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

In re NADIA C. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SUZANNA C.,

Defendant and Appellant.

B256557

(Los Angeles County
Super. Ct. No. CK91512)

APPEAL from orders of the Superior Court of Los Angeles County, Tony L.
Richardson, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and
Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County
Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Suzanna C. appeals from the orders of the juvenile court denying her petition for a change of order (Welf. & Inst. Code, § 388)¹ and terminating parental rights to her four children. (§ 366.26.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Background*

Viewing the evidence according to the usual rules (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165), it shows that the juvenile court sustained a petition (§ 300) in May 2012 finding that Suzanna had a seven year history of drug abuse and was a current abuser of methamphetamine and amphetamine, rendering her incapable of providing regular care to Nadia C. (age 10), Nathan C. (age 7), Julio C. (age 5), and Damian C. (age 3). The court also found that Suzanna left the children with the maternal grandfather without making a plan for their care, and that Damian was born in November 2011 with a positive toxicology screen for methamphetamine and amphetamine.² (§ 300, subds. (b) & (g).)

Suzanna denied using drugs. After she was confronted with a positive test result from January 2012, she admitted being a “recreational user” of methamphetamines. Suzanna also has a criminal history.

2. *The reunification period – before Suzanna’s arrest*

As disposition, the juvenile court ordered Suzanna to complete a (1) drug rehabilitation program with aftercare and random or on-demand testing, (2) parenting classes, (3) individual counseling to address case issues, and (4) family counseling. The court also granted her monitored visits.

a. *Drug rehabilitation*

In November 2011, after the Department of Children and Family Services (the Department) removed the children from Suzanna’s custody, but before the petition was

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

² The children’s father is not a party to this appeal.

sustained, Suzanna enrolled in a drug rehabilitation program at Baldwin Park Counseling Center, but was discharged for non-attendance only two months later, in January 2012. The following day she enrolled in an outpatient program at Acacia Counseling but was terminated again for failure to participate. A month later, in February 2012, Suzanna underwent an intake assessment at Prototypes Substance Abuse Program, but left 10 days later against medical advice. Suzanna refused the Department's ensuing offers to assist her in enrolling in a free program.

In April 2012, just before the adjudication hearing, Suzanna enrolled in a program at Acacia Counseling. The intake coordinator there was not confident that Suzanna would actually attend because she only partially paid the fee and "insisted" that the program give her enrollment letters to her attorney. Suzanna had done the same thing at Acacia Counseling in January 2012: partially paid, obtained her enrollment letters, and disappeared after attending her court hearing.

Between January and August 2012, Suzanna twice produced positive test results and otherwise failed to appear seven times for random drug tests.

b. Parenting classes and individual and family counseling

Many of the rehabilitation programs in which Suzanna enrolled offered the classes and counseling she was ordered to undergo as part of her case plan. However, as the result of her short stays at each program, Suzanna did not participate in much of her court-ordered plan. Suzanna never commenced family counseling as she was unaware that it was a required part of her case plan.

c. Visitation

Initially, visitation was problematic. Suzanna was rude, angry, and vulgar with the monitoring staff and threatened to take her children during a monitored visit. She attempted to feed the infant Gatorade and refried beans and was angry when staff tried to correct her. Suzanna's difficult behavior caused the agency to refuse to monitor her visits.

Suzanna had no visits with the children between April and November 2012.

3. Suzanna's arrest and conviction

Suzanna disappeared in September 2012 before the scheduled six-month review hearing. The Department eventually located her in jail on carjacking charges. She was released at the end of February 2013.

In March 2013, Suzanna entered an residential drug treatment program at Rena B. Recovery Center and produced six negative drug test results. Although her participation was reported to be “positive,” Suzanna was expelled for lack of compliance in late May 2013, only two months later. Several text messages on her phone indicated she was using or attempting to obtain drugs. Suzanna admitted to the social worker she was using and so she refused to submit to tests then and in June 2013.

Suzanna's visits with the children were minimal throughout her incarceration and during her stay at Rena B. Recovery Center because that program required a 30-day period without visitation. Visits, which had ceased in April 2012, resumed at Easter in 2013. Still, visits were inconsistent. Between her release from jail and July 2013, Suzanna attended only 40 percent of her visits. When she did visit, she was appropriate with the children. Suzanna explained she had missed visits because she had “ ‘messed up,’ ” which was her way of admitting she was using drugs again.

