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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re K.J., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

B297426

(Los Angeles County
Super. Ct. No. CK42907-A)

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

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Mother T.R. appeals the juvenile court's order terminating her parental rights to now seven-year-old K.J., arguing the beneficial parent-child relationship exception to the termination of parental rights applied. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are drawn from our earlier opinion, denying mother's writ petition challenging the court's order setting a Welfare and Institutions Code section 366.26 hearing, *T.R. v. Superior Court* (Sept. 28, 2018, B291171) [nonpub. opn.]:

"T.R. gave birth to K.J. when she was 16 years old and herself a dependent of the juvenile court. T.R. had begun working with a registered public health nurse specializing in at-risk mothers during her pregnancy, and K.J. lived with her for almost his first year.

"K.J. was removed from mother's care the first time when he was 11 months of age, after numerous issues arose related to mother's failure to adequately supervise him.^[1] K.J. remained in an out-of-home placement for approximately five months. During that time, mother's monitored visits went well.

"With the recommendation of the Department of Children and Family Services (DCFS), K.J. was returned to mother's care in November 2013. Mother and child were placed together in a group home. This placement gave mother the opportunity to take advantage of daycare services for K.J. The juvenile court ordered

¹ At the jurisdiction/disposition hearing, the juvenile court found K.J.'s father was unwilling and unable to provide him appropriate parental care and supervision. Father is not involved in these proceedings.

mother to participate in individual counseling and complete an anger management program.

“This placement lasted approximately six months, but ended after a series of angry outbursts and rule violations by mother. In one incident, mother slammed a telephone on the ground, almost hitting K.J., and then left the room in anger, knocking down an 18-month-old child; neither child was injured. K.J. witnessed mother cursing and yelling at staff. In another incident, mother verbally argued with another teen mother. Again, K.J. was present; staff had to restrain mother.

“Mother’s behavior improved after these outbursts, but she defied the group home rules by repeatedly returning late. She demonstrated limited insight into her personal responsibility. She resisted staff’s instructions that it was her responsibility to pick up K.J. from daycare on time.

“In April 2014, mother refused to take K.J. to the hospital after he developed a fever. When the child finally received treatment, he was diagnosed with bronchitis, an ear infection, and pneumonia.

“In May 2014, mother engaged in a physical altercation with another resident. Blows were struck, and mother punched the window and kicked the door to the room the other resident was in; all this occurred in K.J.’s presence.

“K.J. was removed from mother’s custody in late May 2014. Mother’s family reunification plan provided for anger management, parenting classes, and individual counseling.

“While K.J. was in foster care, mother completed the anger management course, graduated from high school, enrolled at Los Angeles City College, and got a job with a retail company. Mother expressed a desire to reunify with K.J. and insisted her

anger would never affect her child. Mother's interactions with other group home residents and their children were positive.

"During this period, however, mother's threats to staff on one occasion prompted them to call the police. She occasionally failed to return home before curfew. She stayed away until late at night on three occasions, prompting staff to file missing person reports twice.

"Nevertheless, mother's monitored visits with K.J. went so well that she began unmonitored visits. She was chronically late in returning K.J. to his foster home, however; and the foster mother asked that K.J. be placed elsewhere. In December 2014, K.J. moved to the foster home where he once again resides. K.J. was two years of age; this was his fifth placement.

"Mother's disruptive and destructive behavior in her group home, including physical outbursts and running away, continued. The group home discharged her in April 2015.

"Although mother consistently visited K.J., she often made last-minute changes to the schedule. The inconsistencies were difficult for the child, and he started acting out when getting ready for scheduled visits.

"DCFS reported mother had completed the court-ordered programs, but failed to demonstrate substantive progress or insight. By the time of K.J.'s 12-month review hearing in July 2015, mother had stopped individual therapy. Mother's foster parent asked that she be placed elsewhere.

"Despite the ups and downs and the fact that K.J. was under three years of age when detained, the juvenile court did not terminate family reunification services at the 12-month mark, but continued those services and scheduled an 18-month review hearing. During this six-month period, mother continued

to arrive late for visits or missed them entirely. Her shift at work ended at 2:00 a.m., and mother sometimes had trouble getting up the next morning. Nonetheless, mother's unmonitored visits were extended to several overnight stays.

