Filed 11/13/12 In re B.G. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re B.G., a Person Coming Under the Juvenile Court Law.	B240655 (Los Angeles County Super. Ct. No. CK81883)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHELSEA G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Court Commissioner. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Chelsea G. (mother) appeals an order terminating her parental rights to B.G., born in July 2009.[1] Mother contends that the juvenile court erred in terminating her rights because substantial evidence supported the "beneficial relationship exception" under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i).[2] Finding no error, we affirm.

BACKGROUND

I. Detention

B.G. came to the attention of the Department of Children and Family Services (DCFS) in March 2010, when a caller reported that mother and maternal grandmother (grandmother) were using drugs and neglecting B.G. Mother and grandmother drug tested; mother tested positive for methamphetamines and amphetamines, and maternal grandmother may also have tested positive for drugs. Mother and grandmother agreed to accept voluntary family maintenance services and to cooperate with DCFS.

DCFS detained nine-month-old B.G. in April 2010. The detention report, filed April 15, 2010, stated that deputies responded to the family home on April 12, 2010, on a tip that people living in the home were responsible for burglaries in the area. Christopher K. and his father, William K., lived in the home; mother, grandmother, and B.G. had been staying with them for about a month. The deputies searched the home and found numerous stolen items, marijuana pipes, methamphetamine pipes, and syringes containing heroin and cocaine. Methamphetamine pipes were found in the couch where grandmother, in whose care B.G. had been left, slept. Deputies also found a large knife on a table and a loaded gun elsewhere in the home.

A children's social worker (CSW) reported the house to be "absolutely filthy and smelly," with beer cans "all over the place," clothes and grime on the carpet, and a litter

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[1] B.G.'s father, Darrel L. (father), is not a party to this appeal.

[2] All further statutory references are to the Welfare and Institutions Code.

box full of cat feces in one bedroom. The CSW found dirty bottles for the baby in the kitchen, but no baby formula or clean bottles. The living room where mother, grandmother, and B.G. lived "was a mess with clothes on the couch and the floor and the coffee table. The home was in a deplorable state." Mother was not at home.

As the CSW was leaving the home with B.G., mother arrived home with some friends. Mother and her friends were arrested because the car they arrived in contained stolen items. During a subsequent interview with a detective, mother admitted to burglaries.

The CSW spoke subsequently with mother's cousin, R.B. R.B. reported that mother had been using drugs since she was 14 or 15 years old and used drugs during her pregnancy with B.G. R.B. believed mother used heroin, marijuana, speed, and cocaine, and said she associated with gang members. R.B. said maternal grandmother had been addicted to Demerol eight years earlier, but she did not know whether grandmother currently was using drugs. R.B. said she cared for B.G. five to six times a month, and reported that B.G.'s clothes were usually filthy, her diaper full of feces, and her bottles dirty. A month earlier, R.B. discovered mother in a car with B.G., smoking with the windows rolled up. Later that afternoon, mother told R.B. she could not pick up B.G. because she was too high. Subsequently, R.B. discovered B.G. had developed a fungus (thrush) in her mouth.

The CSW also spoke with maternal grandmother, who said she knew mother had smoked marijuana but was not aware of any other drug use. Grandmother admitted she had been addicted to Demerol, but said she had not used it for five years. She also admitted having been arrested for drug possession six years earlier, but said the drugs were not hers. She admitted testing positive for drugs once while on probation. She said she was devoted to taking care of B.G. and denied the police officer's reports that there were no clean bottles or formula in the house.

Mother told the CSW that she met Christopher K. through a friend and did not know him well, but knew him well enough to know that he would not hurt her or her baby. She did not know whether Christopher K. was a drug user. Mother denied that

methamphetamine pipes had been found in the couch in the living room where she and grandmother slept. Mother claimed she had not used drugs while pregnant, and said she had stopped using drugs when she moved into Christopher K.'s house.

On April 13, 2010, mother was arrested for use of a controlled substance.

