

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

In re D.M., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B276897
(Super. Ct. No. 15JD-00057)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

ANDREA G.,

Defendant and Appellant.

Andrea G. (Mother) appeals an order of the juvenile court declaring that her minor son D.M. is adoptable and terminating her parental rights. (Welf. & Inst. Code, § 366.26, subd. (c).)¹ We conclude that Mother has not established that the

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

sibling relationship exception to adoption applies, and we affirm. (*Id.*, subd. (c)(1)(B)(v).)

FACTUAL AND PROCEDURAL HISTORY

Mother and A.M. (Father) are parents of two young children, D.M. and G.M.² On February 25, 2015, the San Luis Obispo Department of Social Services (DSS) detained D.M. and G.M. from the care of Mother and Father due to their failure to provide for the children or to adequately supervise them. Each child has significant development delays and behavior problems. Mother was homeless and Father was incarcerated for violating a domestic violence protective order. Mother also has a criminal history of domestic violence convictions. Since 2012, DSS had provided pre-intervention services to the parents without success.

On February 25, 2015, DSS filed a dependency petition on behalf of the two children. DSS alleged that the children were at significant risk of physical or emotional harm due to Mother's and Father's failure to supervise them, provide for them, or access treatment programs for the children's significant special needs. (§ 300, subd (b).) On February 26, 2015, the juvenile court held a detention hearing. It found a *prima facie* case regarding the dependency petition, placed the children in the temporary care and custody of DSS, and set the matter for a jurisdiction and disposition hearing. The children were placed in separate foster homes due to their serious special needs.

² Father is not a party to this appeal which concerns only Mother and D.M. In an unpublished opinion, we affirmed the termination of Mother's parental rights regarding G.M. (Oct. 19, 2016, B271498). In that opinion, we rejected Mother's argument that the sibling relationship exception to adoption applied.

On March 25, 2015, the juvenile court held a jurisdiction and disposition hearing. The court received evidence of DSS written reports and took judicial notice of the dependency file. Following submission by the parties, the court sustained the section 300, subdivision (b) allegations of the dependency petition and ordered DSS to provide family reunification services to Mother and Father.

Mother's family reunification services plan required her to participate in mental health assessment and parent education, provide safe and appropriate supervision of her children during visits, and demonstrate an ability to meet the children's needs, among other things.

Three-Month Interim Hearing

On June 25, 2015, the juvenile court held a three-month interim hearing. The DSS report stated that the social worker had discussed the case plan with Mother and emphasized that she must attend an orientation class with Tri-Counties Regional Center (TCRC). Mother had missed the March, April, and early May orientation classes, but attended and completed the orientation class on May 30, 2015. TCRC reported that it had worked with the family for several years and that Mother lacked "follow through" with her mental health treatment. During this period, Mother also was assessed by county mental health services. At the conclusion of the interim hearing, the court advised Mother and Father that they must "put [their] feet on the gas and keep it on the gas through this whole case."

The DSS report also stated that D.M. had been diagnosed with an autism spectrum disorder and was receiving in-home services five days a week with California PsychCare. D.M. had moved to the home of his paternal grandparents and

his behaviors were improving. During visits with his sibling, D.M. did not play well with or interact with G.M.

Six-Month Review Hearing

On October 9, 2015, the juvenile court held a six-month review hearing. By then, Mother had commenced counseling with a therapist and had completed parent education classes. She remained homeless, however, in part because her criminal history precluded her acceptance into subsidized housing. DSS presented evidence that Mother's services plan compliance was minimal; nevertheless, DSS recommended continuation of services for six months. Mother, through counsel, submitted on the recommendation of continued services. The court ordered continued reunification services and set the matter for a 12-month review hearing.

The DSS six-month report stated that additional testing disclosed that D.M. suffers from intellectual disabilities, rather than autism. During visits with G.M., the siblings would interact briefly but only when encouraged to do so. D.M. continued to express self-absorption and elopement behaviors.

On September 28, 2015, the TCRC social worker recommended to Mother that she initiate adult treatment services with TCRC. By December 2015, Mother had missed mental health therapy appointments and some of D.M.'s appointments, and she remained homeless. On January 29, 2016, DSS learned that Mother had established an online account requesting donations to "[h]elp [her] get [her] kids back from [DSS]." Mother posted photographs of the two children on the account.

