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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B277350
(Los Angeles County
Super. Ct. No. CK77197)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SEAN A. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant Sean A.

Mary Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant Desiree B.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

Sean A. (father) and Desiree B. (mother) appeal from an order of the juvenile court under Welfare and Institutions Code section 366.26,¹ terminating their parental rights with respect to their child, M.B. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2014, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of M.B., who was five days old, alleging risk of serious physical harm and failure to protect. According to the petition and the detention report, both M.B. and mother tested positive for cocaine and marijuana at his birth, and, a few weeks before his birth, father and mother engaged in a physical altercation that resulted in father's arrest. Moreover the detention report stated that M.B.'s two siblings (K.B. and S.A.) were the subject of an open 2014 dependency case based on prior domestic violence incidents, mother had an extensive DCFS referral history based on her substance abuse, and M.B.'s three older half siblings were receiving permanent placement services in a 2009 dependency case based on inappropriate physical discipline by mother and the half siblings' father.

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

The juvenile court detained M.B. from mother and placed him with the maternal aunt.² The court ordered monitored visits for a minimum of six hours per week.

In February 2015, DCFS reported that mother visited M.B. once a week for two hours and had stated she was unable to visit more because of her participation in domestic violence and substance abuse programs in the dependency case for M.B.'s siblings. The report indicated that in the seven weeks since M.B.'s birth, mother attended two sessions of her domestic violence program, had one unexcused absence, and had three other absences. The report also indicated that mother had enrolled in a substance abuse program and had two negative drug tests, but noted she manipulated the on-demand drug testing to test on her own time frame rather than DCFS's.³ As to father, the report indicated that DCFS had scheduled weekly two hour visits starting at the end of January 2015, and father stated he was unable to visit more due to his participation in programs as part of his dependency case for M.B.'s siblings.

At the February 22, 2015 jurisdiction hearing, the juvenile court sustained the section 300 petition.⁴

In April 2015, DCFS reported that mother had missed three drug tests. DCFS also reported that father had missed three visits.

² Father was incarcerated.

³ The February 2015 report did not indicate mother attended any drug program sessions.

⁴ Father, who was incarcerated and not present, waived his right to trial.

In May 2015, father was arrested for violating a criminal protective order after becoming involved in a domestic disturbance with mother. That same month, mother was arrested for prostitution.

At the June 18, 2015 dispositional hearing, the juvenile court declared M.B. a dependent of the court, removed him from parental custody, granted mother reunification services, granted both mother and father a minimum of six hours visitation per week, and ordered mother and father not to visit M.B. together. The court ordered mother to participate in individual counseling, parenting classes, domestic abuse counseling, random drug and alcohol testing, and drug and alcohol counseling. The court found the parents had not made significant progress in resolving the problems that led to M.B.'s removal.

In December 2015, DCFS indicated that mother had attended four more domestic violence sessions, but had stopped attending the program. The report also stated that mother was discharged in June 2015 from her substance abuse program for nonattendance, reenrolled in July 2015 but stopped attending again in October 2015. Since the end of January 2015, mother failed to appear for 10 drug tests, had seven negative tests, and had three positive tests for opiates while on prescription medication. DCFS noted there was a two-month period during which mother failed to test. The maternal aunt stated that mother visited regularly and acted appropriately during visits, and father visited sporadically and acted appropriately during visits.

At the six-month review hearing in January 2016, the juvenile court found mother was only in partial compliance with

her case plan. It terminated reunification services and referred M.B. for section 366.26 permanency planning.

On February 23, 2016, the juvenile court removed M.B. from his placement with the maternal aunt after DCFS discovered she had allowed parents unmonitored contact with the child, she had a new husband with an extensive criminal background, and social media videos appeared to show her son and M.B.'s older half sibling at her home smoking marijuana and caring for M.B. while under the influence of marijuana.⁵

A section 366.26 report from May 2016 stated M.B. had been residing with Mr. and Mrs. G. since his removal from the maternal aunt. The couple, who were also caring for M.B.'s siblings (K.B. and S.A.),⁶ were meeting all of his needs and wished to adopt him. The report stated mother had missed two of her weekly two-hour monitored visits with M.B. Father was incarcerated from January 2016 to April 2016, and had not contacted DCFS to resume visitation. DCFS concluded mother and father had not assumed parental roles, and recommended that parental rights be terminated.