II. Juvenile Dependency Petition and Detention Hearing

DCFS filed a juvenile dependency petition on April 15, 2010. It alleged that B.G. was within the juvenile court's jurisdiction pursuant to section 300, subdivisions (b) and (g), as follows:

b-1: Mother is a frequent abuser of heroin, marijuana, amphetamine, and methamphetamine, which renders her unable to provide B.G. with regular care and supervision.

b-2: Mother established a dangerous home environment for B.G., in that drug paraphernalia, including syringes and drug pipes, and a loaded firearm were found in the child's home and within her access, and mother permitted an acquaintance, Christopher K., who is a known drug user, to have unlimited access to B.G.

b-3: Father is a current abuser of prescription medication, which renders him incapable of providing B.G. with regular care and supervision.

b-4: Father suffers from mental and emotional problems, including posttraumatic stress disorder, suicidal ideation, and a suicide attempt, which render him incapable of providing B.G. with care and supervision.

b-5: Mother established a dangerous home environment for B.G. by allowing maternal grandmother, a known substance abuser, to reside in the family home and have unlimited access to B.G., including by providing child care for B.G.

b-6: On prior occasions, mother failed to make an appropriate plan for B.G. by placing her in the care of a maternal cousin, R.B., and failing to provide her with food, clothing, or medical care.

b-7: On April 12, 2010, mother established a filthy and unsanitary home environment for B.G.

b-8 and g-1: Father has failed to provide B.G. with the necessities of life, including food, clothing, shelter, and medical care, and father's whereabouts are unknown.

The juvenile court held a detention hearing on April 15, 2010. It found a prima facie case for detaining B.G. and ordered her placed in DCFS custody.

III. Jurisdiction and Disposition

On June 28, 2010, the court sustained the allegations of paragraphs b-1 through b-8 and g-1 of the petition, and declared B.G. a dependent of the juvenile court pursuant to section 300, subdivisions (b) and (g). It further found that substantial danger existed to B.G.'s physical and emotional health, there were no reasonable means to protect her without removing her from mother's custody, and reasonable efforts had been made to eliminate the need to remove B.G. from mother's custody. Mother was ordered to participate in individual and drug counseling, attend parenting classes, and submit to weekly, random drug testing. Mother was granted reunification services and monitored visitation with B.G.

IV. Six-month Review

The six-month status review report, filed December 7, 2010, stated that mother did not visit B.G. between July 5, 2010, and late November 2010. Mother's whereabouts were unknown to DCFS between August and October, during which time mother had no contact with DCFS or B.G.'s caregiver. On October 2, 2010, DCFS received a letter stating that mother had entered a drug and alcohol treatment center on July 27, 2010, but had left the program against the advice of staff on August 11, 2010. Mother entered another treatment program, Cri-Help Treatment Center, on October 26, 2010.

On December 7, 2010, the juvenile court ordered DCFS to continue to provide family reunification services for mother, and set a 12-month review hearing for June 7, 2011.

V. Twelve-month and Permanency Review

DCFS filed a 12-month status review report on June 7, 2011. It reported that mother had been discharged from the Cri-Help Treatment Center on December 1, 2010, on suspicion of drug use. Mother had several visits with B.G. at Cri-Help between November 17 and December 1, 2010. Mother enrolled in Patterns Women and Children Recovery Center on December 13, 2010, but left the program on January 3, 2011, against staff advice. She then lived at Spencer House II, a sober living house, from January 3 to April 30, 2011. Mother was reported not to have visited with B.G. between December 1, 2010, and late May 2011, and to have failed to return the CSW's phone calls between March 1 and May 12, 2011. On May 12, 2011, mother told a CSW that she wanted to visit her daughter but had been told by the caregiver that she was not allowed to have visits until she contacted DCFS; she subsequently told a CSW that she was not visiting B.G. because she did not like the friends with whom B.G.'s caregiver lived. It "appeared to [the CSW] that mother had not been making efforts to visit her child and comply with court ordered programs."

On June 7, 2011, DCFS learned that B.G.'s caregiver had allowed maternal grandmother to care for B.G. since December 2010. The caregiver said that "she had enough with the family and she is ready to give up caring for [B.G.]." B.G. was placed in a foster home from June 7-29, 2011, and then with a family friend, Rachel C., on June 29, 2011. Rachel C. reported that between June 29 and July 21, 2011, mother and maternal grandmother visited B.G. on a daily basis.

On July 21, 2011, the court ordered mother's visits with B.G. to take place at a DCFS office. On July 22, 2011, the CSW advised mother that she could visit B.G. two to three times per week, for two to three hours each visit, and told mother to schedule monitored visits directly with the caregiver. Monitored visits initially were scheduled on Mondays, Wednesdays, and Fridays from 2:00 to 3:00 p.m. Mother then requested that visits be scheduled just twice a week, for one hour each. However, mother cancelled visits on August 2 and 4, visited with B.G. for only 30 minutes on August 9 and 11, and cancelled a scheduled visit on August 16, 2011.

