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

In re IAN G. et al., Persons Coming Under
the Juvenile Court Law.

2d Juv. No. B241004
(Super. Ct. Nos. J-1379430, J-1379431)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

PRISCILLA F.,

Defendant and Appellant.

Priscilla F. (mother) appeals from the Welfare and Institutions Code, section 366.26¹ order terminating her parental rights to her children. She argues that the order must be reversed because the court abused its discretion by denying her a contested evidentiary hearing. Mother had also argued that the Santa Barbara County Department of Social Services/Child Welfare Services (CWS) did not comply with the notice requirements of the Indian Child Welfare Act (ICWA).

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

(25 U.S.C. § 1901 et seq.) We granted respondent's motion to augment the record with documents relevant to that issue. Mother now concedes the ICWA issue. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On July 23, 2010, CWS filed petitions alleging that mother's four-year-old son, Ian G., and twenty-one-month-old daughter, Alina, F., came within the provisions of section 300, subdivisions (b), (c), and (g). Ian and Alina have different fathers. Neither father is a party to this appeal.

CWS detained the children and placed them in protective custody. Both children had significant developmental delays. For example, Alina was not yet walking at the age of twenty-two months. On October 4, 2010, the juvenile court declared the children to be dependents of the court and removed them from parental custody. The court ordered reunification services for mother. CWS placed the children in foster care together.

On April 20, 2011, the juvenile court terminated mother's reunification services and set the matter for a section 366.26 hearing permanency planning hearing. In its August 15, 2011, section 366.26 report, CWS recommended that the court terminate parental rights and find the children adoptable. The children had lived in the same foster adoptive home since October 2010, and called their foster parents mom and dad. Both children made significant developmental improvements in their care.

The juvenile court conducted a section 366.26 hearing. Mother requested a contested hearing. The court ordered her to file an offer of proof to establish a need for a contested hearing, and continued the hearing. Mother submitted a written offer of proof claiming that the section 366.26, subdivision (c)(1)(B)(i) beneficial parental relationship exception to the termination of parental rights applied to her children's dependency cases. She also submitted documentary evidence. The court concluded that her offer of proof was insufficient to justify holding a contested hearing regarding the existence of a

beneficial parental relationship. The court found that the children were adoptable and terminated mother's parental rights.

DISCUSSION

Mother asserts that the juvenile court abused its discretion by denying her request for a contested evidentiary hearing to allow her to establish the beneficial parental relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

Section 366.26, subdivision (c)(1) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless the court finds a compelling reason for determining that termination would be detrimental to the child due to an enumerated statutory exception. The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*Ibid.*) The parent must also show that continuation of the parent-child relationship will promote "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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The juvenile court has discretion to request an offer of proof regarding an enumerated exception to the termination of parental rights. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) "[T]he court can require an offer of proof to insure that before limited judicial and attorney resources are committed to a hearing on the issue, [the parent] ha[s] evidence of significant probative value. If due process does not permit a parent to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced

the parent will present relevant evidence on the issue he or she seeks to contest." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122 [offer of proof regarding beneficial parental relationship exception].)

Mother's written offer of proof represented that she had attended all scheduled visits with her children; the visits had gone well; the children showed attachment to her; mother was involved actively in her recovery from substance abuse and attended AA regularly; mother had stayed out of destructive relationships and had a three-year restraining order against Ian's father; mother completed parenting courses; she was employed in December 2011 and January 2012; and she volunteered at a recovery center. She also submitted the following documents to the court: the drug testing policy of a residential facility; a letter from mother stating she was a resident and volunteer staff member of Bridge House in Lompoc; the Bridge House schedule; a letter from her employer stating that she was employed 20-25 hours per week; and a letter from Transitions Mental Health Association regarding her participation in their program since December 2011.

The juvenile court did not err by denying mother a contested evidentiary hearing. "The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued." (*In re Tamika T., supra*, 97 Cal.App.4th at p. 1124.) Here, taken together, the relevant portions of mother's offer of proof claimed that she regularly visited her children and the visits went well, and concluded the children showed an attachment to her. The offer did not set forth the actual evidence she would present to show that continuation of the parent-child relationship would promote "the well-being of the child[ren] to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229 ["To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant

visits"].) The court reasonably found that mother's offer of proof was insufficient to warrant an evidentiary hearing.

DISPOSITION

The order is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Amy Z. Tobin, under appointment by the Court of Appeal, for
Defendant and Appellant.

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