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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B288549

(Los Angeles County
Super. Ct. No. CK97745)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.R., Sr.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Natalie P. Stone, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of
Appeal for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

I. INTROCUCTION

Victor R., Sr. (Father) appeals from the February 28, 2018 orders denying his Welfare and Institutions Code¹ section 388 petition and terminating his parental rights over his daughter. Father argues that the juvenile court abused its discretion in denying his section 388 petition because it failed to consider his daughter's bond with him and her family when determining her best interests. He challenges the termination of his parental rights, contending that he maintained regular visitation and contact with his daughter and shared a close relationship with her. He asserts the juvenile court abused its discretion in declining to find that the strength of his bond with his daughter and the benefits of continuing their relationship outweighed any benefit the child would derive from adoption. Finding no error, we affirm the orders.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Dependency Case*

Father and Maria T. (Mother) are the parents of a son, Victor R. Jr., and daughter, V.R. Mother also has three older children—Juan C., Jonathan T., and Hazel C.—from two prior

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

relationships. In March 2013, the juvenile court sustained a section 300 petition alleging Father sexually abused his stepdaughter Hazel. On March 28, 2013, the court dismissed the petition as to Juan and Jonathan, and then on October 2, 2013, granted Mother full legal and physical custody of Hazel, Victor, and V.R. and terminated its jurisdiction. Father was allowed monitored visits with the children.

B. *Investigation and Section 300 Petition*

On February 11, 2014, the Los Angeles County Department of Children and Family Services (the department) received a referral alleging Mother hit the children and used drugs. The department investigated and filed a section 300 petition on April 2, 2014 on behalf of Juan, age 14, Jonathan, age 11, Hazel, age 10, Victor Jr., age 8, and V.R., age 6. The petition alleged that on February 11, 2014, Mother struck Jonathan in the face with her hand, leaving a cut on his lip, and pushed him against a wall. Mother had hit the other children in their faces with her hand in the past. The petition further alleged that Mother allowed Father to reside in the home even though she knew he had sexually abused Hazel. The children were detained on April 2, 2014.

C. *Father's Visitation and Compliance with Case Plan*

On August 4, 2014, the juvenile court sustained the petition under section 300, subdivisions (b)(1), (d), and (j). The court ordered Father to attend parenting classes, sexual abuse counseling for perpetrators, and individual counseling to address

domestic violence. Father was granted unmonitored visits with the boys, monitored visits with V.R., and no visits with Hazel. Mother was not to be present at any of Father's visits.

The children were placed in three separate foster homes. The oldest child, Juan, was placed in one foster home. Jonathan and Victor Jr. were placed together in a second foster home. And Hazel and V.R. were placed together in a third foster home. V.R.'s foster mother later reported that V.R. was happy, but would throw temper tantrums if she did not get her way. On December 3, 2014, during a monitored visit between Mother and the children, Father showed up unannounced to see V.R. even though he knew his visits were to be separate from Mother's visits. V.R. had not seen Father for at least three months and was extremely excited to see him. The foster family social worker allowed a separate, monitored one hour visit between Father and V.R. at that time.

On September 1, 2015, the department placed V.R. and Hazel together in a new foster home. V.R. reported that she liked the new foster home and being with her sister. Father had another visit with V.R. after a court hearing on October 2, 2015. Besides these two visits, Father had not had any contact with V.R. by phone or in person as of October 26, 2015. On October 26, 2015, the juvenile court found the parents had minimal compliance with their case plan and terminated their family reunification services.

In December 2015, the three boys were placed together in one foster home. On January 11, 2016, V.R.'s foster mother reported that Father had not visited the child and only called twice since she was placed in the foster home on September 1, 2015. In contrast to his sporadic contact with V.R., Father had

unmonitored day visits with Juan, Jonathan, and Victor Jr. each Saturday for six to eight hours. Victor Jr. reported he saw various aunts and uncles during the Saturday visits.

