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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B251092
(Super. Ct. Nos. J1395826, J1395827)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Petitioner and Respondent,

v.

R.V.,

Defendant and Appellant.

R.V. (Mother) appeals an order (judgment) terminating her parental rights pursuant to Welfare and Institutions Code section 366.26. She contends the trial court erred in denying her a contested hearing.¹ We affirm.

FACTS

On February 19, 2012, Mother went to a hospital emergency room and reported that she had been sexually assaulted by a friend. A Santa Barbara County Child Welfare Services (CWS) worker determined that Mother was not able to care for her two children because of a "substance abuse" problem. The children, C.T. and S.T, were both

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

two years old. Mother told the worker that she "regularly smokes marijuana and was currently on methadone."

Staff of a CARES Mobile Crisis unit also "had concerns" with Mother's "emotional stability." They recommended that Mother "go into [a] CARES residential treatment [program] for the night to be further assessed to ensure [her] safety." CWS took the children "into protective custody."

CWS filed a juvenile dependency petition alleging the children fell within the jurisdiction of the court under section 300, subdivisions (b) and (g). In a detention report, CWS noted that on May 4, 2011, while in Alabama, Mother placed the two children in an Alabama "Children's Home" because "she did not have a stable living environment." CWS recommended that the children "remain in out of home care pending a Jurisdictional Hearing." A CWS social worker said she had concerns about Mother's "mental stability." Mother told the worker she was "on methadone due to having a previous addiction to oxycontin."

The juvenile court found the children were persons "described by Welfare & Institutions Code § 300" and ordered them removed from Mother's custody. It ruled Mother would have supervised visits with the children three times a week if she tested "clean" for drugs prior to the visits.

On March 26, 2012, CWS filed a jurisdiction/disposition report and recommended that Mother be provided family reunification services. CWS said Mother "requires extensive treatment for her drug problem and extensive treatment for her chronic instability, erratic behavior, mental health problems, and problems parenting her children." It provided a case plan for services to "stabilize her life so that she can reunify with them."

At the jurisdiction/disposition hearing on April 19, 2012, the juvenile court sustained the dependency petition and found CWS's allegations were true. It ordered Mother to comply with the family reunification case plan and set a three-month period to review her progress.

On July 16, 2012, CWS filed its interim review report recommending that the children continue to be "placed in out of home care." It said Mother entered a

"residential substance abuse treatment program." On June 15, 2012, Mother tested positive for "spice." She confessed that she bought it and smoked it on June 11. CWS said that "[d]uring the review period," Mother "continued to obtain prescriptions for narcotics that interfered with her recovery efforts." Mother's visits with her children were "suspended due to her recent drug use." On June 19, she missed a drug test. CWS offered her "Detox" services, but when Mother started working, "her participation declined."

CWS said the children "appear to be comfortable in their foster home as they were observed to have affection and safety from the foster parents." A therapist concluded "the children are emotionally deregulated after coming back from their visits with the mother as evidenced by the children's increase in throwing tantrums, having meltdowns, whining and not following the rules." CWS said Mother's visits "were consistent, but unstable, because the mother would not set up a regular schedule for visits." Dr. Yanez, a psychologist, diagnosed Mother as having "polysubstance dependence, [a] parent-child relation problem and histrionic personality disorder." Yanez said, "[A]t present, the mother is not currently fit or sufficiently stable to parent her children" Her "behaviors" are the result of a "personality pattern that is pervasive."

In an addendum report filed in August 2012, CWS said Mother did not provide CWS with documentation of "attendance at 12 step meetings nor has she consistently been participating in the required groups or parenting classes" On July 3, 2012, Mother tested "positive for Morphine and admitted to taking hydrocodone and purchasing an immediate clean test at a cigarette shop to alter the test so she can attend group."

On October 15, 2012, CWS filed its status review report and recommended that family reunification services be terminated. CWS said a counselor at the Great Beginnings program determined the children are making "amazing " progress in decreasing their anxiety. That is due "to the caring environment that is provided to them in the foster home." Mother is unemployed. She wants to seek employment "as a bartender." Her social workers and her substance abuse counselor have tried to discourage her from that type of employment.

CWS said Mother "has not followed through with her referrals to counseling." Mother has not "provided consistent signature cards to CWS." After visits with Mother, the children show signs of "anxiety" and "make statements such as 'die mommy.'" After phone calls with Mother, they show signs of "increased emotional distress" and are "angry, hyper vigilant, spitting and hitting." Mother attended parenting classes. Parenting class staff determined that Mother "would attempt to set limits with her children; however, [she] struggled to follow through with the limits she set." Project Preemie monitored her substance abuse treatment. But when Mother was working, "her participation in treatment declined." Mother "has missed testing sporadically throughout the review period which has had a negative [effect] on her visitation consistency."

In addendum reports filed February 4, 2013, CWS said Mother's "inability to commit to her recovery is a concern and has been a pattern throughout this case." Mother enrolled in the Good Samaritan substance abuse out-patient program, but she "missed four appointments." On October 8, 2012, she missed a drug testing appointment. On October 13, she "proceeded to verbally abuse staff" at the Recovery Way program. During child visitation in November, Mother "struggled with supervision of both children." In December, police responded to a domestic violence call. Mother and her partner "were both intoxicated." In January 2013, the Recovery Way program terminated her participation for too many "unexcused absences." CWS said Mother does "not place a priority on a clean and sober lifestyle. . . . [¶] [I]t is in the best interest of [the children] to be moved into permanency through adoption."

