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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B295042
(Los Angeles County
Super. Ct. No. DK21119)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

Emma G.,

Defendant and
Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Judge. Affirmed.

Melissa A. Chaitin, Under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Emma G. (mother)¹ appeals from the findings and order terminating her parental rights under Welfare and Institutions Code section 366.26² as to B.G. (daughter). Mother contends the court erred when it failed to apply the parental relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Daughter—who was 12 years old at the time—was placed on a psychiatric hold in January 2017. She stated she wanted to kill herself; she also disclosed mother yelled and screamed at her, hit her, and pulled her hair. An investigating social worker with the Los Angeles County

¹ Presumed father Jose M. died in 2011.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Department of Children and Family Services (Department) observed that daughter had cut marks on her left arm, which daughter said were self-inflicted. Daughter told the social worker she no longer wanted to live with mother.

The Department detained daughter from mother's custody, and filed a petition alleging she was at risk of harm under section 300, subdivisions (a), (b)(1), and (c), based on physical and emotional abuse by mother, as well as neglect related to mother's mental and emotional problems. The court ordered mental health services for both mother and daughter, as well as monitored visits.

In March 2017, the court sustained amended petition allegations under section 300, subdivisions (a) and (b) that mother physically abused daughter and that mother's mental and emotional problems interfered with her ability to care for daughter. The court ordered mother to participate in parenting classes and individual counseling to address case issues, as well as mental health counseling, including a psychological assessment and taking all prescribed psychiatric medications. Mother was permitted monitored visits with daughter, initially in a therapeutic setting.

Daughter refused to visit with mother until July 2017, when she told her therapist she wanted a monitored visit with mother before starting conjoint therapy. On August 3, 2017, mother and daughter had their first visit since daughter's detention in January 2017. The monitored visit went well, but they had very little to say to each other. After the court ordered that maternal grandfather could monitor

the visits between mother and daughter, a visit ended early on August 15, 2017, with mother insulting maternal grandfather and daughter getting upset. Future visits were to be monitored by daughter's caregiver, rather than maternal grandfather. Daughter was adamant she did not want to return to mother's care at that time.

At the six-month review hearing on September 11, 2017, the court found mother in partial compliance with the case plan and directed the Department to continue efforts to place daughter with maternal grandfather.

Daughter was placed in maternal grandfather's home in December 2017, where she was well-cared for and happy. She had a good attitude and was doing well at home and in school. Both mother and maternal grandfather attended monthly meetings with daughter's Wraparound team. Daughter consistently expressed she wanted to remain with maternal grandfather and did not want to return to mother's home. Mother had two-hour visits with daughter on Saturdays at church and on Sundays at a fast-food restaurant, monitored by maternal grandfather, who initially reported that visits went well. However, during a visit on February 11, 2018, mother verbally attacked both maternal grandfather and daughter, and daughter told maternal grandfather she no longer wanted to see mother.

Mother received a psychiatric evaluation, and she was diagnosed with anxiety, adjustment disorder, and acute stress reaction, but no psychotropic medications were recommended. The Department acknowledged that mother

was actively participating in reunification services, but based on daughter's emphatic insistence that she did not want to return to mother, paired with the fact that daughter was doing well in maternal grandfather's care, the Department recommended terminating reunification services.

At the 12-month review hearing on March 12, 2018, the court found a substantial probability that daughter would be returned to mother, and ordered reunification services to continue.

The Department's 18-month review report gave additional information about the challenges of maintaining a relationship between mother and daughter, including details about statements made by mother before the March 12, 2018 12-month review hearing took place.³ The deterioration of the relationship started with a February 11, 2018 visit, where mother verbally attacked maternal grandfather and daughter. The attacks continued after the visit, through texts and phone calls. Mother sent daughter text messages accusing her of siding with grandparents, calling her a bitch, and saying "I don't care if I loose [*sic*] u I wish I never had u." Maternal grandfather informed mother he was pausing visits until her behavior changed. When the social worker asked mother about the visits, mother initially said they were okay, but when the social worker pressed about the

³ The report also documents the daughter's referral for orthodontia, and the Department's efforts at facilitating authorization and payment for orthodontia.

