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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.T., a Person Coming Under
the Juvenile Court Law.

B277807
(Los Angeles County
Super. Ct. No. CK97594)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROL L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

On September 14, 2016, the juvenile court terminated the parental rights of Carol L. (mother) to her son, D.T., freeing the child for adoption by the paternal grandfather and step-grandmother (paternal grandparents), with whom he had been living for more than two years. Mother, who visited regularly with D.T. during dependency proceedings, contends the juvenile court erred in failing to find the beneficial parental relationship exception to the termination of parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

D.T. was born in March 2014. Mother is also the parent of D.T.'s older half-sister, R.L.² Dependency proceedings as to R.L. were ongoing at the time of D.T.'s birth.

In that case, on October 2, 2013, the juvenile court sustained allegations that mother and D.T.'s father, Michael H. (father), engaged in domestic violence in front of R.L., resulting in mother's arrest July 13, 2013; mother had a history of mental and emotional problems and failed to take her psychotropic medication as prescribed; and mother had a history of substance

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

² R.L. was also the subject of this dependency case, but she is not involved in the appeal.

abuse and was a current abuser of marijuana including instances of marijuana abuse when R.L. was in mother's care.³

When D.T. was two months old, the juvenile court terminated jurisdiction over R.L. Within one month, the Los Angeles County Department of Children and Family Services (DCFS) received a telephone call concerning mother's statements that "she no longer cared and was going to hurt the children whenever she want[ed]." At the time, mother was living with both children and father, as well as R.L.'s father. Then seven-year-old R.L. described the fighting, yelling and physical altercations between mother and father. When they fought, D.T. cried, and she tried to go to a friend's house or put on her headphones. When mother and father sent R.L. to her room during their fights, R.L. could hear things being thrown and broken.

Mother is a United State Navy veteran, serving from 2000 to 2004. Mother reported she first received mental health treatment while in the Navy and upon discharge was diagnosed with post-traumatic stress syndrome.

Section 300 Petition and Detention Hearing

DCFS filed a section 300 petition on August 1, 2014, alleging both children were at risk for "serious physical harm inflicted nonaccidentally" (§ 300, subd. (a)) or "as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child" (§ 300, subd. (b)(1).) Specially, DCFS recited the history of domestic violence between

³ An earlier 2012 substantiated report resulted in mother's participation in Voluntary Family Maintenance Services for R.L.

mother and father; mother's diagnosed mental illness (Borderline Personality Disorder) and recent failure "to comply with mental health services including individual counseling"; father's 16-year history of drug abuse and current use of methamphetamine, including being under the influence of that drug in the children's presence; mother's knowledge of father's drug abuse and failure to protect the children from exposure to it; mother's history of substance abuse, current use of marijuana and a recent positive toxicology screen for that substance."

At the detention hearing, the juvenile court removed the children from mother's home. R.L. was placed with her birth father, and D.T. was ordered into shelter care. Within a week, D.T. was placed in the home of the paternal grandparents.

The juvenile court ordered family reunification services for mother and father and granted them twice-weekly monitored visits with D.T. The paternal grandparents agreed to assist the family reunification efforts and indicated their willingness to provide D.T. with a permanent home if mother and father failed to reunify.

Jurisdiction/Disposition Hearing

The jurisdiction/disposition hearing was conducted on September 30, 2014. The court sustained the allegations of the petition by clear and convincing evidence and declared D.T. a dependent child of the juvenile court. D.T. remained with the paternal grandparents. Mother was provided family reunification services and counseling to address her mental health issues.

In the two months between the detention hearing and the adjudication hearing, mother visited D.T. regularly, although the

paternal step-grandmother reported mother was more focused on gleaned information concerning father than spending time with her son. In an interview with the social worker, mother reported a long family history of mental and emotional problems. She recognized she needed therapy and acknowledged a pattern of abusive relationships. Mother denied she neglected her children, offering, “I’ve been neglecting myself. When [father] is [a]round, I don’t take care of myself.” She felt that helping father “has been to her detriment” because she expended too much energy on his recovery. She blamed the paternal step-grandmother for father’s drug abuse.

Six-Month Review Hearing

At this May 7, 2014, hearing, mother was found to be in compliance with the case plan, and six more months of reunification services were ordered for her (§366.21, subd. (g)); reunification services were terminated as to father.

In this period since the jurisdiction/disposition hearing, mother maintained weekly social-worker monitored visits with D.T., “but mother was usually not engaged during the visits with the [D.T.] Mother was more concerned and focused in knowing . . . father’s whereabouts.” During the first three months of this period, mother typically “appeared disheveled, anxious and angry.” If D.T. became fussy, mother would end the visits early.

12-Month/Permanency Review Hearing

By the time of this September 29, 2015, hearing, D.T. was 18 months old. The juvenile court continued him as a dependent child, extended mother’s reunification services for another six

months, and set the matter for a contested hearing in early 2016. The court also gave DCFS discretion to begin extended visits between mother and D.T. and ordered an immediate assessment of mother for overnight visits. Based in large measure on mother's self-reported mental health history, history of disruptive personal relationships, and her continued angry and profane outbursts and resistance to supervision, the juvenile court ordered an Evidence Code section 730 psychological evaluation of mother. A follow-up hearing to discuss the Evidence Code section 730 evaluation was set for November 17, 2015.

