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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.A., et al., a Person Coming
Under the Juvenile Court Law.

B289565
(Los Angeles County
Super. Ct. No. CK98140A-B)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County
of Los Angeles, Emma Castro, Commissioner. Affirmed.

Nicole Williams, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

V.A. (mother) appeals from the juvenile court's order terminating her parental rights to her two minor daughters, L.A. and K.V. (the children). According to mother, she presented sufficient evidence to establish the beneficial relationship exception to termination of her parental rights.

Whether reviewed under the substantial evidence or the abuse of discretion standard, the evidence supported the trial court's finding that the benefit to the children from adoption outweighed any detriment to them from terminating their parental relationship with mother. We therefore affirm the juvenile court's order terminating parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention, Jurisdiction, and Reunification

On June 5, 2015, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300¹ alleging in counts a-1, b-1, and j-1 that mother physically abused L.A. and that L.A. had been a prior dependent of the juvenile court because of past physical abuse by mother. The petition further alleged in counts

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

b-2 and b-3 that mother had: (i) established a dangerous and detrimental home environment for the children by allowing L.A.'s father to care for the children knowing his history of illicit drug use and failure to comply with juvenile court orders; and (ii) failed to protect the children from the risk of his conduct.

Also on June 5, the juvenile court detained the children, authorized their continued placement with their maternal grandmother (grandmother), and set the matter for a jurisdiction/disposition hearing.

At the jurisdiction hearing on March 7, 2016, the juvenile court sustained counts b-2 and b-3 and dismissed the remaining counts.

At the March 18, 2016, disposition hearing, the juvenile court removed the children from their parents, ordered mother to participate in reunification services, and granted her monitored visitation three times a week for three hours per visit.

On August 8, 2016, the juvenile court terminated reunification services for L.A.'s father, continued services for mother, and set a status and permanency review hearing under sections 366.21 and 366.22 for February 6, 2017.

B. Termination of Mother's Reunification Services and Her First Section 388 Petition Seeking Restoration of Services

On February 6, 2017, the juvenile court terminated mother's reunification services and set the matter for a section 366.26 hearing to select and implement a permanent plan for the children. The court also limited mother's visits with the children to one three-hour visit per week.

On August 31, 2017, the juvenile court denied mother's first section 388 petition to restore her reunification services. The juvenile court also continued the section 366.26 hearing because, *inter alia*, the children were not present to testify.

C. Mother's Second 388 Petition and the Termination of Her Parental Rights

On September 26, 2017, mother filed a second section 388 petition asking to have the children returned to her or for reinstatement of her reunification services. On October 3, 2017, the continued date for the section 366.26 hearing, the juvenile court ordered DCFS to respond to the section 388 petition and continued both matters to December 6, 2017.

1. Mother's Testimony

On December 6, 2017, the juvenile court began an evidentiary hearing on mother's second section 388 petition.² Mother's testimony began that day and was completed at the continued hearing on January 5, 2018.

On direct examination by her attorney, mother explained that after the children were removed from her in May 2015, she had weekly and sometimes daily contact with the children. Specifically, she testified that from January to October 2017, she had daily contact with the children because, during that period,

² The juvenile court ordered that the testimony taken on the section 388 petition would also be considered by the court in determining whether to terminate parental rights under section 366.26.

she was living at grandmother's house.³ Mother also stated that, when she was living at grandmother's house, she was in charge of caring for the children, including bathing them. She further asserted that she had never brought L.A.'s father to grandmother's house or around her children and that she had limited contact with him.

In early October 2017, grandmother asked mother to move out because she believed mother might regain custody of the children, a result grandmother opposed. Mother described her relationship with grandmother at that point as "toxic." After mother moved out of grandmother's house, she visited with the children there three times a week. Grandmother monitored the visits, which were a minimum of three hours each. During those visits, mother helped her children with home work, put them to bed, and attended their medical appointments. She also participated in their school's annual "mud run."

Mother believed the children were bonded with her. As an example, she described an incident during which K.V. cut her finger at school on a Friday, but did not tell anyone, including grandmother, until she spoke to mother about it on Sunday. The children also would ask mother to stay the night when she was about to leave after completing a visit.

