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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.V., et al., Persons Coming
Under the Juvenile Court Law.

B290295

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK16230)

Plaintiff and Respondent,

v.

P.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

Valerie N. Lankford, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

Mother P.V. appeals the juvenile court's termination of parental rights over her six young children. She contends the court should have applied the beneficial parent-child relationship exception to the preference for adoption found in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B).¹ We find no abuse of discretion and affirm.

BACKGROUND

By the time of the termination hearing in this case, mother had six children with father L.A. (who is not a party to this appeal), all of whom were subject to the jurisdiction of the juvenile court: M.V. (born 2009); C.A. (born 2012); K.A. (born 2013); J.A. (born 2014); K.V. (born 2016); and F.A. (born 2017).

1. Detention of the Five Oldest Children

Mother's five oldest children were the subjects of a dependency petition filed by the Los Angeles County Department of Children and Family Services (DCFS) on March 28, 2016, alleging mother used methamphetamine, father used marijuana, and the parents engaged in domestic violence in the presence of the oldest child M.V.² The petition was based on a referral after K.V. was born premature and mother tested positive for

¹ All undesignated statutory citations are to the Welfare and Institutions Code.

² The family had one prior referral in 2016. It was reported that mother had failed to attend a "Student Success Meeting" at M.V.'s school. Maternal grandmother attended the meeting and told a school psychologist that the children were living in a home where they were abused and neglected. But when interviewed, maternal grandmother said she had no concerns of abuse or neglect in the home, and the referral was deemed inconclusive.

methamphetamine at his birth. She denied using drugs and admitted she received no prenatal care because she did not know she was pregnant until one or two weeks before the birth. She claimed she had support from maternal grandmother and grandfather, who lived in the same apartment complex. She denied any domestic violence with father, who did not live in the home with the children.

A social worker contacted the family. The children appeared well cared for. The maternal grandparents actively supported mother and the children. M.V. reported she preferred staying with the maternal grandparents because her parents fight and constantly yell at her. She admitted seeing father hit mother. She also saw father smoking what she described as marijuana.

Maternal grandmother described going to mother's apartment and seeing "father having mother on the floor." She also observed father using marijuana. She said she and maternal grandfather were ready to take care of the children. Maternal grandfather also reported father used marijuana and the parents constantly argued in front of the children.

Mother continued to deny drug use and agreed to submit to drug testing. She tested negative for drugs on March 11, 2016.

The juvenile court detained the children on March 28, 2016, and released them to mother on the conditions that M.V. remain with maternal grandmother; mother reside with maternal grandmother; and K.V. reside with maternal grandmother once released from the hospital. Father was given monitored visitation outside maternal grandmother's home and mother could not serve as monitor. Mother was ordered to submit to weekly on-demand drug testing.

In the jurisdiction/disposition report, M.V. and maternal grandmother both reported seeing father choke mother. M.V. said she did not want to live with her parents because they fought too much; she wanted to live with maternal grandmother. While mother continued to deny all drug-use and domestic violence allegations, she failed to show up for four drug tests between March and May 2016. Mother was provided referrals for parenting and other programs, but she refused to start the programs unless they were court-ordered.

Newborn K.V. was ready to be discharged from the hospital on April 18, 2016, but by the time mother was interviewed on May 3, 2016, she had not picked him up or gotten training on the oxygen machine he needed. Instead, maternal grandmother had come to the hospital and was trained on the machine. The social worker reported having difficulty contacting mother and reported that mother had failed to call her to start services or follow through with the children's mental health referral.

On the day scheduled for the adjudication hearing, the court continued the hearing but detained the children from mother because she failed to drug test. The children were permitted to remain in maternal grandmother's home so long as mother moved out.

In preparation for the adjudication hearing, DCFS informed the court that the parents had not made themselves available to DCFS. Maternal grandmother reported that mother visited the children in the mornings to help get M.V. ready for school, and mother returned in the afternoon to assist in feeding the children. Maternal grandmother also reported mother failed to take M.V. to school, and M.V. fell behind academically. Mother missed five more drug tests.

At the adjudication hearing held on September 19, 2016, the court sustained amended allegations that mother was a current methamphetamine user and the parents engaged in a violent altercation in the presence of M.V. The court dismissed all other allegations. The court ordered mother and father to participate in family reunification services. Mother was ordered to participate in a full drug program with aftercare, weekly drug testing, a domestic violence support group, and a parenting class. She was given monitored visitation.

