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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSE A.,

Defendant and Appellant.

B281903

(Los Angeles County
Super. Ct. No. DK13505)

APPEAL from an order of the Superior Court of
Los Angeles County, Julie Blackshaw, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jesse A., father of two-year-old Roselyn R.A., appeals the juvenile court's March 21, 2017 order pursuant to Welfare and Institutions Code section 366.26¹ terminating his parental rights and selecting adoption as the permanent plan for Roselyn. Jesse contends the juvenile court erred in ruling he failed to establish the parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition and Detention*

In February 2015 the Los Angeles County Department of Children and Family Services created a voluntary family maintenance plan for Jesse and Nicole R., the mother of then two-month-old Roselyn. The plan included services to address reported domestic violence, neglect of Roselyn, and Jesse's drug use.

In September 2015, after Jesse and Nicole failed to comply with the voluntary family maintenance plan,² the Department filed a non-detain petition alleging Roselyn came within the jurisdiction of the juvenile court under section 300, subdivisions

¹ Statutory references are to the Welfare and Institutions Code.

² Among other problems, the Department lost contact with Jesse and Nicole for six weeks, a Department social worker observed a small container of marijuana on the floor where Roselyn was crawling during a home visit, and both Jesse and Roselyn tested positive for marijuana use.

(a) and (b). The Department alleged, among other things, that drug use by Jesse and Nicole interfered with their care and supervision of Roselyn and put her at risk of serious physical harm.

At the initial hearing on the petition, counsel for Roselyn asked the juvenile court to detain Roselyn, citing continued drug use by Jesse and Nicole, unsanitary conditions in their home, and their failure to take Roselyn to the doctor as requested by the Department. The juvenile court found the Department made a prima facie showing Roselyn was a person described by section 300, subdivisions (a) and (b), and determined detention was warranted. The court temporarily placed Roselyn with the Department, with discretion to release her to any appropriate relative, and ordered weekly monitored visits for Jesse and Nicole of at least three hours.

B. *The Jurisdiction and Disposition Order*

In its December 2015 jurisdiction and disposition report, the Department noted that, since the initial hearing on the petition, Jesse and Nicole had not appeared for any of their random drug tests. The Department also reported that, according to Roselyn's foster mother, Jesse and Nicole's visits with Roselyn were "going okay," although initially, "on more than one occasion, the parents did not make it to the visit they had previously agreed to with the foster mother." After the Department, at the foster mother's request, set a fixed visitation schedule, Jesse and Nicole became "consistent with attending their scheduled visit[s]," which occurred once per week, with each parent visiting individually with Roselyn for one hour.

At the December 7, 2015 jurisdiction and disposition hearing, the juvenile court sustained the petition based on the allegations of drug use by both parents, dismissed the remaining allegations, and declared Roselyn a dependent of the court under section 300, subdivision (b). The court removed Roselyn from her parents' custody, directed the Department to provide family reunification services, and ordered monitored visits for Jesse and Nicole of at least three hours per week.

C. *The Six-month Review Hearing*

For the six-month review hearing (§ 366.21, subd. (e)) in August 2016, the Department reported that Roselyn was healthy and well cared for in the home of her foster mother and that Jesse and Nicole were not compliant with the family reunification services the court had ordered. In particular, Jesse had stopped attending his substance abuse program as of May 4, 2016, and consequently the treatment center providing the program had discharged him. He also continued to miss his drug tests.

The Department also reported Jesse continued to miss or arrive late for his scheduled visits with Roselyn. In fact, between December 7, 2015 and May 16, 2016, Jesse missed seven of his 19 scheduled visits with Roselyn.³ He showed up, on time, for only five of those visits. He and Nicole also failed to attend a special visit Roselyn's foster mother attempted to arrange on Roselyn's first birthday. The juvenile court terminated family reunification services and set a selection and implementation hearing under section 366.26 for December 19, 2016.

³ This number does not include three occasions on which visits were rescheduled.

D. *The Selection and Implementation Hearing*

For the December 19, 2016 hearing the Department reported it had placed Roselyn with prospective adoptive parents on November 1, 2016, she was doing well in their care, and they wanted to adopt her. The Department reported that from August through October 2016 Jesse and Nicole still did not visit Roselyn regularly and, according to Roselyn's caregiver, visited Roselyn an average of only twice per month. Since November 1, 2016, however, Jesse and Nicole had not missed any of their weekly visits. The Department recommended the juvenile court terminate parental rights and declare Roselyn free for adoption. The juvenile court granted Jesse and Nicole's request to continue the selection and implementation hearing and set it for contest.

The contested section 366.26 hearing occurred on March 21, 2017. For the hearing the Department reported that, although Jesse had reenrolled in his substance abuse program, he had attended only half of his scheduled sessions and tested positive for marijuana. The Department reported Jesse and Nicole had become more regular in their visitation with Roselyn: From January 5, 2017 through March 2, 2017, they arrived on time for their weekly, three-hour, monitored visit (a total of nine visits), attended an additional visit on January 18, 2017, but cancelled their visit on March 9, 2017. The Department noted Roselyn was thriving in the home of her prospective adoptive parents.

Jesse testified at the hearing that he currently visited with Roselyn once a week for three hours, she called him "Dad" when she saw him, and at the conclusion of their visits she did not cry but "looks like she doesn't want to leave." He also testified that he had lived with Roselyn from the time she was three months

old to the time she was nine or ten months old, but that she had not lived with him now for about a year and a half.