On August 19, 2011, B.G. was removed from Rachel C.'s home and placed in a foster home.

Mother entered a detox program at Tarzana Treatment Center on August 18, 2011, and transferred to the residential unit on September 1, 2011. On September 6, 2011, mother's counselor approved two-hour visits between mother and B.G., and mother had monitored visits with B.G. on September 9, 16, 23, and 30, 2011. The monitor observed that during the September 16 visit, mother ate lunch with B.G. and then "turns on the TV and plays videos back to back. [Monitor] notices that mom is zoned into the TV more than interacting with child. Child is good with keeping herself busy." During the September 23 visit, the monitor noted that mother was appropriately playful and interactive with B.G. for an hour in an empty conference room, but when the visit was moved to another room, mother immediately turned on the television and had limited further interaction with B.G. Mother ended the visit 20 minutes early.

On October 11, 2011, the juvenile court found that mother had not satisfactorily completed the case plan. The court specifically noted, among other things, that mother "has not had sufficient visitation. She seems to want to leave the visits early, saying she wants to go to classes. The visitation would be first and foremost in my mind for her." The court thus terminated reunification services and set a permanency plan hearing.

VI. Mother's Section 388 Petition

Mother filed a section 388 petition on December 9, 2011. The juvenile court set the matter for hearing on February 7, 2012; on that date, it denied the petition, finding no changed circumstances and that the requested relief was not in the child's best interests.

VII. Termination Hearing

DCFS filed a section 366.26 report on February 7, 2012. The report noted, among other things, that during many visits with B.G., mother arrived late, interacted with B.G. only very briefly before turning on the television, and routinely ended visits early. For example, the monitor reported that on September 30, 2011, mother arrived for a visit

10 minutes late, interacted with B.G. for several minutes, and then turned on a movie. Mother's "full focus [is] on the TV while child tries to play with toys." "[M]om continues to discourage child from playing with toys . . . and says 'come sit down.' . . . [¶] . . . [¶] Mom ends the visit early at 12:40 pm." The monitor similarly reported that on October 7, during the first hour of the visit "mom sits directly in front of the TV and tries at all cost to encourage child to sit on her lap. When child tries to play with toys mom soon picks child up and regains attention back on the movie. [¶] Mom uses the restroom and when she gets up child starts to whine and stands close by the bathroom door until mom comes back out. During this time child finds a coloring book and crayons, mom brings child and the crayons to the front of the tv and allows child to color by herself while mom sits and watches tv. Mom will look down periodically at child but has minimal interaction with child. [¶] 12:15 pm Mom ends the visit early due to a dental appointment." The report also noted that many other scheduled visits between mother and B.G. did not take place either because mother did not show up or because mother or her monitor failed to confirm the visits as required.

At the section 366.26 hearing, mother testified that when she arrived for visits, B.G. would "run to me and say, 'Mommy,' and give me a big hug. She'd tell me she misses me. I'd tell her I miss her too and I love her. She tells me she loves me back." During visits, mother said she "[s]pen[t] as much time as I could, interact with her. Try to teach her ABC's, her numbers, her colors. We paint. We play games. I'd show her pictures of her animals that I have at the house. Just spend as much time as I could." When visits are over, B.G. "asks me if she can come home with me. She starts to cry and whine." Mother believes that B.G. views her as her mother and that they have a close bond.

Mother's aunt, Elena M., testified that she monitored at least five visits between mother and B.G. B.G. greeted mother by running to her and saying, "Mommy." B.G. was sad when the visits were over and asked whether she could go home with mother. When mother said no, B.G. was sad and sometimes cried. In Elena M.'s opinion, mother and B.G. have a strong mother-daughter bond.

Grandmother testified that when B.G. greets mother, she gets a big smile on her face and "yells 'Mommy,' and she goes running to her mom." Mother and B.G. "paint. [Mother] will go over her colors, her alphabet. They play with, like, Play-Doh. And she brings different — she has different games and activities they do. She made her hand print, her feet print." At the end of the visit, "[B.G.] would get real upset. She would start to cry. She would tell her mom, 'Put my stuff . . . in Nanny's car. Can I go home with you? I love you.' And when [mother] would say, 'Not today, [B.G.],' you know, [B.G.] would get real upset and start to cry."

On April 10, 2012, the juvenile court terminated mother's parental rights. Mother timely appealed.

