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

In re DELILAH G. et al.,

Persons Coming Under the Juvenile
Court Law.

B241679

(Los Angeles County
Super. Ct. No. CK76203)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JENNIFER G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Veronica
McBeth, Judge. Affirmed.

Lee Gulliver, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jennifer G. (Mother) appeals from an order terminating her parental rights over her four-year-old twin daughters, Delilah and Denise, under Welfare and Institutions Code section 366.26.¹ She contends the trial court erred in failing to find the beneficial parent-child relationship exception precluded termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) applied. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A detailed discussion of the factual and procedural background of this case is set forth in our decisions in *In re Delilah G.* (Dec. 7, 2011, B231675) [nonpub. opn.], which followed the denial of Mother's first section 388 petition, and *In re Delilah G.* (Jul. 24, 2012, B237743) [nonpub. opn.], which followed the denial of her second and third section 388 petitions. Briefly summarized, the facts leading up to our previous opinions are as follows:

The twins were detained in February 2009, when they were a few months old. Mother, who was then 16 years old, had mental health problems and was unable to care properly for the twins. The twins were declared dependents of the court under section 300, subdivision (b), and they were placed with paternal relatives.²

Mother received 18 months of reunification services. During that time, she visited with the twins, participated in therapy and parenting classes, and obtained a full-time job. Ultimately, however, she stopped therapy, her participation in parenting classes was sporadic, and her work interfered with visitation. The juvenile court found Mother was

¹ Unless otherwise stated, all further section references are to the Welfare and Institutions Code.

² The twins' father is not a party to the appeal.

not in compliance with her case plan. It terminated her reunification services and set a section 366.26 permanency planning hearing.

Mother filed her first section 388 petition on February 17, 2011, seeking to have the twins returned to her custody. She explained that since the juvenile court terminated reunification services and set a permanency planning hearing, “Mother has been in individual counseling . . . since November 22, 2010. Mother continues to attend Young Moms Program Mother continues to enjoy regular unmonitored visits with the [twins]. Mother continues to have steady employment.” She believed it would be in the twins’ best interests to be returned to her because they were “strongly bonded with the Mother and . . . continue to have a strong relationship with the maternal grandmother. Mother is a young parent but has made efforts to comply with the case plan to ensure a safe home for the [twins].”

On March 8, 2011, the juvenile court denied Mother’s petition without a hearing. It explained that the petition did not state new evidence or a change of circumstances, and the proposed change would not promote the twins’ best interests. Mother filed her notice of appeal from the court’s order.³

Mother filed a second section 388 petition on July 26, 2011. The juvenile court granted a hearing on that petition. Before the hearing could be completed, Mother filed her third section 388 petition on September 16, 2011. Again, the court granted a hearing on the petition.

As changed circumstances, Mother cited her participation in a two-year Young Moms Program and weekly therapy. An Evidence Code section 730 evaluation indicated that while Mother’s history of depression appeared to be stabilized, she was still dealing with anger issues. Mother’s therapist wanted Mother to continue with parenting classes, therapy and anger management, but he did not see her as a danger to her children.

³ We affirmed the order, finding no abuse of discretion in denying the petition and, in any event, the appeal was moot because Mother had filed the two petitions at issue in the second appeal, and the court had granted a contested hearing on the petitions.

At the October 31, 2011 hearing on Mother's section 388 petitions, the juvenile court acknowledged Mother's growth since the twins were first detained and the quality of her visitation with the twins. However, it denied Mother's petitions as premature, explaining that she needed to "continue to show the stability that you have been showing fairly recently in this whole process continuing with your counseling and continue to have good visits with your children" We affirmed the juvenile court's order, finding that under the circumstances of this case, the juvenile court did not abuse its discretion in requiring Mother to demonstrate stability and compliance with her case plan for a greater period of time.

While Mother's appeal was pending, the case proceeded toward a section 366.26 selection and implementation hearing. The Department of Children and Family Services (DCFS) was conducting an adoption home study of Jose and Lucy A., paternal relatives with whom the twins had been placed since November 2010.