Just before the 12-month review hearing (§ 366.21, subd. (f)) Suzanna enrolled in a residential treatment program at the Los Angeles Transition Center, Inc.

4. The 12-month review hearing on August 16, 2013

At the review hearing (§ 366.21, subd. (f)), the juvenile court terminated reunification services for Suzanna after finding that she had not consistently and regularly contacted and visited with the children, made no significant progress in resolving the problems that led to the removal of the children from her custody, and had not demonstrated the capacity and ability to complete the objectives of her treatment plan or to provide for the children's safety, protection, physical and emotional well-being, and needs. The court set the selection and implementation hearing for December 13, 2013.

5. The post-reunification period

a. Probation

Suzanna reported that she was on probation for five years. Her probation officer was the one who referred her to the Los Angeles Transition Center, Inc. If Suzanna stayed out of legal trouble for two years and remained in the residential treatment program for a year, her probation would be terminated. Otherwise, she would have to serve out a three year prison sentence.

b. Visits

Between September 2013 and February 2014, Suzanna had monitored telephone calls and visits with the children twice on weekends, for a total of four hours a week. Visits became consistent in 2014. By February 2014, the Department reported that the children enjoyed visits. All contact with the children remained monitored.

6. The children

The children were placed with their maternal aunt Priscilla P. and her husband Javier P. They adjusted well to the P.s who met their needs. Everyone got along “very well” and integrated and bonded with the family. They were “happy, comfortable and relaxed,” “very friendly, smiling and engaging.” The household appeared to the social worker to be stable and nurturing. The three oldest children underwent some form of therapy for a short time.

In February 2014, the Department reported that the children were “healthy” and “thriving” in the P.s’ care. Nadia and Nathan had done well in school and presented no behavioral problems.

The Department commenced a home study for the P.s in the spring of 2013. Nadia and Nathan stated they liked living with the P.s, who were committed to adopting the four siblings. Nadia wanted to be adopted by them. Nathan was too young to understand adoption.

7. The petition for modification

On February 21, 2014, Suzanna filed a petition for modification (§ 388) seeking to have the children placed with her or to reinstate reunification services, including

unmonitored contact. As changed circumstances, Suzanna indicated she had participated in six-months of the drug program at Los Angeles Transition Center, Inc., completed 18 sessions of parenting classes, 10 sessions of individual counseling, and had enrolled as a full-time student at the UEI College's Dental Assistant Program. The change in order would benefit the children, she asserted, because she "is committed to the safety of her children and her sobriety by completing her court-ordered programs. Mother visits the children regularly and consistently, and those visits have been positive without incident. Mother is also a full time [*sic*] student, planning to position herself with a career to provide for her children." Suzanna was scheduled to graduate from the Los Angeles Transition Center, Inc. in July 2014. The juvenile court scheduled a hearing on the section 388 petition.

In its response to Suzanna's petition for modification, the Department reported that the children were stable and happy with Priscilla and were used to the routines in her house. Priscilla felt Suzanna was not ready to parent or provide for the children.

The Department also noted the children were happy about adoption. Nathan commented that Suzanna had cancelled some visits. Nadia was disappointed she could not live with Suzanna. Suzanna's other sister, who functioned as visit monitor, opined that Suzanna was ready for the chance to have the children returned to her. She felt Suzanna had changed a lot. Recognizing the children could not be placed with her in the residential treatment facility, Suzanna had no plan for where to live if the juvenile court released the children to her before her discharge in July 2014. The social workers expressed concern about prolonging foster care and concluded that the children's long term best interest was to remain with Priscilla. Accordingly, the Department recommended the juvenile court deny Suzanna's petition for change of order.

Suzanna testified at the hearing on her petition for modification that if the children were released to her, she would live with their paternal grandmother where her probation officer was willing to allow her to finish the remaining two months of her rehabilitation. Suzanna testified she was on step three of Alcoholics Anonymous' 12 steps.

Priscilla testified that Suzanna's visits with the children only became consistent in the previous four to five months because Priscilla intervened to make Suzanna visit regularly.

The juvenile court found that Suzanna's circumstances were changing but that she had not "improved and progressed to such an extent that the children should be released to her." The court noted that Suzanna was unaware that family counseling was a component of her court-ordered plan and so she had not complied with that element. The court also found it was not in the children's best interest to reinstate reunification services.

