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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.V., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARMEN R.,

Defendant and Appellant.

B266475

(Los Angeles County
Super. Ct. No. CK63093)

APPEAL from an order of the Superior Court of Los Angeles County. Annabelle Cortez, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Mother Carmen R. appeals from the juvenile court's order terminating her parental rights in daughter A.V., contending that A.V. would be harmed by cutting off her relationship with her two older siblings. We conclude that substantial evidence supported the order and therefore affirm.

FACTS AND PROCEDURAL HISTORY¹

In October 2008, the juvenile court found that three-month-old A.V., who had been detained shortly after birth, was a dependent of the court after finding that mother Carmen R. was unable to provide appropriate care for the girl due to mother's developmental delays.² A.V. joined her siblings – then 14-year-old sister Irene V. and 9-year-old brother Francisco R. – in foster care. In March 2010, the juvenile court found that mother was not in compliance with her case plan and terminated reunification services.

The sister moved out of the foster home in November 2013 after she turned 18, and has since been attending college. In December 2013, the brother was removed from the foster home and placed in another after it was alleged that the brother had inappropriately touched A.V. A social worker for respondent Los Angeles County Department of Children and Family Services (DCFS) deemed the allegation inconclusive in March 2014. However, the initial foster parents were already considering asking for the removal of the brother from their home due to his angry outbursts and defiant behavior.

¹ As with most dependency cases, the factual and procedural histories are lengthy and convoluted. We have tailored our statement of facts to fit the relatively narrow issue on appeal: whether terminating mother's parental rights would cause A.V. to suffer substantial interference with her sibling relationships that was not outweighed by the benefits of adoption. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v).) All further section references are to the Welfare and Institutions Code.

² The juvenile court also found that presumed father Gustavo V.'s alcohol abuse left him unable to care for the child. Father is not a party to this appeal.

In October 2014, A.V. was placed in the foster care home of Mr. and Mrs. V., who eventually decided they wanted to adopt A.V.³ DCFS endorsed that decision and recommended the termination of parental rights with an eye to A.V.'s adoption. The adoptive parents consistently expressed their willingness to allow A.V. to visit her siblings. A formal agreement to that effect was reported as pending, but the record does not show whether such an agreement was ever executed.

For reasons that are not relevant to this appeal, a final resolution of the permanency planning issues for the children was continued and revisited between 2010 and 2015. The ultimate permanent plan hearing (§ 366.26) was held in August 2015. In advance of that hearing, the trial court granted the brother's petition for standing to challenge the termination of parental rights on the ground that A.V.'s relationship with him was so beneficial that severing the family ties would cause her harm. (§§ 366.26, subd. (c)(1)(B)(v), 388, subd. (b).) The elder sister did not appear or otherwise join in the petition, but mother did. The petition was not supported by any declarations or other evidence and all parties chose to present no testimony at the hearing. As a result, the only evidence before the court was contained in the various DCFS reports submitted to the court.

The reports showed that A.V.'s siblings visited her regularly. Those visits went well, and A.V. sometimes refused to visit with mother unless her siblings were present. A.V. had a close bond with her siblings, although "mostly" with her sister. These visits continued up to one month before parental rights were terminated. A.V. referred to adoptive parents as mom and dad, and to their children as brother and sister.

At the permanency planning hearing, DCFS argued that terminating parental rights was in A.V.'s best interests, that the child was happy and thriving with the prospective adoptive parents, that the brother was removed from the previous foster home because of allegations that he had improperly touched A.V., and that the children had not lived together since then. Counsel for A.V. agreed and joined in those arguments, noting that

³ We will refer to Mr. and Mrs. V. as the adoptive parents.

the adoptive parents had made A.V. available for visits with her siblings, and that A.V. wanted the adoption to proceed.

Counsel for the brother argued that he and A.V. had been close and bonded while they lived together, and that the brother denied any abuse claim. Mother joined in the argument, adding that A.V. was also bonded to her sister. The juvenile court noted that the sister had not asked for standing to be heard on the permanent plan issue. The court also noted the five-year gap between the end of family reunification services and the permanency planning hearing, that A.V. had been in multiple placements since she was six days old, had been in her current placement for nearly ten months, and was in a home approved for adoption where the adoptive parents had fulfilled the daily parental role. Although the brother had a bond with A.V., the court found that was not enough given the “issues in terms of why [A.V.] is no longer living with [the brother].” Even though the brother had weekly visits with A.V. that raised no concerns, the court found that alone did not outweigh the benefits to A.V. from the stability of adoption. The court therefore terminated parental rights. Mother contends the trial court erred by declining to apply the sibling relationship exception.⁴

DISCUSSION

1. *The Beneficial Sibling Relationship Exception*

Because the juvenile court had terminated reunification services for the parents, the focus shifted to A.V.’s needs for permanency and stability. The section 366.26 hearing is designed to select and implement a permanent plan in order to achieve a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. (*In re D.M.* (2012) 205 Cal.App.4th 283, 289 (*D.M.*).)