For the March 28, 2012 hearing, DCFS reported that the twins were adjusting to their placement and Jose and Lucy A. provided them "with a nurturing stable home and remain committed to the adoption process." Both Delilah and Denise, who were born prematurely, had speech delays, but only Denise qualified for Special Education Services. Although the Children's Social Worker (CSW) invited Mother to attend Denise's Individualized Education Plan (IEP) meeting, Mother did not attend.⁴

Both Mother and the maternal grandmother had expressed concern to the CSW about the twins' placement with Jose and Lucy A., while Jose and Lucy A. were concerned about the condition in which the twins returned from their visits with Mother. The CSW had tried to get the parties to contact one another to address their concerns.

DCFS reported that Mother had been enrolled in the Young Moms Program for three years. She had been consistent in her participation in therapy since May 2011 and

⁴ Apparently, at a later date both girls qualified for special education services and received IEP's.

was taking her medication. Mother had enrolled in anger management classes in October 2011 and had been participating consistently.

The CSW had expressed concern to Mother about the care the twins received when they were under her supervision, and Mother accused her of being unfair and siding with Lucy A. The CSW also noted Mother had violated court orders by not informing the CSW of her whereabouts during visitation. Due to the concerns over Mother's anger management and mental stability, as well as the length of time the twins had been placed with DCFS, DCFS recommended termination of parental rights and adoption as the permanent plan.

On the day of the hearing, the CSW reported that she had interviewed the twins, who told her that Mother's boyfriend/ex-boyfriend—who was not supposed to be present during visitation—went with them when Mother took them to McDonald's. Mother denied that he was present during visits. The CSW wanted the court to stress to Mother that the boyfriend/ex-boyfriend not be present during visits and that the CSW was to be informed of her whereabouts during the visits.

The hearing was continued for receipt of an Evidence Code section 730 evaluation. The evaluation by psychologist Michael P. Ward was filed on April 10, 2012. Dr. Ward reviewed relevant documents as well as interviewed the twins, interviewed and tested Mother and Jose and Lucy A., and observed the parties' interactions with one another.

Dr. Ward observed that “[a]ll of the adults agree on one thing, namely, that ‘this has gone on far too long,’ meaning without some decision, for everyone’s sake, but especially the girls. Everyone agrees that the children are torn and confused, and that all these ‘transitions/exchanges’ are traumatic on everyone, again, especially the girls. Everyone agrees the girls need stability and thus one home, and that they need it now.”

Dr. Ward believed “judicial wisdom” was called for in this case, because “a fairly good case” could be made for either alternative. He noted that the twins seemed very bonded to both Mother and Jose and Lucy A. Jose and Lucy A. had “a much more normal, stable, productive, reliable and responsible life and history, as well as greater

resources, skills, motivation, resolve and commitment. . . . There is little doubt that there would be less risk to these girls if they remain in their present home. Likewise, their ability to maximize their potential seems much more likely in that environment as well.”

Dr. Ward acknowledged that placement of the twins with Jose and Lucy A. “would be a life without their natural mother, and that is something they might have some regrets about later in their life. However, if being with their mother jeopardizes their growth, potential, or well-being, then it may well not be worth the risk. On the other hand, i[f] things do work out, relatively well, then that probably would be the best of all possible worlds for them, considering everything.”

Dr. Ward was concerned, however, that Mother did not enroll the twins in the Regional Center to enable them to receive services for the speech delays, “and still does not think it is or was necessary, and that she also apparently did not attend their recent IEP’s. Maybe there is a critical lack of insight here related to some of her cognitive deficiencies Whatever the case, some actions speak much louder than words, and in some situations, there are simply no reasonable or acceptable excuses.”

The doctor indicated that he would expect detriment whether the twins’ bonds with Mother or with Jose and Lucy A. were broken. “However, in either case, it would also depend on how the situation was handled. In general, as long as the children were well taken care of and reasonably happy in either environment, they would most likely be able to deal with the loss of the other bond fairly easily and quickly, although it might be a little more difficult in a short-term sense if they were removed from their caretakers, given that they have lived with them for about 1½ years now.” There also could be long-term difficulties regarding loss of contact with Mother, which could be ameliorated if Jose and Lucy A. allowed the twins some contact with Mother.