D.T. remained with the paternal grandparents, who had the support of the paternal grandmother and step-grandfather and the paternal step-grandmother's adult daughters. Mother began unmonitored visits, and the September 29, 2015, Status Review Report noted, "There is a close bond between the mother and the child." The only negative comments in the report concerning the unmonitored visits were mother's failure on one occasion to use sunblock for D.T. and the child's returning from a visit with several bruises. Mother accompanied D.T. and the paternal grandparents to one doctor's visit; but she became agitated, angry, and profane.

Mother did complete parenting classes and her drug tests were negative. She was to participate in individual counseling and ALANON meetings and continue with parenting classes. Mother was also participating in programs through Veterans Affairs (V.A.) and was attempting to stop smoking.

Hearing on Evidence Code Section 730 Evaluation

Originally scheduled for November 17, 2015, the matter was continued to December 21, 2015, at the request of the

evaluator. Her report is dated December 10, 2015. The evaluator concluded mother “does meet the DSM-5 criteria for Borderline Personality Disorder and has a history of depression and anxiety, as well as relational problems, which contribute to poor decision-making in interpersonal situations.” She added, mother’s “reported contradictory statements and inconsistent behavior are problematic and have the potential of negatively affecting the son’s emotional health. Her behaviors have the potential to cause substantial confusion and emotional damage to the son. [Mother’s] behavior appears to improve when she is consistently receiving mental health treatment services.” At the December 21, 2015, hearing, the juvenile court accepted the report and gave DCFS discretion to liberalize visits between mother and D.T. and “to also consider . . . implementing the 730 evaluation and its recommendations.” The matter was continued to the previously scheduled February 1, 2016, 18-month review hearing date.

In response to the Evidence Code section 730 evaluation, DCFS visited mother’s home to assess suitability for overnight visits. The social worker arrived unannounced during one of D.T.’s unmonitored visits. R.L. was also present. The report noted the home was “filthy,” trash-strewn, and “had a bad odor.” Medicated ointment and a bowl with cigarette butts were within D.T.’s reach. “When the CSW arrived to the home, the mother was outside of the apartment smoking a cigarette while the children were left in the home unattended. Therefore, the visits were then brought back into the office and are now being monitored.”

Section 388 Petitions

Although mother was represented by counsel throughout the dependency proceedings, she filed section 388 petitions in propria persona on December 24, 2015, and December 30, 2015. In the first, she complained of DCFS's decision to reinstate monitored visits. The relief she sought was to "not give DCFS discretion to liberalize visitation." The juvenile court denied it without a hearing, noting the "court doubts mother understands what DCFS having discretion to liberalize means, and the effect removing that discretion would have."

In the second petition, mother did not seek any substantive relief; instead, she complained that on some reports the paternal step-grandmother had been referred to as the paternal grandmother and the paternal grandfather had been referred to as the paternal step-grandfather. These four individuals were all part of D.T.'s life. Paternal grandmother and grandfather had each remarried. D.T. lived with the paternal grandfather and paternal step-grandmother, and the paternal grandmother and paternal step-grandfather assumed some child care responsibilities when the paternal grandparents were at work. All four are mentioned in various DCFS reports. No substantive relief was requested; this petition, too, was denied without a hearing.

18-Month/Permanency Review Hearing

This contested hearing was held February 1, 2016, shortly before D.T.'s second birthday. The juvenile court found mother had "not made significant progress in resolving the problems that led to the child's removal from the home." (§ 366.21, subd. (g)(1)(B).) Reunification services were terminated and DCFS was

directed to conduct an adoptive home study for the paternal grandparents. The section 366.26 hearing was scheduled for May 31, 2016.

Third Section 388 Petition

On April 11, 2016, mother, again in propria persona, filed a third section 388 petition, seeking reinstatement of reunification services and return of the child. The juvenile court denied without hearing the request to reinstate reunification services. The court set a hearing on mother's request for return of D.T. for May 13, 2016 and ordered DCFS to prepare a report. The May 13, 2016 hearing was then continued to coincide with the section 366.26 hearing.

Section 366.26 Hearing

This hearing began May 31, 2016. The paternal grandparents were granted de facto parent status. The juvenile court appointed a second expert under Evidence Code section 730 to evaluate mother and D.T. This expert interviewed mother and D.T. and observed their interactions. Her report is dated July 29, 2016. She agreed, as have so many individuals involved in these proceedings who have met D.T., that he is a happy, loving child.

This expert spoke with mother's V.A. therapist. Both experts agreed mother suffers from Complex Posttraumatic Stress Disorder, but the symptoms are similar to Borderline Personality Disorder, i.e., "Both involve difficulties with emotional control, judgment, and relationships with others."