Adoption is the Legislature’s preferred permanent plan. If the juvenile court finds by clear and convincing evidence that the child is adoptable, the court must terminate

⁴ Parents have standing to raise that exception. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 402.)

parental rights and free the child for adoption. (*D.M., supra*, 205 Cal.App.4th at p. 290.) This rule is subject to certain statutory exceptions, although the exceptions apply only if the court “finds a compelling reason for determining that termination would be detrimental to the child” pursuant to one of those exceptions. (§ 366.26, subd. (c)(1)(B); *D.M.*, at p. 290.)⁵

One of these exceptions is the sibling relationship exception, which requires a showing that there “would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) Under this exception, the trial court may consider possible detriment to only the child being considered for adoption, not the detriment to that child’s siblings. (*D.M., supra*, 205 Cal.App.4th at p. 291.)

We review the juvenile court’s order for substantial evidence. As a result, we view the evidence and its attendant inferences, and resolve all evidentiary conflicts, in favor of the order. (*D.M., supra*, 205 Cal.App.4th at p. 291.)

2. *Substantial Evidence Supports the Order Rejecting Application of the Sibling Relationship Exception*

Mother contends there is no substantial evidence to support the juvenile court’s order and that, instead, the evidence compelled the court to apply the sibling relationship exception. She points to the following: (1) the evidence shows a strong bond among all three siblings; (2) the siblings lived together for much of their lives; (3) the abuse

⁵ Mother argues in her reply brief that respondent has misinterpreted this rule by relying on decisions that interpret it to mean that the existence of the relationship constitutes a compelling reason for determining that terminating parental rights would be detrimental to the child being adopted. We need not settle that dispute because we are applying the statute according to its plain terms.

allegations against the brother were unfounded and unsupported by any other evidence; (4) the trial court did not address A.V.'s relationship with her sister; (5) it was unclear whether A.V. would ultimately be adopted; (6) even if the adoption occurred, there was no evidence that the proposed visitation agreement was ever signed or that the adoptive parents would allow visitation; and (7) adoption is not necessarily permanent and could be revoked.

We begin with mother's contention that the juvenile court did not take into account A.V.'s relationship with her sister. In evaluating this contention, it is important to note that it was the brother who filed the petition seeking standing to raise the sibling relationship exception. (§ 388, subd. (b).) That petition was necessary for the brother to gain standing and participate in the section 366.26 hearing. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 792-793.) Mother only joined in that petition. Because mother's appeal is derivative of the brother's petition, we do not believe mother has standing to raise the sibling relationship exception as to the nonparticipating sister.

Regardless, we conclude that substantial evidence supports the juvenile court's order as to both siblings. First, the petition was supported by neither evidence nor the testimony of any witnesses. Instead, the court's order rises or falls based on the various DCFS reports that are in the appellate record.

Second, we agree that the record shows a positive relationship and bond between the siblings. As to the brother, however, we note that the more positive reports about that relationship predate the abuse allegation. After that time, the DCFS reports state that the close bond was mostly with the sister. Although the December 2013 abuse allegation was deemed inconclusive, we disagree with mother that there was no other evidence to raise a concern about the brother in that regard. A July 2015 DCFS report said that the brother had been recently removed from his foster home after reports that he had made inappropriate comments about the foster parents' daughter and was watching pornography. Although the brother denied that accusation, we believe the trial court was entitled to infer that there were legitimate concerns about his conduct. (See *In re E.S.* (2011) 196 Cal.App.4th 1329, 1338-1339 [petition by minor seeking standing to assert

sibling relationship exception did not show a positive relationship given his history of, among other things, engaging in inappropriate sexual conduct with his sister].)

Because the older sister did not raise the issue, and because she was living on her own as she attended college, the trial court could also infer that despite the sister's clear affection for A.V., the sister had her own life to take care of and did not want to interfere with the adoption proceedings. Combined with the fact that A.V. wanted the adoption to proceed, the trial court was free to conclude that there was an insufficient relationship to justify applying the sibling relationship exception.

Next, the fact that the adoption had not been finalized does not militate against rejecting the sibling relationship exception. Because the permanency planning hearing is designed to set the stage for adoption in most cases, an adoption can never be finalized by that point in the proceedings. If the theoretical possibility that the adoption might somehow fall through justified applying the exception, then the exception would apply in every case.⁶

As for the absence from the record of any completed visitation agreement, we reject mother's reliance on *In re Naomi P.* (2005) 132 Cal.App.4th 808 to show that the sibling relationship would be disrupted. In that case, the trial court applied the sibling relationship exception after making a credibility determination that the prospective adoptive parent did not understand the importance of the sibling relationships and perhaps did not intend to allow visitation. (*Id.* at p. 824.) Here, even if there were a sufficiently strong sibling relationship, the record shows a consistent willingness by the adoptive parents to allow visitation with A.V.'s siblings, along with evidence that visitation had occurred since A.V.'s placement in their home, thereby permitting an

⁶ The same applies to mother's contention that an adoption might someday be revoked, a contention she makes without any legal authority. If this occurs at all, it is surely the exception, a possibility that strikes us as far too speculative to warrant consideration when determining whether to apply the sibling relationship exception.

inference that visitation would continue and that the relationship would not be disrupted.⁷ (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

Finally, based on all this, the trial court could justifiably determine that the benefits to be obtained from the permanency of adoption outweighed whatever benefits the sibling relationship might confer.

DISPOSITION

The order terminating parental rights in minor A.V. is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

⁷ In fact, a post-hearing report concerning the brother's progress in a wraparound treatment program, dated December 19, 2014, states that the adoption of A.V. had been finalized and that "[the brother] and his older sister may continue to have visitation with younger sister."