"At the 18-month review hearing in February 2016, DCFS reported, and the juvenile court recognized, the bond between mother and child. Mother moved into an apartment that could accommodate K.J. (a 'parenting unit'), and K.J. was returned to her care under continuing juvenile court supervision.

"In July 2016, mother left K.J. home alone around 3:45 a.m. to help a friend. A passerby spotted the child on a street corner, and the police were called. Mother returned at 5:30 a.m., before officers arrived, but they interviewed her. She admitted this was not the first time she had left K.J. alone. DCFS immediately intervened with a 'team meeting' to devise a safety plan. Mother agreed not to leave him alone again.

"But she did. Three months later, in October 2016, mother left K.J. alone in the apartment around 3:30 a.m. to put gas in her car. She said she was gone no more than 12 minutes, but did not check on K.J. when she returned home. She ate a bowl of cereal and then realized her son was not in the apartment. She went outside to look for K.J. and drove around. Mother waited an hour before reporting the child missing because 'she really wanted to find [him] before she had to report it to the police.' Police officers found K.J. at a gas station almost an hour later, in the company of a transient. K.J. explained he woke up alone in the apartment, was afraid, and went to look for his mother.

"DCFS detained K.J. and returned him to his previous foster home. K.J. had been in mother's care for about eight months.

“Mother was given a new family reunification plan. It included individual counseling and parenting education for her, play therapy for K.J., and conjoint counseling for them both. The court allowed mother unmonitored visits on the condition she not leave K.J. alone.

“Mother went to parenting classes and started individual counseling with a new therapist. The therapist reported mother initially was difficult to work [with], but improved. Mother’s pattern of varying her visits at the last minute continued. She engaged in inappropriate conversations with K.J., telling him that they would be moving to Canada soon. K.J. worried about mother being alone. At the 12-month review, held in August 2017, the court found mother in moderate compliance with the case plan. Mother was sharing a home with several other former foster youth and was working well with K.J.’s foster parents. Mother continued to attend school full time and often brought K.J. with her. She participated in therapy, but had not found a parenting course that fit her schedule. DCFS once again authorized overnight visits.

“In December 2017, the juvenile court found mother to be in substantial compliance with the case plan. Concluding there was a good probability K.J. could be returned to mother’s care if additional time were provided, the juvenile court ordered another six months of family reunification services.

“By the time of the 18-month review hearing in June 2018, however, DCFS recommended terminating reunification services and scheduling a selection and implementation hearing pursuant to [Welfare and Institutions Code] section 366.26.

“The juvenile court conducted a contested 18-month review hearing over a two-day period. The usual DCFS reports were

received into evidence, as well a letter from K.J.'s therapy provider and an e-mail from a visitation monitor. Although mother had attended a number of parenting classes, she still had not completed the course. Mother's therapist reported her progress was minimal due to interpersonal conflicts and difficulty implementing effective problem-solving strategies. Mother no longer attended conjoint counseling with K.J. When she had participated, K.J.'s behavior regressed and he would act out.

"An incident several months earlier was of particular concern. Mother had taken K.J. to visit her father. When it was time to leave, K.J. resisted mother's efforts to buckle him into his car seat. Mother forcefully buckled him in and hit the child in the stomach or chest with enough force that K.J. said he could not breathe. Mother admitted she struck K.J. multiple times on the buttocks, arm, and chest. Because of K.J.'s anxiety about another visit with mother, the visit scheduled for the upcoming weekend was canceled.

"Mother testified. Her current housing situation could not accommodate K.J.; but if he were returned to her care, she would find other housing. Addressing the physical discipline incident, she explained K.J.'s behavior got progressively worse during the visit with his grandfather. She had set aside time during the visit to do K.J.'s homework, but the child did not want to do his homework. She spoke to him privately. She tried five-minute timeouts. Finally, she gave K.J. the choice between doing his homework or going home. He still would not do his homework, so she packed his things. K.J. then started to have a 'meltdown,' so she put him in a bear-hug and got him out of the house and into the car. During the ensuing tussle to buckle him in, K.J. smacked mother in the face and she swatted him on the arm no

more than three times. She then forcibly buckled him in his car seat. Mother said she had never before had a problem like this with K.J. At most, he would cross his arms and tell her he did not want to talk to her.

