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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re RUDOLPH E., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B242939
(Super. Ct. No. J067954)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Petitioner and Respondent,

v.

CONNIE H. and W. E.

Respondents and Appellants.

Connie H. (mother) and W.E. (father) appeal from the judgment terminating parental rights to their son, Rudolph E. (child), and ordering him to be placed for adoption. (Welf. & Inst.Code, § 366.26)¹ Parents contend that the juvenile court erroneously failed to apply the beneficial relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

Facts

In May 2009 child was born with Down Syndrome and three holes in his heart. He underwent two surgeries to repair the holes. In January 2012 he underwent a third

¹ All statutory references are to the Welfare and Institutions Code.

heart surgery to repair "A[tr]ial, Septal and Ventricular defects." In addition to his heart problems, child suffers from "chronic lung issues."

Child's ability to communicate is limited. As of June 2012, when child was three years old, he was unable to speak. He would communicate by "point[ing] at things or he would make sounds." He was learning to use sign language.

A juvenile dependency petition was filed in September 2010, when child was 16 months old and before his first heart surgery. Child had gained only one pound during the previous nine months. The petition alleged that parents' home was "dangerous and unsanitary" and that parents had "failed to provide adequate medical care and treatment for the child."

The juvenile court sustained the petition and declared child a dependent of the court. It ordered that he be removed from his parents' physical custody and that Human Services Agency (HSA) provide reunification services.

At a 12-month contested review hearing, the court terminated reunification services and scheduled a section 366.26 hearing for selection of a permanent plan.

At the section 366.26 hearing, the court received the social worker's report. The social worker stated: During "this status review period," 24 supervised visits with child were scheduled. Mother was late for 12 visits, 4 of which were cancelled because she was more than 15 minutes late. Father was late twice and did not appear for five visits. "[T]here appears to be an absence of on-going expressed affection and [a] lack of emotional connection with the child through out [sic] the visits with both parents. Although the parents interact with the child, they appear to be just going through the motions of the visit and not investing in developing an emotional connection with the child." Since September 21, 2010, child has been placed with his prospective adoptive parents. They "have expressed their deep commitment to adopting [child]" "The bond and interaction that was observed between [child] and the prospective adoptive mother is convincing that the child would say that he would wish to remain in the home if he were able to verbalize this."

In a memorandum prepared after the report, the social worker provided the following additional information: "[W]hen the child first sees the mother or the father [during visitations], the child does not appear overly excited, enthusiastic, nor has the child cried due to not seeing his parents. At the end of the visits, the child . . . easily separates from his mother and father. The parents have been observed to greet the child with a hug and kiss, but the affection does not appear to remain constant throughout the visits. . . . The child appears to have some recognition of the mother and father, but does not appear to vie for their attention nor does he reach out to them to be held or picked up. [¶] . . . It appears that the parents do not know how to interact to a child with special needs. There does not appear to be an effort to make on-going eye contact with the child, [or] . . . to capture his attention [or] . . . to engage the child to sit with them to do an activity that the child might find interesting. . . . In most visits, the child is busily throwing toys on the ground[;] seldom is the child observed seeking the mother and/or the father to play or to seek their attention."

At the section 366.26 hearing, the social worker testified that "there does not appear to be . . . an attachment" between child and parents. It appears that parents "are uncomfortable with a child with special needs or do not know how to be around a child with special needs." On the other hand, child is attached to and "very loving towards [his prospective adoptive mother] and vice versa."

The social worker did not personally observe child's visits with parents. Her description of the visits was based on documentation prepared by a "field-based case aide" (aide) who had supervised the visits. The aide testified that child is pleased to see mother and hugs her and father when they visit him. Mother has been late for every visit. The aide opined that child "has a loving bond with mom." Child has a bond "to a certain extent" with father since "Dad doesn't really interact with [child] as much." "[O]nce we go start the visit, dad basically sits on the couch."

During the three weeks prior to the section 366.26 hearing, the aide noticed a change in child's behavior: "[H]e likes to hit [mother] with things." The aide elaborated: "[H]e would just take stuff off the floor and hit mom with it. He would throw it at mom."

He would just hit her in the face, hit her on the head, on the arm. . . . And when she tells him to stop, he'll start crying." When child throws the objects, he is not being playful "because he throws them pretty hard."

Mother testified that child "is extremely bonded to [her] as [she is] to him." When she arrives for her visits, child runs up to her and gives her a big hug. Mother further testified that child "is very bonded with his father." Father appeared at the section 366.26 hearing but did not testify.

Trial Court's Ruling

The trial court found by clear and convincing evidence that child is adoptable. It concluded that parents had failed to establish the beneficial relationship exception to the termination of parental rights. The court stated, "I do believe that you have a pleasant relationship with your son." But the relationship was "very much limited."