This evaluator did not see a strong bond flowing from D.T. to mother and did not believe D.T. could be returned safely to her at that time. Echoing the first Evidence Code section 730 expert,

this expert also found mother's "problematic psychiatric issues" had not yet resolved. Mother "openly" communicated her own "paranoid ideation[s]" to D.T., placing him at further risk.

For the interview, this expert brought D.T. from the waiting room to her office, where mother was already waiting. The expert's report details the following: The child "sauntered over to his mother. Mother commented, 'See how he runs to my arms?' This was an overstatement of what occurred. Mother hugged [D.T.] while he had his back to her. His expression was very serious and seemed a little frozen." The child "didn't seem to react" when mother kissed him on the side of his head. Mother had to be reminded several times not to criticize the Department in front of D.T. When the visit was over, "[D.T.] separated easily from Mother, ran down the hall and greeted the step-grandmother and grandfather with enthusiasm."

The contested section 366.26 hearing concluded on September 14, 2016. D.T. was then two years and six months of age. The section 388 petition was denied. The juvenile court found it likely D.T. would be adopted by his paternal grandparents.

Addressing the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)), the court recognized mother had maintained regular contact with D.T. and had "to some extent [exercised] a parental role and relationship" with him. But the court concluded that was insufficient: "[I]t clearly does not outweigh the benefits of permanence in adoption for [D.T.] in this case with this ongoing history and level of relationship and length of time outside of the mother's care." Mother's parental rights were terminated and D.T. was freed for adoption.

DISCUSSION

At the section 366.26 hearing, the preferred choice is to terminate parental rights and place the dependent child for adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) When the juvenile court finds “by a clear and convincing standard, that it is likely the child will be adopted, the court *shall* terminate parental rights and order the child placed for adoption . . . unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to . . . [¶] (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), italics added.)

In re Noah G. (2016) 247 Cal.App.4th 1292 includes an in-depth discussion of “the beneficial parental relationship exception.” (*Id.* at p. 1300.) We apply the substantial evidence test to review “the factual issue of the existence of a beneficial parental relationship,” and an abuse of discretion standard to review “whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption.” (*Ibid.*) There was no error here under either standard.

There are two prongs to the analysis. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) The juvenile court found mother maintained regular visitation and contact with D.T., satisfying the first prong. Substantial evidence supports this finding. The juvenile court then found mother did not establish that an ongoing relationship would outweigh the benefits of adoption by the paternal grandparents. The juvenile court did not abuse its discretion in so finding.

D.T. was four months old when he was removed from mother's home on August 1, 2014. Between that date and the conclusion of the section 366.26 hearing on September 14, 2016, D.T. never again spent one night in her care. Except for several months, all visits with mother were monitored. Despite D.T.'s young age when he was initially detained, family reunification services were provided until February 1, 2016, when D.T. was 23 months of age. (See, e.g., § 361.5, subd. (a)(1)(B) [for children who are under the age of three when removed from the parent's home, "court-ordered services shall be provided for a period of six months . . . but no longer than 12 months from the date the child entered foster care . . ."].) Despite the lengthy family reunification period, mother had not made significant progress in resolving the issues that led to D.T.'s dependency.

Mother's interactions with D.T. during the monitored visits did improve as time went by. She learned to set aside her anger and devote more time to enjoying D.T.'s company and playing with him during their visits. But she never resumed unmonitored visits and did not assume a parental role in the child's life. She was the person D.T. visited and played with. The beneficial parental relationship exception does not apply under these circumstances. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 ["a *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one"]; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811 [mother's "regular contact," "positive relationship," and "strong bond" with her child insufficient]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 ["No matter how loving and frequent their contact with the girls, appellants had not occupied a parental role in relation to them"].)

To establish this exception, “the parents must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) That is, “the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. The section 366.26, subdivision (c)(1)(A)[⁴] exception is not a mechanism for the parent to escape the consequences of having failed to reunify.” (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1348.)

Mother relies on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), where the Court of Appeal reversed the termination of parental rights based on the beneficial parental relationship exception. Factually, this matter is distinguishable from *S.B.* There, the child was older than D.T. when she was removed from her father’s home and had lived with him years longer than D.T. resided with mother. S.B. missed her father, and he made significant progress addressing the issues that led to the child’s dependency. Moreover, the *S.B.* court has since recognized that decision “is confined to its extraordinary facts” (*In re C.F.* (2011) 193 Cal.App.4th 549, 558) and has tried to “discourage the improper and inaccurate use of our opinion in *S.B.*, . . . [noting,] in literally dozens of unpublished opinions . . . courts . . . have been required to distinguish *S.B.* on its facts and repeatedly reject the notion a parent can prevent termination of parental

⁴ Former section 366.26, subdivision (c)(1)(A) is now section 366.26(c)(1)(B)(i).

rights by merely showing there is some measure of benefit in maintaining parental contact. We have not found any case, published or unpublished, in which a reviewing court, relying on *S.B.*, provided relief to a litigant whose parental rights were terminated.” (*Ibid.*)

Mother failed to make the required showing for the beneficial parental exception. The juvenile court did not err in terminating her parental rights.

DISPOSITION

The order is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.