During argument, counsel for Jesse and counsel for Nicole asked the juvenile court not to terminate parental rights, relying on the parent-child relationship exception. Counsel for Roselyn joined with the Department in asking the court to terminate parental rights and proceed with adoption.

The juvenile court found by clear and convincing evidence that Roselyn was adoptable and that returning her to her parents would be detrimental to her. The court ruled no exception to termination of parental rights applied, finding Jesse and Nicole had not met their burden for establishing the parent-child relationship exception. The court stated: “The first prong that the parents must prove is that there has been regular and consistent visitation. Actually, that has happened in the last couple of months, but before that time, over the last year, the parents’ visits really have not always been regular. There have been some visits that have been missed. The parents have been late. So I can’t really find that for a substantial period of time your visits have been regular. Even in the last couple of months, where you have shown more consistency in your visits, you are with Roselyn three hours a week, a monitored visit.

Unfortunately, because of your lack of compliance with the case plan, your lack of dedication to addressing the issue, you never did get beyond the monitored visitation status. I have no doubt that your visits are enjoyable with Roselyn and that she has a good time with you. But I do not find that your visits show that you have a significant positive and emotional attachment with the child and that your role in her life has been a parental role. You are not with the child at night. You don’t put the child to

bed. You don't take care of the child when she is sick. . . . I don't find that your relationship with the child rises to the level of the type of parental and significant emotional bond in order to meet your burden under this exception."

The juvenile court terminated Jesse's and Nicole's parental rights, transferred custody of Roselyn to the Department for adoptive placement, and ordered adoption as the permanent plan. Jesse timely appealed.

DISCUSSION

A. *Applicable Law and Standard of Review*

The purpose of a section 366.26 hearing is "to provide stable, permanent homes" for dependent children. (§ 366.26, subd. (b).) Once the court has decided to end parent-child reunification services, the legislative preference is for adoption. (§ 366.26, subd. (b)(1); see *In re S.B.* (2009) 46 Cal.4th 529, 532 ["[i]f adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child"].) "[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

"Section 366.26 requires the juvenile court to conduct a two-part inquiry at the selection and implementation hearing. 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.” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645-646.)

“One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ The exception requires the parent to prove both that he or she has maintained regular visitation and that his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.)

“A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” [Citations.] Factors to consider include “[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.”” [Citation.] 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.” (*Breanna S., supra*, 8 Cal.App.5th at p. 646.)

“The parent has the burden of proving the statutory exception applies. [Citations.] The court’s decision a parent has not satisfied this burden may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citations.] When the juvenile court finds the parent has not maintained regular visitation or established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. [Citations.] When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion.” (*Breanna S., supra*, 8 Cal.App.5th at pp. 646-647.)

B. *The Juvenile Court Did Not Err in Ruling Jesse Did Not Establish the Parent-child Relationship Exception to Termination of Parental Rights*

Jesse argues the juvenile court erred in ruling he did not establish the parent-child relationship exception because, according to Jesse, the court based that decision on a determination that he and Nicole did “not occupy a parental role in the life of Roselyn.” Jesse argues this was error because he and Roselyn had a “significant attachment” that warranted application of the exception. As evidence of that attachment, he

points to the six or seven months Roselyn lived with him during her first year, the regularity of his visits beginning in November 2016, and a March 2017 report from Roselyn's foster care social worker that his visits had "improved gradually over time." Jesse suggests that, instead of adoption, "guardianship was the appropriate permanent plan."

Among the reasons the juvenile court gave for ruling Jesse failed to establish the parent-child exception, however, was the court's finding he failed to prove he maintained regular visitation with Roselyn. And the evidence does not compel a contrary finding as a matter of law. (See *Breanna S.*, *supra*, 8 Cal.App.5th at pp. 646-647.) Although the consistency and quality of Jesse's visits with Roselyn may have improved in the four months immediately preceding the section 366.26 hearing, the evidence shows that from September 2015 (when the juvenile court ordered Roselyn detained) through October 2016 Jesse often missed his scheduled weekly visits. For example, from December 2015 to May 2016 he missed seven of 19 (more than one-third) of his scheduled visits, and from August through October 2016 he visited an average of only twice per month. (See *Breanna S.*, at p. 647 [evidence did not compel a finding the mother maintained regular visitation because "there was ample evidence in the record that [she] visited with [the children] only sporadically during the first 18 months of the dependency proceedings"]; *In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 ["[s]poradic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption"].) Moreover, even when Jesse began to visit Roselyn more regularly, he visited only once a week for three hours. (See *Breanna S.*, at p. 647 ["[w]hile [mother's] visits apparently became more regular during the final

six months before the section 366.26 hearing, even then they occurred only once a week for two hours per visit”].)

Nor did the juvenile court abuse its discretion in concluding Jesse’s relationship with Roselyn did not “rise[] to the level of the type” necessary to establish the parent-child relationship exception. As the juvenile court noted, even when Jesse was visiting Roselyn regularly, he did so only three hours per week, with a monitor present, and he did not perform the sort of routine tasks associated with the parental role, such as putting Roselyn to bed at night or taking care of her when she was sick. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 646 [“notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life””]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621 [“[t]he relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences”], italics omitted.)

DISPOSITION

The juvenile court’s March 21, 2017 order terminating parental rights and identifying adoption as the permanent plan for Roselyn is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.