In May 2016, father and mother had another child, A.B.⁷

⁵ In addition, father called DCFS in February 2016 to express concerns about M.B.'s placement with maternal aunt.

⁶ DCFS reported that parental rights as to siblings K.B. and S.A. were terminated on April 19, 2016.

⁷ In July 2016, DCFS filed a juvenile dependency petition on A.B.'s behalf.

In July 2016, DCFS reported that mother had missed seven of her 10 most recently scheduled visits.⁸ The monitor supervising mother's visits indicated mother's visitation continued to be inconsistent, and described the quality of the visits as "fair," noting mother did not bring food or age-appropriate games or toys, but was affectionate. Father had five visits with M.B. before being incarcerated in June 2016.

In August 2016, DCFS reported that M.B. had a strong bond with Mr. and Mrs. G. and was attached to the couple and to his two siblings, K.B. and S.A. He called Mrs. G., "Ma," and sought help from Mr. and Mrs. G. to meet his needs. The couple remained interested in adopting M.B.

At the contested section 366.26 hearing in August 2016, DCFS entered its reports into evidence, and mother introduced into evidence the monitor's reports from April 2016, which described mother as having affectionate and playful interactions with M.B. Mother's counsel argued that M.B. had a strong bond with mother, and she played a parental role. Counsel asked the court to find applicable the beneficial parent-child relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court acknowledged that mother loved M.B. and M.B. had affection for mother, but stated it was unable to find there was "such a strong and beneficial relationship between her and [M.B.] that terminating her parental rights would be greatly detrimental to the child and that the benefits of a stable and permanent home that would come with adoption are outweighed." The court reached the same conclusion with respect to father, and terminated parental rights. The court ordered

⁸ A second weekly visit was added to mother's visitation schedule in June.

adoption as M.B.'s permanent plan and designated Mr. and Mrs. G. as his prospective adoptive parents.

Mother and father appealed.

DISCUSSION

On appeal, mother and father contend substantial evidence did not support the juvenile court's finding that the beneficial parent-child exception did not apply because the monitor's reports from April 2016 showed a strong parent-child bond and mother visited regularly while M.B. was placed with the maternal aunt.⁹ We affirm.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern" and "the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability. [Citation.]" (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subdivision (c)(1) provides that if the court finds by clear and convincing evidence that "it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the Legislature"].) The statutory preference is in favor of adoption, unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies, including that the juvenile court finds "a compelling reason for determining that termination would be

⁹ Father joins in the legal arguments contained in mother's brief.

detrimental to the child” because 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).)

The “benefit” prong of the exception requires the parent to prove 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.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [“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”].) Parents bear the burden of establishing the beneficial parent-child exception applies. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952-954.)

We review under the substantial evidence standard the trial court’s finding that a parent failed to establish a beneficial relationship exception. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 642.) We “indulge in all reasonable inferences to support the findings of the juvenile court.”¹⁰ (*In re Tanya P.* (1981) 120 Cal.App.3d 66, 71.)

M.B. was detained five days after his birth and never lived with mother or father. He was 1 year and 8 months old at the

¹⁰ We review the next step, the juvenile court’s determination of whether the relationship constitutes “a compelling reason for determining that termination would be detrimental to the child,” under the abuse of discretion standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.)

time parental rights were terminated. M.B. had been living with and developing bonds with his siblings, S.A. and K.B., and with his foster parents for six months as a family unit. Thus, neither parent provided for M.B.'s daily needs and care. Neither parent progressed beyond monitored visits with M.B, and at the time parental rights were terminated, neither mother nor father was maintaining regular visitation. While the visits were reported to be generally positive and without serious problems, such limited contact was unlikely to create the opportunity for mother or father to assume a meaningful and significant parental role. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621 [“the parents must show that they occupy “a parental role” in the child’s life,” which “characteristically aris[es] from day-to-day interaction, companionship and shared experiences”]; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [“The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation”].)

Mother argues that she visited M.B. regularly while he was placed with the maternal aunt and the monitor’s reports from April 2016 showed they shared warm and loving interactions and mutual attachment. “A biological 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.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Thus, a “parent must show more than frequent and loving contact or pleasant visits.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) Rather, a parent must show that he or she occupies a “parental role” in the child’s life. (*In re K.P.*, *supra*, 203

Cal.App.4th at p. 621.) Neither mother nor father made such a showing.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.