Dr. Ward pointed out the apparent “real reluctance on the part of the [dependency] system to give up on the mother and the possibility of reunification.” In addition, “keeping in mind that these girls are definitely bonded to her,” the doctor thought that “perhaps we should just go ahead and give reunification a chance, especially since [Mother] apparently has become somewhat more cooperative and perhaps has even

benefited somewhat from the treatments she is now more regularly receiving. Along that line, from a practical point of view, how do you argue that it is OK, if not imperative, to terminate the parental rights of someone whom the system has not only allowed, but actually encouraged, to see their children for 3, 8-hour, unmonitored visits a week?”

The doctor concluded: “The bottom line here is about risks and concerns, and what is the best thing to do after all this time and given all these circumstances. There simply seem to be a number of risks and concerns with the mother, and almost no risk and concerns with the caretakers, except for the fact that they are not [the twins’] natural parent. They are also going to be having their first child this coming September, and one has to wonder how that will affect this situation. To be frank and blunt, after all this time, it is still hard to have a lot of confidence in this mother, given all the history and data on her. On the other hand, it is hard to understand and/or to justify all this time, if reunification is not given a chance. Otherwise, it should have been foreclosed on a long time ago.”

On May 15, 2012, the CSW notified the court that DCFS had received a referral alleging Mother had physically abused Delilah by spanking her. Mother said that her parenting instructor had said spanking with an open hand was permissible, but the CSW reminded her of a court order specifying that no corporal punishment was to be used on the twins. Shortly thereafter, DCFS received a call alleging physical abuse and general neglect of the twins by Jose and Lucy A. DCFS determined the allegation to be unfounded.

The CSW also reported that Mother was inconsistent in letting the CSW know where she was during her visitation with the twins. The CSW had repeatedly told Mother that she was to notify the CSW if she was not going to be home to allow the CSW to make unannounced home visits.

At the May 15, 2012 contested hearing, the juvenile court granted Jose and Lucy A. de facto parent status at their request and over Mother’s objection. Mother then testified in her own behalf. She testified that the twins were happy and excited to see her when she picked them up for visitation. She testified as to her interaction with the twins,

what they did, how she disciplined them, and her attempts to get the CSW to increase visitation to overnights.

Mother testified as to her therapy and medication. She also testified that she did not attend the IEP meeting in April because she was not given the date, but she did attend an IEP meeting for Denise three weeks before the hearing. Additionally, she testified that she did not take the twins to the Regional Center because no one told her about the center.

On cross-examination, Mother testified as to the strained relationship she had with Jose and Lucy A. and the basis of her suspicions that they were physically abusing the twins. Mother also testified that for the last two months, she had been leaving voicemails or sending letters for the CSW to let her know where Mother would be during visitation.

Lucy A. testified that the twins screamed and cried when they were picked up for visitation. When they were returned to her, they were happy and hugged her. They told Lucy that Mother hits them, Mother's cat scratched them, and Mother's boyfriend had kicked them. Lucy denied ever spanking the twins.

In deciding whether to terminate parental rights, the juvenile court first noted the length of time the case had been going on. The court also observed that Mother still had not had unmonitored overnight visits with the twins, because she had not made a sufficient showing that such visits should be granted.

The court then stated: "I don't doubt that the children enjoy [Mother's] company, they like being with her. I can see that right here in the courtroom, but Mother has never been in the position since they were infants of having to care for them on a 24-hour basis; and so the bond I see between them I see that they like her and enjoy being with her, but it in no way compares to the bond that the foster care givers who have cared for these children and cared well for them for four and a half years."

Seeing the twins interact with Jose and Lucy A. in the courtroom, the court was convinced that the "benefit of continuing the relationship with the mother and because of the estrangement between the mother and the caretakers, I don't see there is a benefit that

outweighs the stability that these children do need. They deserve to have a stable home and that can be given to them” with the caretakers.

The court found it would be detrimental to return the twins to Mother, who “in all this time has not even had overnights with the children to show us that she is able to care for them on a long term basis.” It found no exceptions to adoption and therefore terminated Mother’s parental rights.