DISCUSSION

Section 366.26 provides that if a parent has failed to reunify with an adoptable child, the juvenile court must terminate her parental rights and select adoption as the permanent plan unless it finds that doing so would be detrimental to the child under one of several statutory exceptions. Under one such exception, the juvenile court may choose a different permanent plan if it "finds a compelling reason for determining that termination [of parental rights] 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).)

A parent urging the application of the beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(i) bears the burden of showing *both* regular visitation *and* benefit to the child in maintaining the parent-child relationship. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.) We review the juvenile court's determination for sufficiency of the evidence, "presum[ing] in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

Mother contends that the juvenile court erred in concluding that the beneficial relationship exception did not apply. For the following reasons, we disagree.[3]

I. Regular Visitation and Contact

The first prong of the beneficial relationship exception required mother to establish "regular visitation and contact with" B.G. The juvenile court did not err in concluding that mother failed to do so. Although mother was granted visitation after B.G. was removed from her care in April 2010, mother did not visit—or, indeed, have any contact with—B.G. between early July and late November 2010, a period of nearly five months. Mother had several visits with B.G. in the two-week period between November 17 and December 1, 2010, but then again ceased visiting B.G. between December 1, 2010, and late May 2011, a period of nearly six months.

Mother was reported to have visited B.G. on a daily basis for the three-week period between June 29 and July 21, 2011. However, after the court ordered that mother's visits take place in a DCFS office, mother requested less visitation than the juvenile court permitted and frequently arrived late, left early, or failed to show up for scheduled visits. For example, in August 2011, although the court permitted mother to visit B.G. two to three times per week, for two to three hours each visit, mother requested that visits be scheduled for only two times a week, for one hour each. Further, she cancelled visits on August 2, 4, and 16, and visited with B.G. for only 30 minutes on August 9 and 11. In September and October 2011, mother visited B.G. on a near weekly basis, but she arrived late and/or left early for visits on September 23 and 30 and October 7 and 14, and she did not show up at all for a scheduled visit on October 28. After family reunification services were terminated and mother was told she would need to provide her own monitor, mother visited B.G. on November 18, December 2 and 16, January 13, February 9 and 24, and March 2, 9, 16, 23, and 30; however, scheduled visits

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[3] Mother's opening brief asserted three additional arguments. On August 6, 2012, mother sought court permission to withdraw arguments I through III. We therefore do not consider them.

did not take place on December 8, December 23, January 6, January 19, January 26, February 2, or February 24 either because mother or her monitor failed to confirm the visits, or mother arrived late.

The foregoing amply supports the juvenile court's conclusion that mother failed to demonstrate "regular visitation and contact with" B.G. To the contrary, for approximately the first year of DCFS supervision, the only contact mother had with B.G. was during a several-week period in late November and early December 2010. During the second year of DCFS supervision, mother visited B.G. somewhat more regularly, but routinely cancelled or failed to confirm visits and, when she did show up for visits, arrived late or left early. Such visitation simply is too sporadic to satisfy the first prong of the beneficial relationship exception. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 554.)

Mother contends that her failures to regularly visit her daughter should not be held against her because they were not her fault. Specifically, she says she could not consistently visit because her chosen monitor did not reliably confirm visits, the foster family agency where visits took place was far from her home, she did not have reliable transportation, and she had transportation cost issues. Even if these things were true, none is relevant to the issue before us—whether mother had "regular visitation and contact with" B.G. during the relevant period. The juvenile court did not err in concluding that mother did not have such regular contact.

II. Benefit From Continuing the Relationship

Even if mother's visitation were to be deemed sufficiently regular to satisfy the first prong of the statute, we nonetheless would affirm the termination order because the evidence amply supports a finding that the second prong of the beneficial relationship exception—that B.G. "would benefit from continuing the relationship"—was unmet.

Courts have interpreted the phrase "benefit from continuing the relationship" in section 366.26, subdivision (c)(1)(B)(i) to refer to a parent-child relationship that "'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.' (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.)[4]

The parent must do more than demonstrate "'frequent and loving contact, an emotional bond with the child, or pleasant visits.'" (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 126.) The parent must show that he or she occupies a "parental role" in the child's life, resulting in a significant, positive, emotional attachment between child and parent. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) Further, "the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. (*Autumn H.*, *supra*, at p. 575.)" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.) In considering this prong, the court should consider "'(1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs.' (*In re*

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[4] Mother suggests that the definition of "benefit" should be "considered without balancing 'strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging to a new family would confer[.]' . . . Instead, the standard should simply be stated as: the parent-child beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(i) applies if the relationship between the parent and child promotes the well-being of the child to the extent that severing the relationship would deprive the child of a substantial, positive emotional attachment to the parent." We decline to adopt the standard mother proposes. The balancing test mother would have us reject is well established in California. (See, e.g., *In re C.F.*, *supra*, 193 Cal.App.4th at p. 555; *In re C.B.* (2010) 190 Cal.App.4th 102, 124; *In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Further, mother's proposed test would make termination of parental rights nearly impossible because, as many courts have noted, interaction between natural parent and child will nearly always confer some "incidental benefit to the child." (*In re Autumn H.*, *supra*, p. 575.)

