suffered language deficits. The Department had reported it did not believe he was capable of making a meaningful statement. E.M. was allowed to present her own testimony regarding her relationship with her brother. Even at the age of nine, the record reflects the court's concern that E.M. exhibited difficulty testifying in chambers. There is no reason to question the court's judgment that at age four, M.B. should not be called to testify. E.M. does not tell us anything she believes M.B. may have been able to say that would have further illuminated the nature of the sibling relationship. E.M. has not shown any deprivation of her right to due process.

Finally, the record contains ample evidence supporting the juvenile court's determination the sibling relationship exception did not apply. In order to establish the exception, E.M. had to show a "substantial interference" with the sibling relationship, "the severance of which would be detrimental to the child." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) If the court determines there will be substantial interference, "*the juvenile court must 'weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.'*" (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293, italics added.) "[T]he application of this exception will be rare, particularly when the proceedings concern young

children whose needs for a competent, caring and stable parent are paramount.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.) “The sibling bond exception is evaluated from the perspective of the child who is being considered for adoption, not the perspective of that child’s siblings.” (*In re D.O.* (2016) 247 Cal.App.4th 166, 174.)

Here, there is no evidence that termination of parental rights will substantially interfere with a sibling relationship to the detriment of M.B. or A.B. The H.’s had repeatedly stated their intention to allow M.B. and A.B. to maintain their relationship with E.M. post-adoption. The H.’s had taken the laboring oar in assuring visitation of the siblings once it became difficult for paternal grandmother to bring E.M. to Rancho Cucamonga. Prior to the permanency planning hearing, the court had ordered the children to the Consortium to assess post-adoption visitation. The court was justified in finding no substantial interference nor resulting detriment. (*In re D.O.*, *supra*, 247 Cal.App.4th at p. 175 [juvenile court may consider whether proposed adoptive parents have a “proven history of, and expressed commitment to, sibling visits”], and cases cited therein.)

There was no showing that the benefit M.B. and A.B. would receive in maintaining a relationship with E.M. outweighed the benefit they would receive by the permanency of adoption. Counsel for M.B. and A.B. argued the evidence supported adoption was in the children’s best interests. M.B. and A.B. were young when they were placed separately from E.M. (M.B. was three years old and A.B. two years old). Their common experiences were not substantial. M.B. and A.B. had formed a

strong attachment to the H.'s and their three children, and were reported to be thriving in their household.

The record amply supports the juvenile court's order.

2. The Visitation Order Regarding E.M.

Mother contends the juvenile court's order regarding visitation with E.M. is improper because it is not in writing, it fails to specify the nature and duration of visits, and requires the visits to be monitored. The Department responds that there is a written order, and that the court acted within its discretion to order monitored visitation, but concedes the order is "somewhat" vague in failing to specify the duration of parental visits.

We review an order of visitation under the abuse of discretion standard. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

It is well established that the time, place, and manner of visitation may be left to the discretion of the legal guardian, but the juvenile court *must* specify the frequency and duration of visits. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314 ["leaving the frequency and duration of visits within the legal guardian's discretion allows the guardian to decide whether visitation actually will occur"]; accord, *In re M.R.* (2005) 132 Cal.App.4th 269, 274 [failure to specify right to visitation and set frequency and duration of visits is an "improper delegation of the judicial function and therefore an abuse of discretion"].)

Here, the juvenile court issued a written order on May 9, 2017 stating that both mother and E.M.'s father were entitled to monitored visits with E.M. The court further specified as follows: "Parents to have visits and telephone calls the last Saturday of every month, or as often as can be arranged by the parties." The order does not specify the duration of the visits. We therefore

order a limited remand to allow the juvenile court to clarify the duration of parental visits with E.M.

Mother has not affirmatively shown error in the court's decision to require that parental visits remain monitored.

DISPOSITION

The juvenile court's May 9, 2017 order regarding parental visitation with E.M. is remanded for the limited purpose of allowing the juvenile court to clarify the duration of parental visits.

The court's orders of May 9, 2017 are otherwise affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.