On February 10, 2016, Father enrolled in a sexual abuse program. On February 26, 2016, the foster mother informed a social worker that she wanted to adopt V.R. By April 1, 2016, V.R. had told the social worker that she wanted to stay with her current foster parents, and the social worker had determined that V.R. was amenable to being adopted. Also by April 1, 2016, the foster mother had requested that Hazel be removed from the home because she did not want to follow directions.² On May 24, 2016, V.R. told the social worker that she did not wish to visit her parents. During this time, the brothers and sisters were visiting each other weekly.

Father was terminated from his sexual abuse program on June 10, 2016 after missing six sessions, but was reinstated later that month.

On June 20, 2016, the juvenile court ordered the department to set up monitored visits for Father with V.R. The social worker contacted Father to arrange monitored visits, but he did not reply. On July 20, 2016, V.R. told the social worker she did not want visits with her parents but did want to see her brothers. The children reported that their visits with each other had not been consistent because of miscommunication among the foster parents.

According to a September 30, 2016 status report, the children continued to have weekly visits with each other, and the

² After Hazel was removed from this foster home, she was placed in two more foster homes before she ran away on February 16, 2017.

boys continued to have unmonitored visits with Father on Saturday or Sunday. The children were doing well in their foster homes. Father had enrolled in parenting and sexual abuse counseling but had not submitted any certificate of completion to the department.

On September 30, 2016, the juvenile court granted Father a visit with V.R. after the court hearing. The court also ordered monthly monitored visits for Father with V.R. at the department's office. Father's first visit on December 17, 2016 was for only 30 minutes and was with V.R. and her siblings. He had a second, hour-long visit with V.R. on March 25, 2017.

On March 30, 2017, the department reported Father had completed fourteen parenting classes and 41 out of 52 sex abuse counseling sessions. The social worker reported V.R. had "not shown too much interest in visiting with [F]ather" and had said that she wanted to see him for thirty minutes when she was available. She continued to enjoy monthly visits with her siblings. V.R. also continued to express interest in being adopted by her foster mother. But her caregiver was unsure about adoption because V.R. now had visits with Father and was "acting out."

On April 15, 2017, the boys had their first overnight visit with Father. The boys said they had a great visit and that Father cooked "really good food." Father was scheduled to visit V.R. twice a month for two hours starting on May 10, 2017.

On May 10, 2017, the social worker reported that V.R. and her foster mother were unsure about the adoption. The foster mother did not want Father to have visits after V.R.'s adoption. V.R. appeared "confused regarding wanting to be adopted," and experienced anxiety and uncertainty. Her brothers did not

support her adoption, and she wanted to maintain contact with Father and hoped to reunify with him now that he was allowed to have overnight visits with her brothers. The department requested a 90-day continuance to evaluate V.R.'s permanency plan.

During a foster home visit on July 13, 2017, V.R. told the social worker that she wanted to be adopted by her foster parents, as long as she could continue to see her brothers, and that she understood "it will be my forever home." V.R. said that she "[felt] weird being around" Father, explaining, "I feel like he is going to touch me like he did to my sister." She stated she was scared of Father and asked the social worker to "please do not tell him." Although Father did not know her address, V.R. feared that he would come and get her. The foster mother reported V.R. was "exhausted about everyone asking her about adoption," and did not want to visit Father.

On July 17, 2017, the social worker reported both V.R. and her foster parents wanted to proceed with adoption.

D. *Father's Section 388 Petition*

On September 1, 2017, Father filed a section 388 petition, requesting custody of Victor Jr. and V.R. or reinstatement of reunification services. Father stated he had complied with the court orders and was utilizing the tools he learned from the classes to ensure a safe home for his children during overnight visits. Father submitted an April 17, 2017 letter that showed he completed his 52-week sex offender treatment program on April 17, 2017. Father refiled the section 388 petition on September 8, 2017.

A September 28, 2017 status review report stated that V.R. was doing well in school and in her foster home and wanted to be adopted by her foster mother. V.R.'s therapist said V.R. did not speak much about Father, mostly talking about the food Father brought to the visits. She also told her therapist that Father did not tell the truth and she did not trust him. The report stated that since May 10, 2017, V.R. had had monitored visits with Father and her brothers twice a month at the department's office. She preferred to visit Father only when her brothers were present. The report also confirmed Father had completed his sexual abuse program and parenting classes.