“Mother testified it was difficult, with school and two jobs, to complete the parenting course. Mother said she could retake the parenting course during the summer months when her schedule would be more flexible.

“In terms of her weekly individual counseling, mother was working on her tendency to become irritated and agitated. She enjoyed therapy because she likes getting things off her chest. Mother thought her sessions were going well and was surprised to learn her therapist had reported only minimal progress.

“In their closing arguments, DCFS asked the court to terminate reunification services. Minor’s counsel agreed it would not be safe to return K.J. to mother’s care at that time, but was in favor of extending reunification services. Mother’s counsel asked for the child’s return to her home and more time for family reunification.

“The juvenile court found by a preponderance of the evidence that returning K.J. to mother’s physical custody would create a substantial risk of detriment to the child. The juvenile court judge noted that DCFS and the juvenile court ‘have wanted to give mother every possible opportunity to reunify’ and acknowledged mother’s progress. Observing that no parent in that department’s inventory had received more family reunification services, the juvenile court also stated it expected ‘to see mother in a different place after four years of quite extensive services’

“The juvenile court described mother as ‘very credible, very intelligent, very articulate.’ Although mother had learned from the numerous classes she had taken, she still had difficulty applying that knowledge. Having observed mother testify, the juvenile court remarked, ‘she does demonstrate when questions get tough, she’s easily frustrated. You can sense the tension, the frustration. And the court has concerns about how that manifests itself.’ Regarding the April 2018 incident, the court said that ‘four years into this intensive process . . . we’re still at [t]he point where mother can’t control her response to a stressful situation.’ The court told mother, ‘[y]ou are a great person, there is no doubt about that. I think you’re going to be a good parent. But I think you need to get to the place where you can convince all of us without any hesitation that your anger management issues are under control and that we’re in a place where we can say without any real reservations that it would be safe to return the minor to your care. We are just not there, and we’re out of time.’ Finally, in terms of an immediate placement, mother did not have housing for herself and K.J.

“The juvenile court terminated reunification services. The court set a hearing pursuant to section 366.26 and encouraged mother to continue her progress in the meantime, to demonstrate substantial change at the hearing. The court also ordered that mother’s visits remain monitored, but gave DCFS the discretion to liberalize visitation.” (*T.R. v. Superior Court, supra*, B291171.)

Mother filed a writ petition, in which K.J. joined, arguing the court erred in setting a Welfare and Institutions Code section 366.26 hearing, and in not providing further reunification services. We denied the petition, finding “substantial evidence supports the juvenile court’s finding that returning K.J. to

mother's care would create a substantial risk of detriment to his physical or emotional well-being." Specifically, we found that "[d]espite all the services she received, mother continued to display poor judgment and poor parenting skills. She acknowledged she left K.J. alone in the middle of the night on three occasions, the last time after the dangers of doing so had been fully explained to her. When K.J., at five years of age, resisted her physically, she resorted to physical discipline to quell his disobedience." (*T.R. v. Superior Court, supra*, B291171.)

We also concluded that "[t]he juvenile court did not err in declining to provide another three months of reunification services" because K.J. had spent more than two-thirds of his young life in and out of foster care, and despite the years of reunification services, mother "had not made enough progress in critical aspects of her parenting. In particular, mother continued to struggle when frustrated or stressed, as exemplified by the seat buckle incident." (*T.R. v. Superior Court, supra*, B291171.)

Just before we filed our opinion, mother filed a Welfare and Institutions Code section 388 petition seeking to have K.J. returned to her care, or to receive additional reunification services.

Notwithstanding DCFS having discretion to liberalize mother's visits, she never progressed to unmonitored visits. Although her visits were generally good, and mother was nurturing and affectionate, there were two significant incidents that concerned DCFS.

At an October 7, 2018 visit to a special event at the Grove, K.J. licked mother while they were engaged in good-spirited "horseplay." She became upset, scolded him, and repeatedly asked K.J. why he had licked her. K.J. shut down, and would not

answer. Mother told him they would not attend the special event, and that it was time to leave. K.J. began to wander away, upset, and mother forcefully restrained K.J. K.J. became combative and tried to hit mother. Mother ignored the monitor's suggestion that they have a seat and calmly talk, and continued to physically restrain K.J., using her body to press him against a pipe in a corner, and threatening to call police when he continued to hit her. Concerned for K.J.'s well-being, the monitor ended the visit. Later, when mother met K.J. and the monitor to provide the monitor with a booster seat, mother tried to discuss the case with K.J., asking him if he wanted to live with her.