8. *The section 366.26 hearing*

Nathan testified that he liked visits with Suzanna. His favorite thing to do with her was to eat. He would feel sad if he could not visit with Suzanna, but added that it would be okay if he could live with Priscilla and Suzanna could visit. Nadia testified that she would be sad if Suzanna were no longer her mother. It would make her feel okay but a little bit sad if Priscilla were her mother. She understood that Priscilla would not be obligated to let Suzanna see her after the adoption and that made her sad. She did not want to be adopted.

The juvenile court terminated Suzanna's parental rights finding Suzanna had failed to demonstrate applicability of the parental-relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).) Suzanna filed her timely appeal.

DISCUSSION

1. *No abuse of discretion in denying Suzanna's section 388 petition.*

Section 388 allows a parent to petition the court for a hearing to modify or set aside any previous order on the grounds of change of circumstance or new evidence.³

³ Section 388 states in relevant part, "Any parent . . . having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . ."

“To support a section 388 petition, the change in circumstances must be substantial. [Citation.]” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.)

In ruling on a section 388 petition, the court’s task was to determine whether Suzanna demonstrated by a preponderance of the evidence that (1) there was new evidence or a change of circumstances demonstrating that (2) it was in the children’s best interest to change the previous order denying reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) The petition is addressed to the court’s sound discretion and on appeal, the decision will be disturbed only when there is a clear abuse of that discretion. (*In re Jasmon O., supra*, at p. 415.)

At best, Suzanna demonstrated that circumstances were changing but not that they have changed. Suzanna has a long, entrenched history of abusing seriously addictive drugs. During the reunification period she admitted relapsing and using. She has a pattern of enrolling in rehabilitation programs in advance of court hearings and then being expelled for failure to participate. In that context, Suzanna’s six months of rehabilitation at Los Angeles Transition Center is just the beginning. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [“It is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.”]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [sobriety for 200 days is not enough].) As for the remaining portions of her case plan, Suzanna has only begun to address the causes of this dependency, her contention to the contrary notwithstanding. She participated in only 10 counseling sessions and 18 parenting classes, and advanced only to the third of 12 steps. Suzanna has not begun to address family counseling which was a required element of her case plan. Stated otherwise, before her conviction for a violent crime, Suzanna had not made any concerted effort toward rehabilitation. While we applaud Suzanna’s efforts since then, they are recent and of short duration. Suzanna is at the beginning stages of change and so she has not shown a substantial change. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 [petition alleging changing circumstances, as compared to changed circumstances, is insufficient].)

Moreover, Suzanna has not demonstrated the second prong of the section 388 test, namely that returning the four children to her care or granting her additional reunification services would be in the children's best interest. After termination of reunification services, "a parent's interest in the care, custody and companionship of the child is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) "[O]n the eve of the section 366.26 permanency planning hearing - the children's interest in stability was the court's foremost concern and outweighed any interest in reunification. [Citation.]" (*In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) The children are in a stable, nurturing, loving, safe home with the P.s where their needs are being met and they are happy and thriving. Meanwhile, Suzanna rarely visited the children during the reunification period and consistently visited them recently because Priscilla demanded it. Even so, Nathan testified Suzanna cancelled some visits. The children have stability, security, and permanency. By contrast, Suzanna's recovery is recent and partial and she has only just begun to address the cause of the dependency. The prospect of an additional reunification period to see whether Suzanna might become capable of parenting does not promote stability for the children and therefore would not be in their best interest. " 'Childhood does not wait for the parent to become adequate. [Citation.]' [Citation.]" (*In re Ernesto R., supra*, 230 Cal.App.4th at p. 224.) The denial of Suzanna's section 388 petition was not an abuse of discretion.

2. No error in terminating parental rights (§ 366.26)

At the hearing under section 366.26, the juvenile court must order one of three dispositional alternatives: adoption, guardianship, or long-term foster care. (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.) The Legislature has declared a strong preference for adoption over the alternative plans. (*Id.* at p. 297.) Once the juvenile court finds that the children are adoptable, a finding Suzanna does not challenge, "the court shall terminate parental rights unless" the court "finds a compelling reason for determining that termination would be detrimental to the child due to" one of the six delineated

exceptions. (§ 366.26, subd. (c)(1) & (c)(1)(B).) Only if a compelling reason for applying an exception appears may the court select a plan other than adoption.