On November 8, 2017, the department filed a section 366.26 report. The report stated that in a November 2, 2017 interview with a social worker, V.R. and her caregivers had reiterated their interest in adoption. The prospective adoptive parents were extremely committed to adopting V.R. and providing her with a permanent home. The department recommended adoption and termination of parental rights.

On December 29, 2017, the department filed a response to Father's section 388 petition. The department recommended that the court reinstate Father's reunification services with Victor Jr. The boy wanted to live with Father one day, and his siblings were fine with this arrangement. The response stated that V.R. was confused and uncertain about adoption because of her family's influence. The response stated: "In the past, [V.R.] has reported in not wanting to reside with [F]ather due to her fear of being abused in the manner he abused Hazel. Though recently, when questioned about wanting to reside with [F]ather, she excitedly stated, 'can I, would you let me[?]' [The social worker] asked her if she was still afraid of residing with [F]ather. She said, '[n]ot

anymore.’ [The social worker] asked her what would be the reason she would like to reside with [F]ather. She said, ‘[b]ecause I miss my family.’ [The social worker] asked her what would be a reason she will like to be adopted. She said, ‘[b]ecause they are a nice family.’” The department recommended that V.R. be referred to adoption promotion support services because the child was having a difficult time deciding on her permanent plan. A February 21, 2018 last minute information report indicated V.R. wanted to proceed with adoption. She stated: “I for sure want to be part of this family.” The child also reported that Father wanted to buy her a cell phone so he could speak with her every day. She told Father that she was unable to have a phone until she was fourteen years old.

E. *Combined Sections 388 and Section 366.26 Hearing*

At the February 28, 2018 hearing, the juvenile court denied the section 388 petition as to V.R. The juvenile court found even if there had been a change in circumstances because Father completed his sexual abuse counseling and other parts of the case plan, it was not in V.R.’s best interests to grant custody or reinstate reunification services. The court reasoned V.R. had not been in the parents’ custody for many years and had been with the current caregivers for over two years. Father had been absent for a long time, and V.R. had formed a bond with the current caregivers.

For the section 366.26 portion of the hearing, Father testified that he had lived with V.R. from her birth until she was seven. On her birthdays, he prepared food and games and invited all her friends. He and V.R. would eat at restaurants,

play in the park, and visit family. He provided her with all the necessities of life. He testified the only reason V.R. was removed from his care was because Mother hit one of the boys. He denied that the children were removed a second time from the home because he was living there in violation of a court order.

Father explained that after V.R.'s removal, he did not visit her at first because he held two jobs. He started visiting V.R. about two years ago after he left his second job and began his programs. He called her three times a week. Father visited with V.R. twice a month for two hours. She was happy during the visits. V.R. hugged and kissed him, called him "daddy," and said that she loved and missed him. Father, V.R., and the boys ate the food he brought to the visits and played games. V.R. told Father about school, her grades, her studies, and how she wanted to be a veterinarian. Father admitted he did not help with V.R.'s homework, which was in English and that the child did not confide in Father or ask his advice. Father did not know the name of V.R.'s school or her best friend. He said he loved her with all his heart.

The juvenile court found by clear and convincing evidence that V.R. was likely to be adopted. The court rejected Father's contention that his parental rights should not be terminated because of the sibling bond. The juvenile court found adoption would not interfere with V.R.'s relationship with her brothers. V.R.'s prospective adoptive parents had been supportive of her visits with her brothers and signed a post-adoption contact contract, agreeing to monthly visits and telephone calls between the siblings.

The juvenile court also found the beneficial parental relationship exception under section 366.26, subdivision

(c)(1)(B)(i) did not apply. Father did not meet the first prong of maintaining regular visitation and contact. The court explained: “Here, the Father went more than a year without any contact with [V.R.], and then now it’s two times a month for two hours per visit, and it’s been monitored. [¶] The child has never asked to have those visits liberalized to unmonitored through her counsel. And until fairly recently, the child was still saying she was worried she could be abused, as her sister Hazel was, by the Father. So I think it’s certainly not clear that the Father has met that first prong of maintaining regular visitation and contact.”