Beneficial Relationship Exception

"By the time of a section 366.26 hearing, the parent's interest in reunification is no longer an issue and the child's interest in a stable and permanent placement is paramount. [Citations.] . . . The child has a compelling right 'to [have] a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' [Citation.] Adoption is the Legislature's first choice because it gives the child the best chance at such a commitment from a responsible caretaker. [Citations .]" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

"If the court finds that a child may not be returned to his or her parent and is likely to be adopted, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under one of [several] specified exceptions. [Citations.]" (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The exception at issue here is the beneficial relationship exception, which applies if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 336.26, subd. (c)(1)(B)(i).) The parents have the burden of establishing this exception. (*In re Derek W. supra*, 73 Cal.App.4th at p. 826; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

" 'To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.' [Citation.] A beneficial relationship 'is one 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." [Citation.] The existence of this relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs." [Citation.]' [Citation.]" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.)

Standard of Review

We review the juvenile court's determination under the substantial evidence standard. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 642; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 824; *In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827; contra, *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [reviewing court should apply abuse of discretion standard].) We view the evidence in the light most favorable to respondent (HSA), giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.) "The appellant has the burden of showing the finding [i.e., lack of a beneficial relationship] . . . is not supported by substantial evidence. [Citation.]" (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) "Substantial evidence is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged [Citation.]" (*In re Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1539.) Our power " ' "begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." ' ' " (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379.)

Discussion

The first prong of the beneficial relationship exception is that "[t]he parents have maintained regular visitation and contact with the child." (§ 336.26, subd. (c)(1)(B)(i).) We need not consider the first prong because substantial evidence supports the juvenile court's finding that parents failed to establish the second prong: "the child would benefit from continuing the relationship." (*Ibid.*) "Satisfying the second prong requires the parent to prove that 'severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.' [Citation.]" (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.)

Viewing the evidence in the light most favorable to respondent, we conclude that a reasonable trier of fact could find that parents' contact with child had not continued or developed " 'a *substantial*, positive emotional attachment such that the child would be *greatly* harmed' " if the relationship were terminated. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.) According to the social worker, parents had no more than a friendly or familiar relationship with child. "[A] *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one. [Citations.] . . . [A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Mother wrongly contends that, because the social worker did not personally observe child's interaction with parents, "she had no supportable basis to speculate about the extent of the child's bonds with his parents." The social worker did not engage in speculation; she gave her expert opinion based on documentation prepared by the aide who had supervised the visits between parents and child. Irrespective of the social worker's opinions, her account of the aide's observations during the visits constituted substantial evidence supporting the trial court's ruling. (See *In re M.B.* (2011) 201

Cal.App.4th 1057, 1071 [social worker's report, including hearsay in the report, is admissible in a dependency proceeding].)

We recognize that the aide opined that child "has a loving bond with mom." But the existence of such a bond is not enough to establish the beneficial relationship exception. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643 ["Evidence that a parent has maintained ' "frequent and loving contact" is not sufficient to establish the existence of a beneficial parental relationship' "].)

Moreover, the existence of a "loving bond with mom" is questionable in view of child's conduct during the three weeks prior to the section 366.26 hearing. The aide testified that, during this period, child had thrown objects at mother. "Some days [the objects] hit her in the face. Some days [they] hit her in the head, the back." Child's conduct was not playful because he had thrown the objects "pretty hard." It is reasonable to infer that child's conduct displayed aggression and hostility toward mother. This is a " ' " 'negative' effect of interaction between parent and child." ' " (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.) It weighs heavily against the existence of " 'a positive emotional attachment.' " (*Ibid.*)

On the other hand, child appears to have bonded with his foster mother, who wants to adopt him. Since September 2010, when child was 16 months old, he has been living with his prospective adoptive parents. Because of child's heart and lung issues and Down Syndrome, it is especially important that he be in a nurturing relationship with parents who can attend to his special needs. HSA's Detention Report, filed in September 2010, stated that child's foster home "specializes in the care of children with Down[] Syndrome." Accordingly, "[t]his is not the extraordinary case where an adoption should have been foreclosed by the exception provided in section 366.26, subdivision (c)(1)(A) [now (c)(1)(B)(i)]." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1352.) "[T]he juvenile court properly found there was no beneficial parental relationship sufficient to overcome the statutory preference for adoption." (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 644.)

We reject mother's contention that "[t]he court relied upon incorrect legal criteria in terminating parental rights in this case." Mother does not identify the allegedly incorrect criteria. Mother's counsel asked the court to apply "the beneficial relationship exception." The court concluded that parents "cannot meet the standard required by law." "It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties. [Citations.] [¶] Absent evidence to the contrary, that presumption justifies a finding in this case that the trial court" properly applied the correct standard for the beneficial relationship exception. (*People v. Mack* (1986) 178 Cal.App.3d 1026, 1032.)

Disposition

The judgment terminating parental rights and ordering child to be placed for adoption is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Ellen Gay Conroy and Teri L. Cody, Judges

Superior Court County of Ventura

Aida Aslanian, under appointment by the Court of Appeal, for Connie H.,
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