³ To corroborate her testimony that she was living at grandmother's house during that period, mother called an acquaintance, Alisa Hill-Arvayo, who testified that she believed mother was living at grandmother's house "from her social media, seeing [pictures of] the girls and stuff at, like, late hours in the night. And, also, [Arvayo] dropped [mother] off and picked her up a few times [at grandmother's house]"

On cross-examination, Mother admitted that, during the eight month period she said she was living at grandmother's house, she was in violation of the juvenile court's orders. She also testified again that she tucked the children "into bed" during her visits.

2. *The Children's Testimony*

At the January 10, 2018, continued hearing on the second section 388 petition, L.A. and K.V. testified in chambers, after which the juvenile court continued the matter to January 17, 2018.

a. L.A.'s testimony

L.A. testified on direct examination that she was in the second grade and currently lived at grandmother's house with her younger sister K.V. and her maternal grandparents. She did not know where mother lived.

Mother visited with L.A. and her sister three times a week, but L.A. could not remember how long those visits lasted. According to L.A., her sister would sometimes have a "tea party" during mother's visits, but mother would not play with her because mother was "always on the phone." When her sister would ask, "Mommy, can you play with me?" mother would say, "Hold on, [K.V.]" Mother would sometimes walk with the children while they rode their "bikes around the corner," and play hide and seek with them.

L.A.'s visits with mother were "fun," but she did not enjoy them sometimes because she would rather spend time with grandmother doing things like homework. Mother would also help her with homework, but grandmother would prepare her

meals, do her laundry, put her to bed at night, and care for her when she was sick.

During the past year, L.A. did not remember any occasion when mother slept over at grandmother's house. L.A. did not want to live with mother because she was concerned that mother would "go back with [L.A.'s father]." While explaining that her father had been "rude" to her, L.A. began crying.⁴ When asked how she felt about staying with grandmother and growing up with her, L.A. said she felt "okay." In response to the juvenile court's question about how L.A. would feel if mother spent the night at grandmother's house on occasion, L.A. stated that she "wouldn't feel safe."

On cross-examination by the attorney for DCFS, L.A. confirmed that she had never visited mother at her home and did not want to visit her there. Although L.A. did not consider grandmother as her mother, she felt closer to grandmother than to mother. Grandmother did things for the children "that a mom [would do] for [her] kids." L.A. sometimes enjoyed her visits with mother, but other times she did not enjoy visiting with her. L.A. wanted to continue seeing her mother, but she wanted to live with grandmother. She liked mother and "kind of" loved her, but she also loved grandmother.

On cross-examination by mother's attorney, L.A. testified that mother never took L.A. to school or picked her up, never attended back-to-school nights, and attended only one "mud run" at her school. L.A. never went to the park or rode bikes with her mother unless grandmother was there. Mother put the children

⁴ The juvenile court noted during a break in L.A.'s testimony that she was "noticeably emotionally upset."

to bed on more than one occasion, but she never slept over or kept any belongings at grandmother's house.

In response to questions from the juvenile court, L.A. provided the following further testimony: Mother did not "get along" with grandmother. L.A. did not know whether mother and grandmother liked each other or whether grandmother was "nice" to mother during her visits. But L.A. never saw grandmother being mean or heard her say mean things to mother during visits. Grandmother never invited mother to stay and have dinner with the family. Mother was "nice" to L.A. during visits and asked L.A. to live with her, but L.A. "wouldn't like [to live with mother] because . . . [mother] might go back with [L.A.'s father]." L.A. would not want to spend the night at mother's house because mother might do "rude things" to her.

b. K.V.'s testimony

K.V. testified on direct examination that she lived with her grandparents and her older sister, and did not remember ever living with mother. Mother visited with K.V., but K.V. did not know how many times a week mother visited. During mother's visits with K.V., they would "go [to] the park or sometimes [they] would stay home, watch T.V., or color." But whenever they went to the park, grandmother was always with them. K.V. also went on bicycle rides with mother, her sister, and grandmother.

Grandmother always made K.V. breakfast and dinner, and also did K.V.'s laundry. Mother would sometimes put K.V. to bed and then leave, but grandmother would "check[]" on her. Mother was never present in the morning when K.V. woke up.

K.V. "loved" living with grandmother and was concerned that, if she and her sister lived with mother, she would "hit

[them] again.” K.V. confirmed for the juvenile court that no one told her “what to tell the [court].”

On cross-examination by mother’s attorney, K.V. testified she had never seen mother sleep over at grandmother’s house. She then said this happened one time but it was a long time ago. Although mother sometimes put K.V. to sleep, afterward mother “leaves because . . . [grandmother] checks.”