The exception to adoption on which Suzanna relies is that found in section 366.26, subdivision (c)(1)(B)(i), the so-called parental-relationship exception. This exception applies when the court finds that (1) “[t]he parents have maintained regular visitation and contact with the child and [(2)] the child would benefit from continuing the relationship.” (*Ibid.*) As the parent, Suzanna bears the burden to show application of this exception. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

On appeal, both the sufficiency of the evidence and the abuse of discretion standards apply. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) The substantial evidence standard applies to the question of whether a beneficial parental relationship exists. (*Id.* at p. 1314.) The abuse of discretion standard applies to the juvenile court’s determination whether the parental relationship constitutes a “ ‘*compelling reason* for determining that termination [of parental rights] would be detrimental.’ ” (*Id.* at p. 1315.)

A beneficial parent-child 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.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) In applying the exception, courts “balance[] the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child.” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.) “[I]f severing the existing parental 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.’ [Citation.] In other words, if an adoptable child will not suffer *great detriment* by terminating parental rights, the court must select adoption as the permanency plan. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229, italics added.) Thus, “[t]he juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly

enough to outweigh the strong preference for adoption.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Here, the record shows that Suzanna did not regularly and consistently visit the children during the reunification period, her assertion to the contrary notwithstanding. Visits were difficult early on and ceased all together between April 2012 and Easter of 2013. After her release from jail, Suzanna attended only 40 percent of her visits. Regular and consistent visitation occurred only in 2014, and, as the juvenile court noted, only because Priscilla insisted. More important, throughout the dependency, Suzanna only had monitored contact with the children.

The parental-relationship exception is applied *only* where because of regular visits and contact, the parent has been able to occupy a “*parental role*” in relationship to the children any time during their lives. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419, italics added.) Under this exception, the parent-child contact must be more than “frequent and loving” (*id.* at p. 1418), or pleasant (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324). This relationship arises from the “day-to-day interaction” in which the adult tends to the child’s needs for “physical care, nourishment, comfort, affection and stimulation. [Citation.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Here, not only was visitation irregular and inconsistent, but the evidence shows that Suzanna spent mere hours a week with the children and that they played, read, and ate together. Suzanna did not occupy a parental role in these children’s lives; at best, she had a pleasant relationship with them.

Nadia and Nathan testified they would be “sad” if Suzanna’s parental rights were terminated. Nadia testified she did not want to be adopted. Suzanna observes that Nadia cried when testifying and argues this is evidence of a bond the two shared. However, Nadia is also on record as telling the social worker she wanted to be adopted by the P.s. Furthermore, she is only one of four children and although the eldest, she is 10 years old. “[T]he court need not follow the child’s wishes unless he or she is over the age of 12.” (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 201, citing § 366.26, subd. (c)(1)(B)(ii) [exception to adoption when a child of age 12 or older objects].) Ultimately,

“[i]nteraction between natural parent and child will always confer some incidental benefit to the child.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Yet, “[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 Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) “[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.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) This is not the extraordinary case.

Furthermore, although the juvenile court must consider each child’s wishes, “it [is] required to act in each child’s best interest (§ 366.26, subd. (h)(1)) and a child’s wishes are not necessarily determinative of the child’s best interest [citation].” (*In re C.B.* (2010) 190 Cal.App.4th 102, 125.) In balancing the strength and quality of Suzanna’s relationship with the children against the security and belonging of adoption (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1235), the result is not close. Julio lived with Suzanna for half of his life, and Damien for none. These children have quickly adjusted to the P. household where they are happy, healthy, doing well in school, i.e., thriving. The children no longer require therapy and their needs are being met. They like living with the P.s. Whatever connection with Suzanna that Nadia and Nathan feel is not sufficiently strong to overcome the benefit they will receive from the permanence, safety, stability, security, and affection that the children have experienced in the P.s’ care or in an adoptive house, and so there is no compelling reason for determining that termination of parental rights would be detrimental to the children.⁴ The juvenile court did not abuse its

⁴ Suzanna relies on *In re Amber M.*, *supra*, 103 Cal.App.4th 681. It is distinguished because unlike here, the evidence there from the psychologist, therapists and court appointed special advocate was that the children missed their mother and had a “strong primary bond with her.” (*Id.* at p. 690.) As Suzanna failed to undergo family counseling, she lost the opportunity to obtain the kind of psychological assessment that would demonstrate the necessary bond.

discretion in determining that termination of parental rights would not be detrimental to these children.

DISPOSITION

The orders are affirmed.

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ALDRICH, J.

We concur:

KITCHING, Acting P. J.

LAVIN, J.*

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