During a February 6, 2019 visit, K.J. shut down while mother was helping him with his homework, and would not respond to mother's questions. Mother became very emotional and repeatedly asked K.J. if he wanted to continue having visits with her. She stormed away when he would not respond, without telling the monitor or K.J. where she was going. As the monitor was leaving with K.J., they ran into mother. Mother resumed her questioning of K.J., and K.J. again refused to answer her. Mother walked off again. As the monitor was placing K.J. in the car to leave, mother appeared, and resumed her questioning of K.J. K.J. admitted to mother he wanted to stay with his foster parents.

Following the October 7 incident, K.J. had repeated sleep disturbances, waking in the night seeking comfort from his foster parents. He also had increased anxiety at school.

K.J. remained placed with the same foster family he had been with for most of the dependency, having first been placed with them in December 2014. They were committed to adopting him, and had an approved home study. K.J. was thriving in their

care, and consistently told DCFS he “feels good” about being adopted, wants to remain in their care, and feels safe and happy in their home. He also told his therapist that he wants to stay in his current placement, and also enjoys spending time with mother. The therapist recommended that K.J. “stay in a consistent, stable, calm, and nurturing home environment”

Mother and K.J. participated in a bonding study. The evaluator interviewed mother, and observed mother and K.J. interact. *He did not interview or evaluate K.J.* The evaluator opined it would be detrimental to K.J.’s well-being if parental rights were terminated, and that “there is definitely a fairly strong and secure attachment between [mother and K.J].” However, he opined that continued support was required to ensure mother’s successful parenting including weekly therapy, ongoing psychiatric evaluations to address patterns of depression, and continued employment and schooling.

K.J.’s foster parents told DCFS that if they adopted K.J., they were willing to allow mother and K.J. to continue to visit each other.

The juvenile court denied the Welfare and Institutions Code section 388 petition² and terminated mother’s parental rights, finding “the court still has concerns about mother’s parenting ability, specifically her conflict resolution and anger management skills.” The court acknowledged that mother maintained regular visitation and was bonded to K.J., but found the bond was not the same as the one he had with his foster parents. Any benefit of his relationship with mother was

² Mother does not challenge the court’s ruling on her Welfare and Institutions Code section 388 petition on appeal.

outweighed by the benefit of the permanency and stability of adoption.

Mother filed a timely notice of appeal.

DISCUSSION

After reunification services are terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under Welfare and Institutions Code section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing evidence standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; see also Welf. & Inst. Code, § 366.26, subd. (c)(1).) A statutory exception to the general rule requiring the court to choose adoption exists where “[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B), *italics added*) because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship” (*id.*, subd. (c)(1)(B)(i)). (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.)

In deciding whether the parent-child beneficial relationship exception applies, “the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

“If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) The parent-child relationship must “promote[] 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.” (*Ibid.*)

The parent-child relationship “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.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Id.* at p. 1350.)

“We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. [Citations.]” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “ “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ ” (*Ibid.*)

It is undisputed that mother maintained regular visitation, and that mother and K.J. shared a bond. However, the juvenile court did not abuse its discretion in finding that the relationship

did not “promote[] 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.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

At the time of the selection and implementation hearing, K.J. had been a dependent for nearly six years, spending most of his life outside of mother’s care. Mother received many years of reunification services, yet she was still struggling with her “conflict resolution and anger management skills.” Visits with mother sometimes caused K.J. to experience sleep disturbances and anxiety. K.J. consistently reported his preference to live with his foster parents, who were willing to allow continued contact between mother and K.J. The bonding study’s determination that K.J. would suffer if parental rights were terminated is not dispositive. It was but one factor for the juvenile court to consider. (See, e.g., *In re Grace P.* (2017) 8 Cal.App.5th 605, 613.) The juvenile court reasonably concluded that any benefit K.J. derived from his relationship with mother was outweighed by the benefits of permanency.

DISPOSITION

The order terminating mother’s parental rights is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.