

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re T.C. et al., Persons
Coming Under the Juvenile
Court Law.

B287772

(Los Angeles County
Super. Ct. No. DK00580)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

F.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Frank Menetrez, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Peter Ferrera, Principal
Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court terminated the parental rights of mother, F.C., to two of her children, half-siblings T.C. and C.A., and freed them for adoption by their maternal grandfather. On appeal, mother contends the juvenile court abused its discretion in finding the children would not benefit from continuing a parent-child relationship with her (Welf. & Inst. Code, § 366.26 subd. (c)(1)(B)(i))¹ and asserts a legal guardianship should have been established.² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

T.C., born in May 2012, began living with the maternal grandfather when she was a baby under an informal arrangement with mother and T.C.'s father, who were no longer in a relationship. At the time, mother was homeless, using drugs, and in an abusive relationship with C.A.'s father.

C.A. was born in August 2013. Mother was hospitalized two days before C.A.'s birth after the latest in a long line of domestic violence incidents with C.A.'s father.

¹ All section references are to this code.

² The parental rights of the presumed fathers were also terminated. The presumed fathers are not parties to this appeal.

Methamphetamine and amphetamine tests at the time of C.A.'s birth were positive for mother, but negative for the baby.

The Department of Children and Family Services (DCFS) initiated dependency proceedings as to T.C. and C.A. a week after C.A.'s birth, alleging domestic violence between mother and C.A.'s father and mother's current substance abuse. At the detention hearing, although the order provided for the elder child's release to the custody of mother and her presumed father, it was agreed T.C. would continue to live with maternal grandfather and mother would enter an inpatient drug treatment program with C.A. The children were declared dependents of the juvenile court on December 9, 2013.

Both children were removed from mother's custody in June 2014. Only C.A. was residing with her at that time, as T.C. had remained with maternal grandfather. Mother tested positive for drugs and admitted she was once again abusing methamphetamine. Her abusive relationship with C.A.'s father continued. C.A. was initially placed with a maternal great aunt, but soon joined T.C. in maternal grandfather's home. The juvenile court ordered monitored visits for mother.

The children were removed from maternal grandfather and placed together in a foster home for a number of months after maternal grandfather's girlfriend abused C.A., resulting in the fracture of his femur. Maternal grandfather was granted de facto parent status in early 2015, and the children were returned to his care. Reunification services for mother were terminated in November 2015. The matter was scheduled for a permanency planning hearing.³

³ Mother gave birth to twins, half-siblings to T.C. and C.A., in August 2016. Dependency proceedings were initiated as to

Maternal grandfather wished to adopt. The adoptive home study process took almost two years, due in part to maternal grandfather's criminal history and unresolved issues concerning the status of his marriage to the maternal grandmother, who resides in another country.

A contested permanent plan hearing finally was conducted on November 15, 2017, two years after the juvenile court terminated mother's family reunification services and almost four years after initiation of the dependency proceedings. Mother was not present. DCFS reports, including three requested by mother, were received into evidence. No witnesses testified. The contested issue was whether it would be detrimental to terminate mother's parental rights based on the parental bond exception. (§ 366.26, subd. (c)(1)(B)(i).)

Evidence demonstrated mother's weekly visits always remained monitored and did not include overnight stays. Beginning in June 2016, mother visited more consistently. The visits typically occurred at a park, restaurant or aquarium near mother's home or in the home of the maternal grandfather. Mother was "affectionate and attentive to the children" during the visits. The children described their mother's visits as "fun." Mother brought toys and played games with T.C. and C.A.

The juvenile court found by clear and convincing evidence that T.C. and C.A. could not be returned to mother's care, their adoption was likely, and it was not detrimental to them to terminate mother's parental rights: "[V]isitation . . . does appear to have been consistent, particularly during the last year or so. I

them based on mother's continuing drug abuse and the sustained abuse allegations as to T.C. and C.A. The twins were not placed with maternal grandfather and are not involved in this appeal.

think it is once a week, monitored on Saturdays, but [mother] does visit and [it] seems the visits go well. But there isn't any evidence of anything like the parental role that would be required under *Autumn H.*"⁴

Mother timely appealed.

DISCUSSION

I. Parental Bond Exception

Once a juvenile court determines by clear and convincing evidence at the permanent plan hearing that it is likely a dependent child will be adopted, parental rights must be terminated unless a statutory exception applies and "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.) The statutory exceptions are enumerated in section 366.26, subdivision (c)(1)(B). A parent who seeks a permanent plan other than adoption, e.g., legal guardianship, has the burden to demonstrate the applicability of a statutory exception. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.) Through her counsel, mother invoked the first such exception, contending she had "maintained regular visitation and contact with the child[ren, who] would benefit from continuing the relationship." (§366.26, subd. (c)(1)(B)(i).)