Father also did not satisfy the second prong, which required showing that the harm from terminating his parental relationship with V.R. outweighed the benefits of adoption. The juvenile court stated: “The questioning of the father on cross-examination was illuminating. The fact that [F]ather doesn’t really know who is [V.R.’s] best friend, she doesn’t confide in him. She likes him. She loves him. She plays with him. She hugs and kisses him. She does have a bond with him, but it’s not to the level that terminating parental rights is going to be greatly harmful to her and outweigh the benefits of her being enveloped in this adoptive family. [¶] And it’s certainly crucial that she has spent about half of her life outside of the father’s care, outside of the parents’ care. . . . And it’s certainly relevant that [V.R.] has expressed that she wants to be adopted.”

After concluding that the two exceptions to adoption did not apply, the juvenile court terminated parental rights. Father timely filed his notice of appeal on February 28, 2018.

III. DISCUSSION

A. *Denial of Section 388 Petition Was Not an Abuse of Discretion*

Father argues that the court abused its discretion in denying his section 388 petition because the court did not consider the bond between V.R. and her father and family and instead only considered her bond with her caretakers. We review an order denying a section 388 petition for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

Under section 388, subdivision (a)(1), a parent or person having an interest in a child may petition to change, modify, or set aside any previously made order upon grounds of change of circumstance or new evidence. A petitioner requesting modification under section 388 must prove by a preponderance of the evidence that the child's welfare requires such change. (Cal. Rules of Court, rule 5.570(h)(1)(D); *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) "To obtain the requested modification, the parent must demonstrate . . . that the proposed change is in the best interests of the child." (*In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.)

In determining a child's best interest, "a primary consideration" is "the goal of assuring stability and continuity." *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) "When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of the child.' [Citations.]" (*Ibid.*) The court must consider "the strength of the

existing bond between the parent and child” as well as “the strength of a child’s bond to his or her present caretakers, and the length of time a child has been in the dependency system in relationship to the parental bond” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531.)

The juvenile court considered these factors, including V.R.’s bond with her father, in denying Father’s section 388 petition. The court considered that V.R. was detained on April 2, 2014 when she was almost seven years old and had not lived with her parents for close to four years.³ She had been with her current caregivers since September 1, 2015, bonded with them, and repeatedly stated that she wanted to be adopted by them. Father had been absent for a lengthy period of time with limited contact with V.R. The court also considered the need for permanence given the long time since V.R. had lived with her parents and had been with her foster family. In addition, the foster family had agreed to continue visits between V.R. and her brothers so that she could maintain that bond.

The court did not abuse its discretion in concluding that maintaining V.R.’s current custodial arrangement was in her best interest and in denying Father’s section 388 petition.

³ Although Mother was granted sole legal and physical custody of V.R. and Father was allowed only monitored visits after the prior dependency case closed in October 2013, Father testified he lived with the family until V.R. was seven.

B. *Terminating Parental Rights Was Supported by Substantial Evidence and Not an Abuse of Discretion*

Father also argues that the juvenile court erred in terminating his parental rights at the section 366.26 motion because he established that he has a beneficial parental relationship with V.R. At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53.) “In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption (the choice the court made here); (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds ‘that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.’ (§ 366.26, subd. (c)(1).)” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

To avoid termination of parental rights, a parent must prove a statutory exception applies. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re J.C.* (2014) 226 Cal.App.4th 503, 528.) One such exception is the beneficial parental relationship exception in section 366.26, subdivision (c)(1)(B)(i). For that exception to apply, the juvenile court must find “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).) Father has the burden of proving the harm caused by terminating his relationship with the child outweighs the well-being gained in a

permanent home with adoptive parents. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300; *In re Anthony B., supra*, 239 Cal.App.4th at p. 395.)

In determining whether the parental benefit exception applies, the juvenile court considers “[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.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646.) Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646; *In re J.C., supra*, 226 Cal.App.4th at p. 529.) Father also must show he occupies a parental role in the child’s life. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646; *In re Noah G., supra*, 247 Cal.App.4th at p. 1300.)