DISCUSSION

If a juvenile court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, the court must select adoption as the permanent plan for the child unless it finds a compelling reason that terminating parental rights would be detrimental to the child due to exceptional circumstances specified in section 366.26, subdivision (c)(1)(A) and (B). (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.) When reunification efforts have been unsuccessful, the legislative preference is adoption “‘because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

One exception to termination of parental rights applies when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) 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).) To determine whether the parent-child relationship exception applies, “[t]he factors to be considered when looking for whether a relationship is important and beneficial are: (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. [Citation.] . . . [T]he relationship must be such that the child would suffer detriment from its termination.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.) The parent

claiming the exception has the burden of proving it applies. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.)

On appeal, we review the juvenile court's finding as to the existence of an exception under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) Under the substantial evidence standard of review, "we must accept the evidence most favorable to the [finding] as true" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53; accord, *In re C.F.* (2011) 193 Cal.App.4th 549, 553.) We do not reweigh the evidence or exercise our independent judgment. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Mother contends that the trial court erred in finding the beneficial parent-child relationship exception did not apply. In support of her contention, she cites the wealth of evidence in the record regarding the twins' bond with her, the efforts she had made to regain custody of the twins and the potential harm to the twins if their bond with her was severed. We acknowledge the existence of such evidence, but the question before us is not whether substantial evidence exists which would support a finding that the beneficial parent-child exception applied. Rather, the question is whether substantial evidence supports the juvenile court's finding that it did not apply. We conclude that it does.

As Dr. Ward observed, the twins were at an age where they needed a stable home, and "a fairly good case" could be made for leaving the twins with Jose and Lucy A. or returning them to Mother. He did opine, however, that Jose and Lucy A. offered the twins a more stable home, with less risk and more opportunity to maximize their potential. His conclusion was that "[t]here simply seem to be a number of risks and concerns with the mother, and almost no risk and concerns with the caretakers, except for the fact that they are not [the twins'] natural parent. . . . To be frank and blunt, after all this time, it is still hard to have a lot of confidence in this mother, given all the history and data on her."

The CSW's experience with Mother also indicated there was reason for concern. Mother spanked Delilah because her parenting instructor said it was permissible and had to be reminded of a court order that no corporal punishment was to be used on the twins.

Mother was told multiple times that she was to let the CSW know where she was during visitation with the twins, so the CSW could check on the visitation unannounced, but Mother failed to comply on a consistent basis. The CSW learned from the twins that Mother's boyfriend was present during some of their visits, even though he was not supposed to be present. Mother denied that her boyfriend had been present during visitation and claimed that for the last two months she did notify the CSW of where she would be.

Mother had been enrolled in the Young Moms Program for three years, although it was only a two-year program. She had been consistently participating in therapy and taking her medication since May 2011 and had enrolled in anger management classes in October 2011. However, there were no recent reports from her therapist or the people in charge of those programs indicating that she was ready to have full-time custody of the twins.

Mother cites the testimony of her therapist at the October 31, 2011 hearing on her section 388 petitions that she was "a very determined person and very motivated and . . . that her desire . . . is to be the best mother that she can." Additionally, when asked if she posed a risk to her children, he stated that he believed "that she would be like any other parent."

However, the therapist was unable to say whether or not Mother posed a risk to her children. He also stated that if the twins were returned to Mother, he would want her to continue with parenting classes, therapy and anger management classes.

Mother also cites an Evidence Code section 730 evaluation from August 2011 which stated that Mother's "level of insight regarding her past history of mental health issues" was impressive and gave the opinion that Mother did "not pose an emotional or physical threat to her children." The evaluator did express concern over Mother's "on-going issues with anger." The evaluator also thought that Mother was "a bit overwhelmed with the demands of work and therapy" and suggested a gradual transition to reunification.

As the trial court noted, Mother had not taken care of the twins over a 24-hour period and shown she could care for them in addition to managing the other demands on her time and energy. Despite an extended reunification period, Mother had not managed to regain custody of the twins.

We acknowledge that there is always “some incidental benefit” to a child from the “existence of interaction between natural parent and child.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) But for the exception to apply, the benefit to the child from maintaining the relationship must ““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.” [Citation.]’ (*In re Beatrice M., supra*, . . . at p. 1418.)” (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1155.)

Here, substantial evidence supports the finding that, given the twins’ age, the small portion of their lives spent in Mother’s custody, and their need for stability in their lives, the benefit the twins would gain from the security of adoption outweighed any benefit they would gain from maintaining their relationship with Mother.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.