Grandmother got K.V. packed for school, not mother. Mother did not help with K.V.’s bath and did not go with her to doctor’s appointments. And mother never came with grandmother to pick K.V. up from school.

According to K.V., mother did not take K.V. and L.A. to the park unless grandmother was also present. K.V. sometimes felt that she did not want mother to visit because although mother would “act[] nice” “she [was] mean to [them].” K.V. remembered a time when mother forced L.A. to eat, and also remembered a separate occasion when L.A. asked mother to hand her a towel in the shower because L.A. had soap in her eyes, but mother told L.A., “It’s right there. You can grab it.”

K.V. said if she could not visit with mother anymore, she would not be sad and she did not want mother to live with her at grandmother’s house because mother would “be mean to [them] again.”

3. *Grandmother’s Testimony*

On January 17 and 22, 2018, grandmother testified on direct examination that mother had not lived with grandmother for almost three years. Grandmother did not know where mother lived during 2017.

During May 2017, mother's visitation schedule with the children was three days a week for three hours per visit. But there was no set schedule in terms of particular days of the week or a specific time of day. Sometimes the visits would take place at the park or at a restaurant. During 2017, grandmother never allowed mother to stay overnight at her house.

Grandmother allowed mother to use her car for a three-month period in 2017 because mother was homeless and had no place to sleep. Grandmother felt sorry for mother, but she eventually took her car back from mother "[b]ecause as much as [grandmother and grandfather had] done for [mother], she [was] not grateful."

Grandmother was not concerned about mother continuing to visit the children as long as the visits were monitored.

According to grandmother, mother accompanied K.V. on one appointment with the doctor and she had also accompanied L.A. on doctor appointments. Grandmother recalled that during 2017, mother attended one "mud run," a parent-teacher conference, and a back-to-school night at the children's school.

Mother never went with grandmother to drop the children at school or picked the children up from school herself. She did, however, accompany grandmother twice when grandmother picked the children up from school. Grandmother always accompanied mother and the children on their trips to the park because grandmother was the visitation monitor. But grandmother never allowed mother to take the children out by herself and never allowed her to stay home alone with the children.

Grandmother observed mother's visits and remarked that, after an hour and a half of visitation, mother would become

“bored and [would] start[] in [on] her cell phone, texting, or she [would go] outside [on] her phone She [would become] bored eas[ily].” Grandmother believed the children enjoyed their time with mother, but her time interacting with them never lasted for the entire duration of the three-hour visits.

Based on the social worker’s advice, grandmother allowed mother to put the children to bed, but once they fell asleep, grandmother would ensure that mother left. Mother put the children to bed approximately five times during the prior year.

The children sometimes enjoyed their visits with mother and would call her “mommy,” but grandmother did not believe the children were bonded with mother. Mother had visited during meals and, two or three times in the last year, helped the children with their baths.

Grandmother did not know where mother lived or where mother took grandmother’s car during the three-month period mother was using it. But grandmother was sure that mother did not have a key to the grandparents’ house.

Grandmother recalled an incident about two and a half years prior during which mother “force fed” L.A. K.V., who was only two and a half years old at the time, remembered the incident without grandmother reminding her of it.

Grandmother did not discuss the children’s fathers with them or tell them what they should tell the juvenile court when they testified. Grandmother did not believe the children would benefit from further reunification services because they were “scared” of mother, did not trust her, and were “scared to be by themselves with her.” As an example, grandmother cited mother’s habit of telling the children at the table to “[j]ust eat a little bit more. Just three more bites.” According to

grandmother, the children “can’t say no to [mother] because they are scared,” so they look at grandmother, who tells the children they do not need to eat any more if they are full.

On cross-examination by the children’s attorney, grandmother testified that in March 2017, she saw mother and L.A.’s father together in Whittier and Montebello. And in August 2017, while grandmother visited Las Vegas with the children and their maternal aunt, mother stayed with permission at grandmother’s house for the weekend because mother had no other place to stay. During that weekend, however, grandmother’s neighbor saw mother and L.A.’s father “going inside [grandmother’s] house.”

In response to further questioning by the juvenile court, grandmother testified that she allowed mother to stay in her house during the trip to Las Vegas because mother had no place to stay and grandmother believed mother “was going to respect [their] house, and she didn’t.” Grandmother assured the juvenile court that, regardless how the court ruled, she would be willing to allow mother to visit the children, as long as the visits were monitored.