In *In re Noah G.*, the court noted that “courts have adopted both the substantial evidence and abuse of discretion standards of review” of the parental relationship exception determination. (*In re Noah G., supra*, 247 Cal.App.4th at p. 1300.) In evaluating the juvenile court’s determination as to the existence of a beneficial parental relationship, courts review for substantial evidence. (*In re Anthony B., supra*, 239 Cal.App.4th at p. 395; *In re J.C., supra*, 226 Cal.App.4th at p. 530; *In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) Whether termination of the parental relationship would be detrimental to the child as weighed against the benefits

of adoption is reviewed for abuse of discretion. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395; *In re J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

The juvenile court here determined that Father did not satisfy the first prong of the exception – maintaining regular visitation and contact. Substantial evidence supports this conclusion.

V.R. was detained on April 2, 2014 and had been in foster care for almost four years. Father admits he had limited visitation with his daughter early in the dependency case. From April 2014 to January 2016, Father only visited V.R. twice. On January 11, 2016, V.R.’s foster mother reported Father had not visited V.R. and only called the child twice since she was placed in the foster home on September 1, 2015. Father blames his second job for his infrequent contact with V.R., but he had unmonitored Saturday visits with Juan, Jonathan, and Victor Jr. during that time. From January 2016 to April 2017, Father only visited V.R. three more times. Beginning on May 10, 2017, Father visited the child twice per month for two hours, usually with her brothers in attendance and called her during the week. In sum, Father visited V.R. five times for the first three years and had bi-monthly monitored visits and regular calls for the last nine months.

Father argues that his contact with V.R. was as frequent as in *In re Brandon C.* (1999) 71 Cal.App.4th 1530, and *In re Amber M.* (2002) 103 Cal.App.4th 681. But those cases do not support his position. In *In re Brandon C.*, the mother visited her sons “consistently for the entire lengthy period” of the three-year long dependency case. (*In re Brandon C.*, *supra*, 71 Cal.App.4th at

p. 1537.) Father did not show similar consistency. In *In re Amber M.*, the court did not discuss how often the mother visited her child, except to note that she “visited as often as she was allowed.” (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 690.) That was not true of Father.

The juvenile court also found that Father did not satisfy the second prong of the exception—that the harm from terminating his parental relationship with V.R. outweighed the benefits of adoption. The court did not abuse its discretion in reaching this conclusion.

Father did not occupy a parental role such that terminating his parental rights would be detrimental to V.R. (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1301.) V.R. exhibited mixed feelings about him. At times she reported not wanting to reside with Father due to her fear of being abused in the manner he abused Hazel. She preferred visiting Father only when her brothers were present. V.R.’s therapist reported the child mostly talked about the food that Father brought to the visits. V.R. told her therapist that Father did not tell the truth and she did not trust him. Father testified that during visits, V.R. hugged and kissed him, called him “daddy,” and said she loved and missed him. Father testified V.R. told him about school and her career choice. But Father admitted she did not confide in him or ask his advice, and he did not know the name of her school or her best friend.

V.R. also expressed some mixed feelings about the adoption. She had lived with her prospective adoptive parents for over two years and thrived in their care. Many times she said that she wanted to be adopted by her foster family. More recently when questioned about living with Father, she excitedly stated, “can I, would you let me[?]” She indicated she wanted to

reside with Father because she missed her family. But she again expressed her desire to be adopted by her foster parents as recently as January 26, 2018, a month before the section 366.26 hearing.

The juvenile court could conclude that V.R.'s statement about living with her father was sparked by a desire to see her brothers. Her current caregivers were supportive of her close relationship with her brothers and signed a post-adoption contract, agreeing to future sibling visits and phone contact. Based on the evidence presented, the juvenile court did not abuse its discretion in finding that the harm from terminating Father's relationship with V.R. did not outweigh the benefits of adoption.

IV. DISPOSITION

The orders denying Father's section 388 petition and terminating his parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SEIGLE, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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