2. *Birth and Detention of Youngest Child F.A.*

Mother's sixth child F.A. was born early in 2017, and both he and mother tested positive for amphetamines at his birth. On January 9, 2017, DCFS filed a petition over F.A. based on the allegations of mother's drug use as well as on the domestic violence allegations sustained in the siblings' case. The court detained F.A. in foster care and ordered monitored visitation.

3. *Review Proceedings*

In the jurisdiction/disposition report for F.A. dated March 20, 2017, DCFS reported that parents had not visited F.A. or inquired about him since his birth or made themselves available for interviews.

In the six-month report for the five oldest children also dated March 20, 2017, DCFS reported that M.V. and K.V. lived with maternal grandparents and the other three children lived with an extended family member in mother's apartment. Maternal grandmother reported that mother visited daily to assist with the children. But DCFS reported mother had not participated in any court-ordered programs or drug testing. When the social worker asked her if she was pregnant during an October 2016 visit, mother said no (even though she must have

been pregnant with F.A., who was born three months later). According to the social worker, mother seemed attached only to C.A. and did not have any “maternal kindness” toward the children. She did not pick up K.V. from his crib and did not act very “lovable” toward M.V., K.A., or J.A. M.V. told the social worker she wanted to stay with her grandparents and was happy with them.

It was reported that mother did not participate in M.V.’s Individualized Education Plan meeting, but maternal grandmother did. The school was requesting maternal grandmother be granted education rights. The child C.A. was four years old and still being potty trained because mother had not trained her.

At the March 20, 2017 combined jurisdiction hearing for J.A. and six-month review hearing for the oldest children, the parents were excused from the courtroom due to an outburst during the hearing. The court sustained the allegations in the petition involving F.A., removed him from the parents, and granted parents reunification services. For mother, the court ordered a full drug program, weekly drug testing, a domestic violence program, and a parenting class, as well as monitored visitation. The court granted maternal grandmother co-educational rights for the five oldest children.

A contested six-month review hearing for the five oldest children was set for April 26, 2017. Before that hearing, DCFS reported that mother failed to comply with any of the court-ordered programs because she felt anxious around groups of people. She also continued to fail to drug test, claiming she did not know she had to test. Father also failed to comply with his court-ordered programs. It was reported that mother would go to

maternal grandmother's home in the evenings to help with the children, but not on a daily basis. At the hearing, the court found the parents had not been given reasonable services and ordered family reunification services be extended.

For the oldest children's twelve-month review hearing and F.A.'s six-month review hearing, DCFS reported that the five oldest children were living with maternal grandparents. F.A. was in the same foster home since birth. Mother and father lived together and failed to participate in any court-ordered services, although both said they wanted their children back. Mother failed to drug test, claiming she did not drug test or participate in her parenting and drug programs because of anxiety. A Multidisciplinary Assessment Team (MAT) meeting was held for F.A., and the assessor was unable to contact the parents and they did not participate.

Maternal grandmother reported that mother visited the five older children daily in the morning and in the evening. According to maternal grandmother, mother "reads to the children and engages with all of them." She also helped with bathing, feeding, and dressing the children, and she played with them. Mother and the children appeared happy to see one another. M.V. reported she enjoyed mother's visits. Mother reported, "I love visiting with my kids, I love playing, hugging and kissing them and telling them how much I love them and miss them."

On July 28, 2017, mother reported she had not visited F.A. since his placement with caregivers in January 2017, six months earlier. F.A.'s caregivers also reported no contact with family members. The parents first visited F.A. on August 5, 2017—seven months after his birth—at the maternal grandparents'

home. On September 18, 2017, DCFS informed the court that mother had not enrolled in any programs or drug tested. Mother told the social worker that she was afraid the drug tests would be positive due to her anxiety medication.

The court eventually terminated family reunification services as to all the children because parents had made minimal or no progress in alleviating the issues that brought the children within the jurisdiction of the court. By that point, F.A. was residing with maternal grandparents. The court set the matters for permanency planning hearings pursuant to section 366.26.

4. Post-Termination Proceedings

Maternal grandparents wanted to adopt all the children. DCFS recommended adoption by the maternal grandparents as the permanent plan.

DCFS noted that mother had maintained consistent and frequent visitation with the children, including F.A. since he was placed with the maternal grandparents. She visited daily in the morning and evening. She read to the children, cleaned their bedrooms, helped with making bottles, did chores, and assisted in the children's care. She spends holidays and the children's birthdays with them.