Grandmother conceded that her husband had a better relationship with mother than she did. Grandmother believed that mother resented her because she called “social services on [mother].” Grandmother also believed that mother lied about living in grandmother’s house for several months because mother “want[ed] to get her girls back.”

4. Juvenile Court’s Rulings

After grandmother completed her testimony, the juvenile court denied the section 388 petition. The court then held the

section 366.26 hearing. Mother's counsel and counsel for the minors argued the court should place the children in a guardianship rather than terminate mother's parental rights because the evidence supported a finding under section 366.26, subdivision (c)(1)(B)(i) that the beneficial relationship exception to termination applied. The juvenile court continued the matter to April 20, 2018, to give the court time to consider the transcripts of the section 388 testimony.

On April 20, 2018, the juvenile court made findings on the evidence, found the children adoptable, and terminated parental rights. The juvenile explained its credibility determinations, findings, and rulings as follows: "So at this time, the Court having heard various witnesses that have been called to testify on this contested 366.26, including the two children, the maternal grandmother, and [V.A.], the birth mother, is going to grant [DCFS's] request for termination of parental rights for adoptive placement and planning by the maternal grandparents. [¶] The Court does not find that the beneficial relationship exception in 366.26 has been proven by a preponderance of the evidence standard and, certainly, not by clear and convincing evidence. [¶] The Court must find termination of parental rights is detrimental to the child because a beneficial parent-child relationship exists. And the Court simply cannot make that finding based on the evidence before [it]."

[¶ . . . ¶]

" . . . We do have evidence presented that is undisputed that the mother has had monitored visits with her two children. Mother testified that, on occasion, her visits were unmonitored. Mother has testified that she has even resided in the home, contrary to Court orders, during the period of supervision on this

matter. [¶] Grandmother testified unequivocally that that was not true; that she has abided by the Court's order, only permitting monitored visits for [mother]. [¶] Both girls provided testimony in chambers, ages 5 and 7. Both girls testified that their mother has not lived with them, and, basically, substantiated the sworn testimony provided by the maternal grandmother in this proceeding. . . . [¶] *The Court did not find mother to be a credible witness.* [¶] *Somebody - - a party lied to the Court under oath* in this [section] 388 proceeding and in the [section 366].26 proceeding because we have testimony by the mother that she was permitted to live in the home with the children and she was told by the maternal grandmother to leave the home whenever the social worker came for her monthly visits. She testified that she took the children to school regularly. She picked them up. She bathed them. She fed them. That she engaged in all functions of a parent who has custody of their children. [¶] Grandmother denies that. Grandmother states that has never occurred, that the mother has been permitted to come to the home, that she has stayed beyond her three hours of visitation, and that she comes at least three times a week.” (Italics added.) [¶ . . . ¶]

“ . . . And *the Court believes the grandmother.* The Court believes that the *grandmother has credibility* in her testimony to the Court. [¶] The two children testified that they don't want to live with their mother” (Italics added.) [¶ . . . ¶]

“The children did not appear to be in the least bit coached while they presented their in-chambers testimony to the Court. They are two very intelligent, articulate, charming young girls, who wish to . . . continue residing with their maternal

grandparents. [¶] I do believe that the children would like to continue to have contact with their mother, but that does not rise to the requisite statutory and case law finding that there is a beneficial parent-child relationship. The court keeps in mind that all of mother's visits have been monitored, to the present time." [¶ . . . ¶]

"The Court believes that the reasons the children were removed have not been ameliorated. There was evidence in the case that mother is still either in a relationship with [L.A.'s father] or, otherwise, having contact with [L.A.'s father]." [¶ . . . ¶]

"So the Court does not find that the beneficial relationship exception applies in this case and does not find that the mother was involved with anything more than monitored visits several times per week, that occurred mostly in the maternal grandmother's home, and, on occasion, accompanying the mother to pick up the children from school and taking the children for bike rides in the neighborhood park or even out to dinner on occasion. [¶] The Court does not believe that severing the mother-daughter relationship would deprive these children of a substantial positive emotional attachment such that either child would be greatly harmed. That attachment is to the maternal grandparents at this time, and the mother is a visitor in that home."

DISCUSSION

A. Standard of Review

"Appellate courts have adopted differing standards of review for the parental relationship exception determination. Many courts review for substantial evidence. [Citations.] Other

courts have applied an abuse of discretion standard of review. [Citations.] More recently, courts have adopted both the substantial evidence and abuse of discretion standards of review. [Citations.] In evaluating the juvenile court’s determination as to the factual issue of the existence of a beneficial parental relationship, these courts review for substantial evidence. [Citations.] But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. [Citations.]” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300-1301.)