February 11, 2018 visit, mother said she had not brought anything up because she wanted to see what lies they would say about her. Mother had told daughter “Wait ’till you grow up. And have problems” and accuse daughter of being lazy because of the way she dressed. Mother felt that daughter and maternal grandfather were ignoring and being rude to her. When mother told the social worker she asked daughter if she wanted to stay with maternal grandfather and daughter said yes, mother told the social worker “Wish I never had her. Wish I never had family. If I lose custody, I will say goodbye to [daughter] forever.” The social worker informed mother’s therapist of mother’s statements.

The 18-month review report noted that between February and June 2018, mother made negative statements about maternal grandfather, maternal grandmother, and daughter. Mother also made contradictory statements about daughter’s placement, first stating she understood if daughter did not return home and was adopted by maternal grandfather, and later stating she wanted daughter to return and did not want maternal grandfather to adopt her.

On April 13, 2018, daughter wrote a letter stating she was not ready to have visits with mother “because I still need time to process what happened between us in the past. I am also worried that she will hurt me again. My visitations with her re-traumatize me because I get flashbacks.”

On April 20, 2018, daughter said she was ready for conjoint sessions, but not for visits. She left open the

possibility of visits in the future. Mother missed the first conjoint therapy session because she forgot, even though the social worker and therapist reminded mother of the session both the day before, and the day of the session. Mother arrived 30 minutes late to a session on April 27, 2018, at which the social worker observed both mother and daughter to be calm and anxious. Mother left the session without saying goodbye to anyone. On May 4, 2018, mother arrived 30 minutes late, but the social worker observed that both mother and daughter were calm. Daughter said after the session that she felt good and did not feel triggered by mother. Mother said goodbye when she left. Mother was 10 minutes late to the last session on June 15, 2018. Both mother and daughter were observed to be anxious, and mother left without saying goodbye.

On June 8, 2018, daughter said she was unsure whether she wanted to start visits with mother again. The same day, mother told the social worker that if daughter was adopted, she never wanted to see or talk to her again. On July 11, 2018, the court continued the 18-month hearing for a contested hearing to take place on August 29, 2018.

The Department submitted two last minute information reports summarizing events in July and August. On July 2, 2018, mother complained that the therapist was rude and she only attended because it was mandatory. Mother also claimed that she was not a bad mother, but that she and her daughter had been bullied.

After a conjoint therapy session on July 20, 2018, the therapist and the social worker spoke with daughter about the difference between adoption and legal guardianship. Daughter understood the difference, and was interested in counseling and groups to help her decide between the two options. Daughter said she was talking more with her mother and wanted to start having monitored visits again.

On July 30, 2018, mother sent the social worker 11 text messages, essentially complaining about being required to attend conjoint sessions and claiming that the therapists are rude and cruel to her and make fun of how she looks.

On August 7, 2018, mother's therapist called the social worker to advise that mother needed long-term services. The therapist explained in an earlier letter that his organization provides brief, intensive therapy, but mother could continue if she wanted, particularly given that she had difficulties with previous mental health providers.

During an August 9, 2018 meeting with the adoptions social worker, daughter expressed some ambivalence about being adopted. Once the social worker answered her questions, daughter reported she felt ready to proceed with adoption; she wanted to remain with maternal grandfather and be adopted by him, and she hoped the case would end soon. Maternal grandfather stated he supported whatever daughter decided.

On August 9, 2018, mother and daughter had a conjoint therapy session, followed by a visit, monitored by the social worker. Mother was appropriate, but there were

periods of silence. A second monitored visit took place the following week, and the social worker again noted periods of silence. Mother asked when she could begin unmonitored visits. Afterwards, when the social worker asked daughter for her thoughts about unmonitored visits, daughter said, “No, I’m not ready for that.” A third monitored visit on August 23, 2018 was also appropriate. When the social worker asked mother and daughter to move to a different table so she could hear their conversation, mother asked if the social worker had to listen to everything they said. Mother jumped from topic to topic, including school and daughter’s grades.