While DCFS believed mother established a "familial emotional connection" with the children, it viewed her role as more of a sibling than a parent. The maternal grandparents reported mother was appropriate with the children but lacked a maternal instinct. She helped with the children but took less of a mother-child bonding relationship. When finished with visits, she was anxious to leave, and the children did not show signs of attachment, such as crying or clinging to mother as she left. The social worker observed on a visit that the children would look

to the maternal grandparents for comfort, soothing, and security. The social worker noted that mother appeared “very lax and did not initiate a more parental role with the children but rather appears to relate to the children as an adult sibling to them who is expected to do chores around the home.”

DCFS submitted mental health records for three of the children, demonstrating that the maternal grandparents were participating in their mental health services.

DCFS further reported M.V. and C.A. wanted to remain with the maternal grandparents. While the maternal grandparents wanted to maintain the contact between mother and the children, they did not want to sign a post-adoption contract until they assessed the ongoing contact among the family.

C.A. reported seeing mother daily and playing games. She was happy when mother visited and sad when it was time for her to leave. K.A. reported that she saw mother every day. She was a “little” happy to see her and sad when it was time for her to leave. M.V. reported having fun with mother riding bikes and playing.

A social worker met with the family. Maternal grandmother reported that the kids would call the maternal grandparents “mom” and “dad,” while they called mother and father “mami” and “papi.” When mother arrived, K.V. ran to her. The children appeared content with mother. When mother left, J.A. looked as if he would cry, but maternal grandmother consoled him and he was fine.

DCFS believed mother had a bond with the children, but it believed adoption by the maternal grandparents was in the best interests of the children. It noted that the maternal

grandparents were open to allowing mother to maintain contact with the children.

The court held the section 366.26 hearing over three days. Mother testified she saw the children daily. In the morning, she would help get them ready for school, feed them, and get them dressed. In the afternoon, she would help M.V. with her homework. She would leave the home and return in the evening to help get the children ready for bed, including bathing the two youngest children and helping the children with pajamas. She recently attended dentist appointments with the four oldest children and a doctor's appointment for C.A. Father testified he visited the children three to four times a week.

At the hearing, mother and father argued that the court should not terminate their parental rights, relying on the beneficial parent-child relationship exception in section 366.26, subdivision (c)(1)(B). The court found that the parents maintained regular visitation, noting that the issue was “essentially uncontested” and was the “first step.” But it went on to conclude that the benefits of maintaining the parent-child bond did not outweigh the children's benefit from adoption. The court noted that the parents never moved beyond monitored visitation and, “while these visits may have been pleasant” for the children and the parents, “there was no evidence that termination of the parent-child relationship would be detrimental or . . . that the relationship conferred benefits to the child more significant than permanency and stability offered by adoption.”

Analogizing to *In re Noah G.* (2016) 247 Cal.App.4th 1292 (*Noah G.*), the court explained that “[n]either parent has ever done anything on their case plan or made any progress in addressing these issues, and that is why the visits have remained

monitored for both of them throughout. So I think that under *Noah G.* that is just about dispositive for this case. [¶] In addition, . . . [F.A. and K.V.] have never lived with the mother and father, and for the older—oldest two children, the evidence is that they want to remain in the grandparents’ care.” The court also cited the fact that the children called the maternal grandparents “mom” and “dad,” but called mother and father “mami” and “papi.”

In the end, the court believed that “when you put it all together, it is very difficult to see how there is a parental role in the meaning of the case law that would—whose benefits outweigh the benefits the children would derive from permanency through adoption. [¶] I agree. There is no question, I do agree that visitation is there, exists, and I agree that there is a bond, and that the children derive some benefit from it. I think that the evidence supports all of that, but I think . . . there isn’t evidence here to show a benefit that would outweigh the benefit of the permanency through adoption, so the exception does not apply.”

The court terminated parental rights. Mother appealed.

DISCUSSION

Upon termination of parental rights pursuant to section 366.26, adoption is the preferred plan when there is no probability of reunification with a parent. (*In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*); *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Section 366.26 creates an exception to the legislative preference for adoption 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); see

K.P., at p. 621.) The parent bears the burden to demonstrate this exception applies. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.)

“The ‘benefit’ prong of the exception requires the parent to prove his or her relationship with the child ‘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.’” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Frequent and loving contact with the child is not enough to establish a beneficial parental relationship. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Thus, “[n]o matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ [Citation.] 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.’” (*K.P.*, *supra*, at p. 621.)