Angel B. [(2002)] 97 Cal.App.4th at [454,] 467, fn. omitted.)" (*In re Helen W., supra*, 150 Cal.App.4th at p. 81.)

In the present case, B.G. was only nine months old when she was removed from mother's care and, by the time mother's rights were terminated, had spent more than two-thirds of her life in foster care. B.G. had no reported special needs and was reported to be thriving in the home of her potential adoptive parent, who "has the ability to meet all of [B.G.'s] needs." Although B.G. appears to be happy to see mother and to enjoy visits with her, there is no evidence that B.G. has any needs only mother can satisfy, or that she has the type of emotional attachment to mother that "would cause [her] to be greatly harmed if parental rights were terminated." (*In re Jason J.*, *supra*, 175 Cal.App.4th at p. 938.) Indeed, there is no evidence that B.G. looked to mother to fulfill any of her needs. To the contrary, the evidence is overwhelming that mother spent significant portions of her visits engrossed in television or videos while B.G. entertained herself.

It is true, as mother suggests, that B.G. appears to be comfortable with mother, is happy to see her at the beginning of visits, greets her with a hug, calls her "Mommy," and sometimes is sad when visits end. Further, mother and B.G. sometimes played or read together, mother brought B.G. gifts, and mother testified that during visits she "[s]pen[t] as much time as I could, interact with her. Try to teach her ABC's, her numbers, her colors. We paint. We play games. I'd show her pictures of her animals that I have at the house. Just spend as much time as I could." This evidence does not establish that mother played a parental role in B.G.'s life, however. Indeed, the evidence of a parent-child bond is no greater in this case than in *Jason J.*, where the court affirmed that juvenile court's determination that the beneficial parent-child relationship exception did not apply. There, the child was a year old when the dependency proceedings began. During visits, father "acted appropriately, he was attentive and showed age-appropriate interaction with Jason, he looked out for Jason's well-being, and he brought toys and food for Jason. Jason greeted Willie with a smile and a hug, called Willie 'Daddy' and spontaneously told Willie, 'I love you.'" (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 929-930.) Thus, the court said, there was evidence that the father and child "enjoyed their visits and

occasionally Jason objected when they ended. Willie was affectionate and appropriate, and we do not doubt he loves his son." (*Id.* at p. 938.) However, "[a] friendly relationship . . . 'is simply not enough to outweigh the sense of security and belonging an adoptive home would provide.' (*In re Helen W.*[, *supra*,] 150 Cal.App.4th [at p.] 81.) There is no evidence Jason had any needs only Willie can satisfy, or that he has the type of emotional attachment to Willie that would cause him to be greatly harmed if parental rights were terminated." (*In re Jason J.*, *supra*, at p. 938.)

Similarly, in *In re C.F.*, *supra*, 193 Cal.App.4th 549, the court affirmed the juvenile court's conclusion that the beneficial parent-child relationship did not apply. The court noted: "While Sara and the children had pleasant visits, and her daughter was sometimes sad to see them end, there is no bonding study or other evidence that shows Sara occupied a parental role in their lives, that they would suffer any actual detriment on the termination of parental rights, or that the benefits of continuing the parental relationship outweighed the benefits of permanent placement with family members who are ready to give them a permanent home. While the two older children preferred to keep visiting Sara, it is apparent that all the children look to the maternal aunt and grandmother to fulfill all of their emotional and physical needs . . . ." (*Id.* at p. 557.)

The same is true here. While we have no doubt that mother loves B.G. and that B.G. enjoys her visits with mother, there simply is no evidence that mother occupies a parental role in B.G.'s life or that B.G. will suffer detriment if mother's parental rights are terminated. Substantial evidence therefore supported the juvenile court's conclusion that the benefits of a permanent home for B.G. outweigh the benefits of continuing the parental relationship.

DISPOSITION

The order terminating mother's parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.