On August 27, 2018, a conjoint therapy session was canceled because mother was unable to take directives from the therapist, who asked mother to listen to daughter without interrupting. The therapist was not able to stop mother from speaking over daughter and making negative comments, including telling daughter to stop fake crying. The therapist was unable to get mother to understand how her comments were harmful to daughter. Daughter walked out of the session in tears while mother commented that daughter was crying fake tears. The therapist stopped the session because it was having a detrimental effect on daughter. The following day, the therapist told the social worker that mother had not been able to put into practice the tools she had learned during prior sessions, and so could not communicate appropriately with daughter. The therapist said continuing conjoint sessions would be

detrimental to daughter, and that visits should remain monitored.

Mother's reunification services terminated

The court terminated mother's reunification services on August 29, 2018. At that hearing, the Department clarified that mother should continue to have monitored visits, but not conjoint therapy. Minor's counsel also reported that daughter wanted to be adopted by maternal grandfather, and submitted on the question of conjoint therapy visits. Over mother's objection to terminating conjoint visits, the court terminated conjoint visits, but ordered monitored visits to continue.

After the August 29, 2018 hearing, daughter had very limited contact with mother, and did not wish to speak or have visits with her. Daughter rejected mother's attempts to speak with her by phone. Maternal grandfather reported that mother showed up to church twice, and she was pleasant and spoke with daughter. The Department noted that it would "respectfully facilitate visits between [m]other and child . . . once the child expresses a readiness to rebuild her relationship with [m]other."

Section 366.26 hearing

At the section 366.26 hearing on January 9, 2019, mother did not present any evidence, but her counsel stated

mother's position that there was a strong bond between her and her daughter. Mother "has been working in individual counseling to address all the issues and would like an opportunity to reunify with her daughter." The court found a likelihood of adoption by clear and convincing evidence, and in its minute order included a finding that "any benefit accruing to the child from his/her relationship with the parent(s) is outweighed by the physical and emotional benefit the child will receive through the permanency and stability of adoption, and that adoption is in the best interests of the child."⁴

DISCUSSION

Exception to termination of parental rights based on objection by minor over 12 years of age

Mother first argues error based on the court's failure to seek input from minor's counsel on whether daughter objected to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(ii), which provides a separate basis for a court to find "a compelling reason for determining that termination would be detrimental to the child" based on an objection by a child who is 12 years old or older. Mother

⁴ While there is no evidence in the record that daughter has any siblings, the minute order also contained language finding that any risk of loss of contact with siblings is outweighed by the long-term benefits of adoption.

does not cite any authority that she has standing to raise such an argument, or that the subdivision places on the court an affirmative obligation to inquire of the minor or minor's counsel. Neither minor nor her counsel objected. We therefore reject this part of mother's argument.

Parental relationship exception to termination of parental rights under section 366.26 subdivision (c)(1)(B)(i)

Mother contends the court erred in finding inapplicable the parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). “At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299 (*Noah G.*)). At that stage of the proceedings, the preferred plan is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645 (*Breanna S.*)). “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*Id.* at pp. 645–646.)

Mother bore the burden of proving the applicability of the parental relationship exception. However, during the

hearing, mother's counsel did not expressly invoke the exception, nor did mother present any evidence to prove the exception applied. This failure arguably waived any contention of error with respect to the court's decision against applying the parental relationship exception to termination of her rights. (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295 [the court does not have a sua sponte duty to determine whether an exception applies].) Even if mother had properly raised the exception, she has not shown the court abused its discretion in finding the exception inapplicable.

The beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), applies only if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he 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).) In analyzing whether a parent has met his or her burden to show application of the parent-child relationship exception, the dependency court considers two prongs. The first prong examines the quantitative question of how consistently a parent has maintained visitation with the child. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) “[T]he second prong involves a qualitative, more nuanced analysis, and cannot be assessed by merely looking at whether an event, i.e. visitation, occurred. Rather, the second prong requires a parent to prove that the bond between the parent and child

is sufficiently strong that the child would suffer detriment from its termination.” (*Id.* at p. 613.)

The parent asserting the parental relationship exception will not meet his or her burden by showing the existence of a “friendly and loving relationship,” an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) The parent must show she occupies a parental role in the child’s life, and that “the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, at p. 555; see also *Breanna S.*, *supra*, at p. 646; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.) Courts consider “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) A court must find that the parent-child relationship “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 other words, 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. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*Id.* at p. 575.)

“Moreover ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.)

In reviewing challenges to a court’s decision to deny application of a statutory exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, based on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080; *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622.) For factual determinations, such as whether a parent has shown consistent visitation and the existence of a parental relationship or a close and strong bond with siblings, we apply a substantial evidence standard of review. (*In re J.S.*, *supra*, at p. 1080; *In re K.P.*, *supra*, at p. 622.) Once the court has found adequate evidence of a parental or sibling relationship, it must determine whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*In re J.S.*, *supra*, at p. 1080; *Noah G.*, *supra*, 247 Cal.App.4th at pp. 1299–1300.) Because the second determination requires the court to exercise its discretion, we apply an abuse of

discretion standard of review. (*In re J.S.*, *supra*, at p. 1080; *Breanna S.*, *supra*, at p. 647; *Noah G.*, *supra*, at pp. 1300–1301.) “In the dependency context, both standards call for a high degree of appellate court deference.” (*In re J.S.*, *supra*, at p. 1080 [sibling relationship exception].)

We find no error in the court’s determination that the parental relationship exception was inapplicable here, because even if we were to assume the existence of a bonded relationship between mother and daughter based on the first 12 years of daughter’s life, plus seven or eight months of monitored visits during the two-year-long dependency proceeding, there is no evidence in the record that ending the relationship would be detrimental to daughter. At the outset of the case, daughter reported mother yelled and screamed at her and hit her. Daughter was suicidal and did not want to live with mother. For close to eight months at the beginning of the dependency case, from January through July of 2017, daughter refused to have any visits with mother. Mother claims that daughter enjoyed visiting with and loved her mother. There is evidence that conjoint counseling and monitored visits went well for a time, specifically between August 2017 to February 2018. However, rather than working to restore her relationship with daughter, in February 2018, mother lashed out at both maternal grandfather and daughter in a way that led daughter to again refuse visits with mother. Mother’s texts to daughter called her a bitch and stated that mother wished she never had daughter. Mother repeated this sentiment to

the social worker as well. Daughter wrote a letter in April 2018 stating that she was not ready for visits with mother, for fear of being re-traumatized.

Even after mother and daughter were engaged in conjoint therapy, mother would arrive late to the sessions, and would sometimes not say goodbye to anyone at the end of the session. In July 2018, mother was complaining about having to attend the conjoint sessions, and by the end of August, the therapist determined that mother's inability to take direction and her negative statements to daughter during the sessions was detrimental to daughter.

To carry her burden of proof, mother must show not only a parental bond between mother and daughter, but that the detriment suffered by daughter if mother's parental rights were terminated outweighs the benefits of adoption. (See *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) The evidence of a few positive monitored visits is inadequate, when considered in the broader context of the dependency proceeding. In addition, mother offered no evidence about what detriment daughter would suffer if her parental rights were terminated. In contrast, the Department consistently reported that daughter was doing well with maternal grandfather, who was committed to adopting her. On this record, we find no error in the court's determination that the parental relationship exception was inapplicable.

DISPOSITION

The order terminating parental rights is affirmed.

MOOR, J.

We concur:

RUBIN, P. J.

KIM, J.