Accordingly, mother was required to establish her visits with T.C. and C.A. were regular and "severing the natural parent-child relationship would deprive the child[ren] of a *substantial*, positive emotional attachment such that [they] would be *greatly* harmed. [Citations.] A biological parent who

⁴ *In re Autumn H.* (1994) 27 Cal.App.4th 567.

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. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The parental bond exception does not apply where the parent has “merely a friendly or familiar” relationship with her children. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) As the Court of Appeal has held, “[t]he exception applies only where the court finds regular visits and contact have continued or developed a significant positive, emotional attachment from child to parent. [Citation.]” (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.)

On appeal, we employ both the substantial evidence and abuse of discretion standards of review. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622.) Here, the juvenile court determined mother regularly visited the children and they had a beneficial parent-child relationship with her. Substantial evidence supports these findings.

The juvenile court concluded that termination of the parent-child relationship would not be detrimental to the children. We review this finding for abuse of discretion. (*In re Bailey J.*, *supra*, 159 Cal.App.4th at p. 1315; *In re K.P.*, *supra*, at pp. 621–622.) For the reasons that follow, we find no abuse of discretion.

T.C. was five years of age when the juvenile court terminated mother's rights; C.A. was four. T.C. never lived in mother's home, and C.A. lived with mother for only a brief period of time when mother was enrolled in an inpatient drug rehabilitation program. Almost four years elapsed from the time T.C. and C.A. were detained until the permanent plan hearing for them. During that entire period, mother's visits remained monitored. The May 18, 2017 status review report for the twins, which mother offered into evidence for the permanent plan hearing for T.C. and C.A., noted mother did "well when in a structured setting," but struggled with continued substance abuse and engaged in "a pattern . . . where she will become clean from substances and comply with the case plan and then becomes codependent on her intimate partner in which she begins to decline in her progress and testing. Mother has not been able to maintain her sobriety for more than six months which creates an unstable situation for the children."

As the juvenile court recognized, mother was like the parent in *Autumn H.*, *supra*, 27 Cal.App.4th 567. Mother's relationship with T.C. and C.A. "was one of friends, not of parent and child." (*Id.* at p. 576.) T.C. and C.A. had been dependents for most of their lives, and mother had never lived on her own with either of them. The juvenile court acted well within its discretion when it concluded the parental bond exception did not apply and termination of mother's parental rights would not be detrimental to T.C. and C.A. These children deserve "a stable, permanent home. The court properly concluded no exceptional situation existed to forego adoption." (*Ibid.*)

II. Legal Guardianship

Although mother acknowledges in her opening brief that “[a]doption, where possible, is the permanent plan preferred by the Legislature,” she cites this court’s decision in *In re Brandon C.* (1999) 71 Cal.App.4th 1530 to argue that “[s]ometimes the best plan for children who live with a grandparent is legal guardianship.” Mother adds, “the record supports a finding that legal guardianship by maternal grandfather . . . would be permanent and stable and would allow mother to maintain her parental rights.” *Brandon C.* is not apposite.

In *Brandon C.*, over DCFS’s objections, the juvenile court concluded the parental bond exception did apply and, consequently, ordered a permanent plan of legal guardianship for twin boys. DCFS appealed, and this court affirmed. We held substantial evidence supported the juvenile court’s decision. (*In re Brandon C.*, *supra*, 71 Cal.App.4th at pp. 1537–1538.)

Here, by contrast, the juvenile court found the parental bond exception did not apply. This finding was well within the juvenile court’s discretion and, once made, compelled the termination of mother’s parental rights so the children could be freed for adoption. (§ 366.26, subd. (b).)

Significantly, subdivision (b) of section 366.26 was rewritten after the juvenile court ordered legal guardianships in *Brandon C.* The version of subdivision (b) in effect when the permanent plan of legal guardianship was selected for the children provided the juvenile court was to make “one of the following” orders at the permanent plan hearing: termination of parental rights and an order for adoption; identification of adoption as the permanent goal, without an immediate order terminating parental rights; legal guardianship; or an order for

longterm foster care. Effective in 1999, the four options for a permanent plan remained the same, but the juvenile court was required to make them “in the following order of preference,” beginning with the termination of parental rights and an order for adoption. (Assem. Bill No. 2773 (1997-1998 Reg. Sess.), § 17.1.) Here, unlike in *Brandon C.*, the juvenile court did not have the discretion to select “one” of the available permanent plan options; once it determined the parental bond exception did not apply, it was required to terminate mother’s parental rights.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

We concur:

MANELLA, P. J

COLLINS, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.