Appellate review of a juvenile court’s application of section 366.26, subdivision (c)(1)(B)(i) involves two standards: whether substantial evidence supports a factual finding of a beneficial parental relationship, and whether the court abused its discretion in finding termination would not be detrimental to the child as weighed against the benefits of adoption. (*K.P.*, *supra*,

203 Cal.App.4th at pp. 621–622; see *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Here, the court found a beneficial parent-child bond existed between mother and the children,³ but held that the benefits of maintaining that relationship did not outweigh the benefits of adoption. The juvenile court did not abuse its discretion in reaching that conclusion.

We need not repeat all the facts set forth above. Suffice it to say that the record shows that mother had indeed established and maintained a bond with the children after their removal. She made multiple daily visits to the maternal grandparents' home and assisted the children with getting ready for school, with bedtime, and with meals and chores. The children enjoyed spending time with her, and she enjoyed her time with them. But everyone who observed mother's interactions believed she lacked a maternal instinct and her bond with the children was more of an older sibling than a parent. The children showed a significant parental attachment to the maternal grandparents, calling them "mom" and "dad," while calling mother and father "mami" and "papi." The maternal grandparents were fully involved in the children's education, health care, and other services, whereas mother failed to participate in most of the educational and medical decision-making and other services involving the children. Mother never lived with K.V. or F.A.,

³ In apparent conflict with the reporter's transcript of the section 366.26 hearing, the minute orders for that hearing indicate that the court found "the parent has maintained regular visitation with the child and has *not* established a bond with the child." (Italics added.) We presume the reporter's transcript is accurate. (*Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254, 259.)

and her oldest two children, M.V. and C.A., wanted to remain with the maternal grandparents. The maternal grandparents indicated they would continue to enable mother to visit the children.

Other than her regular visitation, mother exhibited little effort to reunite with the children or otherwise ameliorate the issues that brought them within the jurisdiction of the juvenile court. The five oldest children were removed because mother tested positive for methamphetamine at K.V.'s birth and due to domestic violence in front of M.V., but mother failed to report for any drug testing after testing one time in March 2016 and failed to comply with her court-ordered programs. When K.V. was born, mother left him in the hospital for weeks and did not get trained on the oxygen machine he needed to use, leaving that important responsibility to maternal grandmother. Mother continued to deny drug use, but when F.A. was born, both he and mother tested positive for amphetamines. After he was removed, mother still failed to drug test or comply with any of her court-ordered classes. She did not even contact his foster family or visit him for the first seven months of his life.

As the juvenile court recognized, these facts are very similar to *Noah G.* In that case, the two children were detained after the younger one and his mother tested positive for amphetamines at his birth and mother continued to test positive for drugs. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1296.) The children were placed with the maternal grandparents, who lived in the same apartment complex as the parents. (*Id.* at p. 1297.) Mother saw the children almost every day and helped care for them, including taking the older child to school and bringing him home, helping with his homework, visiting him in the hospital,

and attending his most recent medical appointment. She helped feed and bathe the younger child and attended some of his medical appointments. (*Id.* at pp. 1297–1299.) But she also failed to drug test, to participate in a drug treatment program, and to comply with court orders, admitting she lacked motivation. (*Id.* at p. 1298.)

The juvenile court rejected the application of the beneficial parent-child relationship exception, and the Court of Appeal affirmed. It held that, despite regular visitation and contact with the children, the mother “did not occupy a parental role such that termination of her parental rights would be detrimental to the children.” (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1301.) It noted that the mother had unresolved substance addiction issues and failed to comply with court orders, which could properly be considered in refusing to apply the exception. (*Noah G.*, *supra*, at pp. 1301–1302.) In the end, the mother’s “drug abuse is evidence continuing the parent-child relationship would not be *beneficial*. The juvenile court, under any standard of review, could conclude the evidence was insufficient to demonstrate termination of the mother’s parental rights would be detrimental to the children.” (*Id.* at p. 1304.)

The case before us is not meaningfully different. Despite regularly visiting the children and participating in their daily care, mother did not occupy a parental role such that terminating her parental rights would be detrimental to the children. The evidence showed that the children bonded with her as more of an older sibling than a parent, and she failed to comply with court orders, had unaddressed drug and domestic violence problems, and showed little effort to solve the issues that brought the children within dependency jurisdiction in the first place.

The court acted within its discretion in finding that the benefit to the children from adoption by their devoted maternal grandparents outweighed any detriment from terminating mother's parental rights.

DISPOSITION

The order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.