Contested 12-Month Review Hearing

On March 9, 2016, the juvenile court held a contested 12-month review hearing. DSS recommended the termination of reunification services to Mother due to Mother's inconsistent visitation, homelessness, and minimal compliance with her services plan. The court received evidence of DSS reports and testimony from DSS social workers and Mother.

Mother testified that she contacted TCRC the day prior to the hearing regarding adult assessment and treatment services. She acknowledged that social workers had encouraged her to have a TCRC adult assessment.

D.M. exhibited symptoms and behavior of autism, although his diagnosis was “mixed developmental delays that [were] speculated to be a result of severe neglect” by his parents. D.M. continued to receive in-home psychological services in the home of his paternal grandparents.

Following argument by the parties, the juvenile court found by clear and convincing evidence that DSS had provided reasonable services to Mother, but there was no reasonable probability that D.M. would be returned to her within the next six months. The court also found that developing and maintaining D.M.'s sibling relationship was appropriate, although placement with his sibling was not. The court then terminated reunification services and set the matter for a permanent plan hearing.

Mother challenged the juvenile court's orders denying further reunification services and setting a permanent plan hearing. In an unpublished opinion, we denied her petition for extraordinary writ. (*Andrea G. v. Superior Court* (June 14, 2016, B270788).)

On July 1, 2016, the juvenile court held a permanent plan hearing and accepted into evidence the DSS report and adoption assessment, the report of the Court Appointed Special Advocate (CASA), and Father's agreement to submit based on DSS recommendations. DSS recommended adoption by the paternal grandparents as the permanent plan for D.M. The special advocate reported that D.M. had significant special needs, including developmental delays, poor motor skills, and poor social-emotional development. The advocate stated that D.M. and G.M. did not interact with each other during sibling visits and did not appear to have a connection. Mother did not appear at the permanent plan hearing and did not present any evidence.

The matter was submitted without further evidence or argument. The juvenile court found by clear and convincing evidence that D.M. was likely to be adopted, and it terminated parental rights.

Mother appeals and contends that the sibling relationship exception to adoption precludes termination of her parental rights to D.M.

DISCUSSION

Mother argues that termination of her parental rights substantially interferes with D.M.'s sibling relationship with G.M. Mother acknowledges that she did not raise the sibling relationship exception to adoption in the juvenile court, and requests that we exercise our discretion and excuse the forfeiture. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [appellate courts may exercise discretion and excuse forfeiture], superseded by statute on other grounds as stated by *In re S.J.* (2008) 167 Cal.App.4th 953, 962.)

The sibling relationship exception to adoption applies where adoption would create “substantial interference with a child's sibling relationship.” (§ 366.26, subd. (c)(1)(B)(v).) In determining whether the exception applies, the juvenile court should consider the nature and extent of the sibling relationship, including a child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 593.) Section 366.26, subdivision (c)(1)(B)(v) expressly requires the court to consider “whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest.” Application of this exception is “rare.” (*Michael G.*, at p. 593.)

A parent who raises the sibling exception to adoption bears the evidentiary burden of establishing the exception. (*In re D.M.* (2012) 205 Cal.App.4th 283, 290.) We review the ruling of the juvenile court for substantial evidence. (*Id.* at p. 291.)

For several reasons, we reject Mother's contention.

First, Mother did not raise the issue of D.M.’s sibling relationship in the juvenile court, nor did she present any evidence or argument concerning that issue. Moreover, neither DSS nor D.M.’s counsel have had opportunity to present evidence or argument regarding the sibling relationship and the best interests of D.M. Thus, Mother has forfeited this issue on review. (*In re S.B.*, *supra*, 32 Cal.4th 1287, 1293 [forfeiture rule applies in dependency proceedings].) Discretion to excuse forfeiture must be exercised with special care in dependency matters. (*Ibid.*) “Because these [dependency] proceedings involve the well-being

of children, considerations such as permanency and stability are of paramount importance.” (*Ibid.*)

Forfeiture aside, sufficient evidence supports the juvenile court's determination of adoptability and termination of parental rights. The evidence presented by DSS and the CASA volunteer indicates that D.M. and G.M. had little connection or interaction during visits; they had lived together only a short time before their detention. The children were very young and suffered significant developmental, intellectual, and social delays. DSS had no obligation to create a sibling bond where little or no bond existed. The children's profound special needs dictated separate placements. “If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.)

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Donald G. Umhofer, Judge

Superior Court County of San Luis Obispo

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut,
Deputy County Counsel, for Plaintiff and Respondent.