In an addendum report filed March 18, 2013, CWS said Mother missed her group treatment appointments on January 23, February 1, 4, 8, 11, 12 and 15. Mother missed drug testing on February 7, 9 and 15. On March 5, 2013, she was unable to give the CWS worker "the exact address" where she was living. Mother told CWS that "she is not currently participating in parenting classes."

On March 18, 2013, at the six-month pre-permanency hearing, the juvenile court terminated family reunification services. It found Mother "failed to participate

regularly and make substantive progress" in her case plan requirements. It scheduled a section 366.26 hearing.

At the hearing Mother's trial counsel requested a contested section 366.26 hearing. She made an offer of proof that Mother's "last in-person contact with the children occurred on 4/17/2013, and . . . the children 'ran' to their mother . . . and 'clung' to her. . . . The children and the mother shared a lengthy goodbye with the children blowing kisses to her, and the mother waiving to them until the children were out of view." Counsel claimed she reviewed "service logs" from November 6, 2012, to July 17, 2013, which showed "mother's visitation was consistently the same: the children being engaged with their mother in singing, playing and learning activities; [and] the mother being 'very active' and 'very involved' with her kids" She said Mother demonstrated "the ability to redirect the children successfully."

Counsel added, "Much will be made, it is anticipated, of the mother's inability to see the children in person since April 17, 2013. There was phone contact between the children and the mother . . . during which time the children spoke to their mother to say 'Mommy , I love you.'" Mother tried to "reestablish visitation with the children in June 2013. [T]he mother sought visits, but tested positive for Morphine on 6/12/2013." Counsel claimed the CWS social worker violated a court order by refusing "to set up visitation for the mother in a conversation on 6/21/2013, when she told the mother that she could see the children during a closure visit after her parental rights are terminated."

Counsel told the court that Mother intended "to be here this afternoon." But she "texted" counsel to indicate "she's not able to make it."

The juvenile court found the offer of proof to be "insufficient" for a contested section 366.26 hearing. It said, "[T]here are two prongs and I don't think either have been met to legal satisfaction warranting a hearing. . . . There is clear and convincing evidence it is likely the children will be adopted." Mother appeals the judgment that terminated her parental rights.

DISCUSSION

Mother contends the trial court violated her due process rights when it determined her offer of proof was insufficient to require a contested section 366.26 hearing. We disagree.

Where a parent claims an exception to the termination of parental rights, the trial court has the discretion to require an offer of proof prior to holding a contested section 366.26 hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) The purpose of the offer of proof is to ensure that the parent has evidence of significant probative value before limited judicial resources are committed to a hearing. (*Ibid.*) The offer of proof must be specific, setting forth the actual evidence to be produced, not merely facts and issues to be argued. (*Id.* at p. 1124.)

Section 366.26, subdivision (c)(1)(B) 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 "[t]he 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 with the child and the child would benefit from continuing the relationship." (*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." (*Ibid.*) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936.) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) The existence of a

beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs, among other factors. (*In re C.B.* (2010) 190 Cal.App.4th 102, 124; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship may exist when children were in mother's care the majority of their lives].)

Historically, courts have applied the substantial evidence standard of review. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) The case of *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315, applied the substantial evidence standard to the trial court's determination whether a beneficial relationship exists, and the abuse of discretion standard to the court's determination whether the relationship is so important that it compels a plan other than adoption. Here we affirm under either standard.

"In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court . . . has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable. [Citation.] The trier of fact is not required to believe even uncontradicted testimony. [Citation.]" (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

Mother's offer of proof falls far short of demonstrating that this is the extraordinary case. It shows her visits are pleasant and these very young children react responsively to her during the short visits. But that, by itself, does not establish the existence of a responsible parental relationship. CWS had to stop visitation because of Mother's drug abuse problem. Dr. Yanez said Mother was not "fit or sufficiently stable to parent her children." The offer of proof did not include proposed evidence showing the steps Mother successfully took to overcome drug addiction or her emotional stability problems. Nor did it show how she would provide the children with a stable home environment. In 2011, she placed her children in a "Children's Home" because she did not have "a stable living environment." She did not show what steps she took to prevent that from happening again.

There was no showing to demonstrate Mother's knowledge of parenting responsibilities or her ability to overcome the problems that led to her noncompliance with her case plan responsibilities. Counsel's statement that she had reviewed the CWS case reports did not demonstrate there was new evidence. The court already had that history in evidence. The conclusory statement that Mother demonstrated "the ability to redirect the children successfully" was insufficient. It did not include sufficient proposed evidence to support that claim. Mother's claim about the ability to take responsibility is undercut by her failure to attend the hearing.

Mother claims CWS has improperly cited to some earlier CWS reports that were not admitted as evidence at the section 366.26 hearing. But those reports, which were admitted as evidence in prior hearings, constitute part of the factual and procedural history of this case. Yet even excluding those reports does not change the result because Mother has not shown how omitting them cures her insufficient offer of proof.

Mother suggests she has made some progress. But the juvenile court could reasonably infer her history casts doubt on her ability to overcome the problems that led to CWS intervention. We do not disparage Mother's efforts. We simply conclude the trial court could reasonably find the evidence shows adoption is in the children's best interest.

The order (judgment) is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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

Michael C. Ghizzoni, County Counsel, Brian R. Pettit, Deputy, for Plaintiff and Respondent.