“The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. [Citation.]” (*In re Jasmine* (2000) 78 Cal.App.4th 1339, 1351, internal quotation marks omitted.) Under this standard, “[t]he 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.]” (*Ibid.*)

Under the substantial evidence standard, “the reviewing court must determine if there is any substantial evidence—that is, evidence which is reasonable, credible, and of solid value—to support the conclusion of the trier of fact. [Citations.] In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. [Citation.] The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. [Citation.]” (*In re I.R.* (2014) 226 Cal.App.4th 201, 211.)

But, as the court in *In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339 noted, the “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 [juvenile] court’s action, no judge could reasonably have made the order that he did.’ . . . ” [Citations.]” (*Id.* at p. 1351.)

B. Beneficial Relationship Exception

At the section 366.26 hearing, the court may not terminate parental rights if it “finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: (i) The 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).)

Application of this beneficial relationship exception to termination of parental rights consists of a two-prong analysis. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The first prong asks if the parent and child have had regular visits and contact. (*Ibid.*)

“[T]he 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. [Citation.]” (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 613.) A parent must prove “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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

A parent's "frequent and loving contact" with a child is not sufficient by itself to establish the beneficial relationship exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 [parents failed to establish beneficial relationship exception because they "had not occupied a parental role in relation to [the children] at any time during their lives"]; see *In re Derek W.* (1999) 73 Cal.App.4th 823, 827 ["the parent must show that he or she occupies a 'parental role' in the child's life"]; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350 ["a *parental* relationship is necessary for the [beneficial relationship] exception to apply" (original emphasis)].)

C. Analysis

1. First prong.

DCFS concedes that mother maintained constant visitation with the children. Therefore, mother satisfied the first prong of the beneficial relationship exception.

2. *Second prong.*

Mother contends the juvenile court erred by not applying the beneficial relationship exception to the termination of her parental rights because the evidence showed the children would benefit from a continued relationship with her. According to mother, her evidence demonstrated that she had “always remained committed to the [children] and took full advantage of the time she was allowed to be with them, visiting them three times a week for three hours a visit.”

Whether the evidence is reviewed under the abuse of discretion or substantial evidence standard, it supports the juvenile court’s finding that any detriment from terminating mother’s parental relationship with the children would not outweigh the substantial benefit that would flow from a permanent relationship with their grandmother.

As an initial matter, the juvenile court made credibility determinations adverse to mother. Because we do not make independent credibility assessments or reweigh the evidence, those determinations support the juvenile court’s findings. Specifically, the juvenile court found that mother had lied about living at grandmother’s house and exaggerated the nature, extent, and quality of her relationship with the children. In contrast, the court credited the testimony of grandmother and the children, which indicated that, while the children may have enjoyed some of their visits with mother, they were not bonded with her and to some degree feared and mistrusted her.

The grandmother’s and children’s testimony also supported an inference that mother did not occupy a parental role in the children’s lives. Among other things, grandmother and the children provided credible testimony that grandmother regularly

fed, bathed, and put the children to bed, helped them with their homework, took them to and from school and medical appointments, and, generally, performed the daily tasks and activities that a mother would perform for her young children. The testimony showed that mother's participation in these activities was extremely limited.

In addition, grandmother's testimony and the juvenile court's credibility determinations supported an inference that mother was untruthful about her relationship with L.A.'s father and was still maintaining a relationship with him, despite the juvenile court's prior jurisdictional findings that the relationship exposed the children to a risk of harm from which mother had failed to protect them. A reasonable trier of fact could have concluded from this evidence that any detriment the children might suffer from terminating their relationship with mother would be outweighed by the substantial benefit that would flow from a permanent relationship with their grandmother.

Mother argues the evidence shows she occupied a parental role in the children's lives and as a result it would be detrimental to the children to terminate her parental rights. But the record contains substantial evidence, which the juvenile court found credible, showing mother did not occupy a parental role and instead was, at best, a regular visitor who played with the children and sometimes helped with their care. In light of that evidence, the court did not abuse its discretion in declining to apply the beneficial relationship exception to the termination of mother's parental rights.

DISPOSITION

The juvenile court's finding that the beneficial relationship exception did not apply and its order terminating V.A.'s parental rights are affirmed.

JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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