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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re D.Q. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.Q.,

Defendant and Appellant.

B295808

(Los Angeles County
Super. Ct. No. DK14509)

APPEAL from orders of the Superior Court of Los Angeles County, Martha A. Matthews, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals an order terminating her parental rights to Son. We affirm. Code references are to the Welfare and Institutions Code.

I

These are the relevant facts.

Mother has three children but this appeal only involves Son.

In December 2015 the Department of Children and Family Services removed Son and his two siblings from Mother and placed them with non-relative extended family member Darlene M. Son was one month old and his siblings were six and eight years old. The Department then filed a section 300 petition on behalf of the children, alleging Mother could not “provide regular care and supervision” because she had “an unresolved history of illicit drug use and [was] a recent user of methamphetamine and marijuana.” The juvenile court sustained the petition and ordered the children removed from Mother’s custody. The court ordered reunification services for Mother including individual counseling, random drug and alcohol testing, and a 12-step program. The court granted Mother monitored visits and ordered her to maintain a sober and stable lifestyle.

Mother used methamphetamine when she was four or five months pregnant with Son. Son tested positive for amphetamine and methamphetamine and had minimal withdrawal symptoms.

Son had developmental and health problems. He spent time in the neonatal intensive care unit for poor feeding and sepsis. At three months, he had small tremors, was physically stiff, and had difficulty focusing his eyes.

Mother’s two older children moved in with maternal Grandmother in March 2016. Son stayed with Darlene M. Mother visited the children for about an hour a week. She did not commit to a visitation schedule and was on her cell phone during visits.

Mother did not enroll in any programs or counseling. She missed all her random drug and alcohol tests.

The juvenile court terminated Mother's reunification services in July 2016.

Son had a close bond with Darlene M. and her family. He went to her for comfort and was very affectionate with her. Son called Darlene M. "Mommy" and Darlene M.'s husband "Daddy." Son thrived in Darlene M.'s home. Darlene M. wanted to adopt Son and was "very in-tune" with Son's needs. The Department recommended Darlene M. adopt Son because of this strong bond, as removal "would be traumatic and detrimental to his wellbeing."

Son began weekend overnight visits with Grandmother in May 2017. In early 2018, Son developed new behaviors after returning from those visits. Son threw tantrums, hit others, had nightmares, and was "extremely sleepy." He started "pocketing food" and refused to eat anything but junk food. Son also developed a harsh cough after weekend visits, which Darlene M. believed could be from third-hand smoke.

The Department received a referral expressing concern about Son's weekend visits because substance abusers resided at Grandmother's house. A police log noted "[n]arcotic activity day and night." In June 2018, a neighbor called the police because Son's adult cousin, who lived with Grandmother, "was under the influence of a narcotic and assaulting family members." The next month, Mother called the police because the same cousin "was under the influence of a narcotic and attacked [Grandmother]." Both incidents occurred while Son was at Grandmother's house. Grandmother refused to seek a restraining order or evict the cousin. Grandmother did not report the incidents to the Department.

Grandmother often violated the juvenile court's order for monitored visits with Mother by allowing Mother unsupervised

contact with Son, even though Mother had not shown sobriety. The Department received ongoing reports that Mother lived in Grandmother's home since early 2016.

Mother claimed she had not used drugs since giving birth to Son. But she appeared under the influence during multiple visits. In one visit, Mother was "messed up," could "[barely] talk and walk, was flinching and had a strong smell." Mother was very argumentative while holding Son and "did not want to hand over the baby." In another visit, Mother "appeared to be under the influence of an unknown substance." A Department referral stated Mother was a substance abuser.

The juvenile court later restricted Grandmother to monitored visits instead of overnight visits. After the overnight visits ended, Son stopped having tantrums, pocketing food, and refusing to eat.

Son needed constant reassurance Darlene M. would not leave him. When Darlene M. brought Son to visit Mother and Grandmother, Son told Darlene M., "I stay with you." He came to Darlene M. during visits to hold her hand or sit on her lap and talk to her. Whenever Darlene M. and Son went out together, Son repeated, "I stay with you, I stay with you." Son started to yell when Darlene M.'s sons unbuckled him from his car seat and he did not see Darlene M. getting out of the car.

The juvenile court terminated Mother's parental rights and appointed Darlene M. as Son's prospective adoptive parent in February 2019. The court found the beneficial-relationship exception to adoption did not apply because while Mother "spent a lot of time with [Son]," much of the time was "unauthorized under the radar contact" violating the court's order for monitored visits. Mother did not "address the substance abuse issue and work with the social worker and be transparent and honest and get unmonitored visitation." The court found the benefit of Son's

parental relationship with Mother did not outweigh the stability and permanence Son had with Darlene M.

II

The juvenile court was right. The beneficial-relationship exception does not apply to Mother and Son.

Our review is deferential. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [noting split between courts applying substantial evidence and courts applying abuse of discretion but concluding there is no significant difference].) We would affirm in this case under any standard of review.

First we explain the beneficial-relationship exception. The juvenile court must develop a permanent plan for children who cannot be reunified with a parent. The preferred plan is to terminate parental rights and have the children adopted. (*In re K.P.* (2012) 203 Cal.App.4th 614, 620; §366.26, subd. (c)(1).) But the court may not terminate parental rights if it finds termination would be detrimental to the child because (1) the parent has maintained regular visitation and contact with the child; and (2) the child would benefit from continuing the relationship. (§366.26, subd. (c)(1)(B)(i).) This statutory exception is the “beneficial-relationship exception.”

Mother argues the beneficial-relationship exception applied because she “visited regularly with [Son] and there was no doubt that the two were bonded and loved each other.”

This is true. Mother testified Son was “overjoyed” when he saw her and cried when their visits ended. The juvenile court stated “it’s not at all in dispute that Mother loves [Son] and he has a bond with her.” But frequent and loving contact alone is insufficient to establish a beneficial parent-child relationship. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300.)

Mother did nothing to address the very reason Son was removed: her sobriety. The juvenile court terminated reunification services because Mother did not enroll in programs or counseling and missed every random drug and alcohol test. Mother appeared under the influence during visits with Son. The court noted Mother “really has never gotten to the point where she was able to prove that she was no longer using drugs” and “[n]o one really knows what her substance abuse situation is now.”

The juvenile court also noted Mother created a bond with Son by having a lot of “unauthorized under the radar contact” with him, violating the court order requiring monitored visits. So any benefit to Son in continuing a parental relationship with Mother—who did not address her substance abuse issues and formed this relationship by circumventing the court’s order—did not “outweigh the stability and permanence” Son had with Darlene M.

Son has lived with Darlene M. almost his entire life. He has a close bond with Darlene M. and has become part of her family. Darlene M. has given Son care, safety, and stability. She has provided for his physical and emotional needs. Adoption by Darlene M. would provide Son the security of a permanent home, free from substance abuse.

The juvenile court assessed the case with compassion and acknowledged the weight of terminating parental rights. The court thoughtfully considered the circumstances and correctly ruled the beneficial-relationship exception did not apply. Termination of Mother’s parental rights was proper.

DISPOSITION

We affirm.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.