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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re H.V. et al., Persons Coming Under the
Juvenile Court Law.

B269243

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK05109)

Plaintiff and Respondent,

v.

STEPHANIE M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Affirmed.

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

Tarkian & Associates and Arezoo Pichvai, for Plaintiff and Respondent.

Stephanie M., mother, appeals from a juvenile court order terminating her parental rights over her four daughters, H MV, H DV, S V, and P V. Mother contends the trial court erred in failing to apply the beneficial parent-child relationship exception to the termination of parental rights. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) became involved with mother and the children in March 2014, after receiving a report that mother was not caring for the children's basic needs.¹ At the time, the children were ages 5 (H MV), 2 (H DV), 1 (S V), and 10 months (P V). In May 2014, the children were detained from mother and placed with a maternal great aunt and uncle. In June 2014, the juvenile court sustained a dependency petition under Welfare and Institutions Code section 300, subdivision (b), based on allegations that mother had a history of substance abuse, was currently abusing marijuana and alcohol, and her use of these substances periodically rendered her incapable of providing regular care for the children.² The court further sustained allegations that mother had been under the influence while the children were in her care, and that her substance abuse endangered the children's physical health and safety and placed them at risk of physical harm and damage.

The court ordered visits for mother at least three times a week, for three hours per visit. The court also gave DCFS discretion to allow mother to have weekend overnight visits in the caregiver's home. In December 2014, DCFS reported mother had visited the children seven times since they were placed with the great aunt in May 2014. During a visit the case social worker observed, the children knew mother as "mom," they talked to her, and sat with her. S V appeared most attached to mother, lying near her during nap time. H MV and H DV "talked with mother but were equally engaged with other family members present. [P V] smiled and engaged with mother but went to caregiver when she

¹ The children's father was shot and killed in 2012.

² All further statutory references are to the Welfare and Institutions Code.

needed something. All the children responded well to seeing mother yet, they went to caregiver when they had a question, wanted to eat or talked to CSW.” DCFS explained it had not liberalized mother’s visits because she “showed little to no interest in moving forward with her visits by increasing hours or days.”

Mother failed to progress with the case plan. She did not enroll in a drug and alcohol program and did not comply with random drug testing. She acknowledged she was depressed and “stuck.” However, mother did not seek mental health treatment.

In January 2015, DCFS informed the court that, according to the caregiver, mother was not visiting regularly, and had on occasion missed a scheduled monitored visit. In a May 2015 section 366.26 report, DCFS indicated mother’s visits had remained sporadic since December 2014. In late January 2015, the caregiver reported mother had visited once. The caregiver also reported that when mother visited, she played with the children “a little, but then lost interest and would then talk with the caregiver.” In late February 2015, the caregiver reported mother had visited twice since late January. In March 2015, the caregiver told the social worker mother failed to show up for a visit scheduled for the week before, but mother saw the children at a family function the next day. In mid-April 2015, the caregiver told the social worker mother had again failed to show up for a visit the week before. According to the caregiver, mother’s interaction with the children was good during the visits, but mother paid most of her attention to PV. The children enjoyed seeing mother.

In December 2015, the caregiver reported mother had been visiting more often, “about once or twice a month.” The social worker observed the children with mother in November 2015. HMY sat on mother’s lap while the other children sat next to mother on the couch, or moved between the caregiver and mother. The report also provided the following assessment: “The mother has still not addressed her depression and has continued her substance abuse. Additionally, the mother has shown little interests in reunifying with her children who she visits sporadically. The children, especially the younger children seem to have a limited relationship with their mother. The children have stated that they want to remain living with their aunt and uncle and further state that

they are happy where they live. [The maternal great aunt and uncle] have provided a safe stable and loving home for the children. They are ready to proceed with adoptive planning once the home study is approved.”

At the December 8, 2015 section 366.26 hearing, mother was not present. Her attorney had not heard from her. Mother’s counsel argued the beneficial parent-child relationship exception to termination of parental rights should apply. Counsel contended the DCFS reports established the children, then ages six, four, three, and two, knew who mother was and referred to her as “mom.” Counsel noted the children were living with maternal relatives and asserted legal guardianship would be more appropriate. Counsel further argued applying the exception would be in the children’s best interest: “These are children who have visits with their mom. They know she’s their mom. I think a permanent termination of parental rights is not in their best interest given that it would permanently sever the legal relationship between them and their mother.” The juvenile court rejected the argument, explaining in part that mother had not visited regularly and the prospective adoptive parents had provided a stable, loving home, acting as the children’s parents on a day-to-day basis. The court terminated mother’s parental rights.

Mother timely appealed.

DISCUSSION

I. The Juvenile Court Did Not Err in Refusing to Apply the Beneficial Parent-Child Relationship Exception

Under section 366.26, subdivision (c)(1), the juvenile court must terminate parental rights if it finds by clear and convincing evidence it is likely the child will be adopted if parental rights are terminated. However, the court will not terminate parental rights if it determines doing so would be detrimental to the child based on one of several statutory exceptions. (§ 366.26, subd. (c)(1)(B).) The party challenging termination of parental rights bears the burden of proving that one or more of the statutory exceptions applies. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

To establish the beneficial parent-child relationship exception, a parent must prove termination of parental rights would be detrimental to the children because (1) the parent maintained regular visitation and contact with them, and (2) the children would benefit from continuing their relationship with the parent. (§ 366.26, subd. (c)(1)(B)(i).)

“ ‘Sporadic visitation is insufficient to satisfy the first prong . . .’ of the exception. [Citation.] Satisfying the second prong requires the parent to prove that ‘severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’ [Citation.] Evidence that a parent has maintained ‘ ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship.’ [Citation.]” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643 (*Marcelo B.*) “ ‘A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be *beneficial to some degree*, but that does not meet the child’s need for a parent.’ [Citation.]” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937 (*Jason J.*)).

The beneficial parent-child relationship exception only applies when there is a relationship that promotes the child’s well-being to such a degree that it outweighs the well-being the child would gain in a permanent, stable home with adoptive parents. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 (*K.P.*); *Jason J.*, *supra*, 175 Cal.App.4th at p. 936.) “Because a parent’s claim to . . . an exception [to termination of parental rights] is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

“[T]he review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. [Citation.] . . . [T]he juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists . . . is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ (§ 366.26, subd. (c)(1)(B); [citation.] This ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,’ is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]” (*K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re J.C.* (2014) 226 Cal.App.4th 503, 531.) Further, we review the juvenile court’s ruling, not its reasoning, and we affirm the ruling if it was correct on any ground. (*In re B.L.* (2012) 204 Cal.App.4th 1111, 1116.)

Substantial evidence supported the juvenile court’s finding that no beneficial parent-child relationship existed in this case. There was substantial evidence that mother did not meet the first prong of the exception in that she did not regularly visit the children. The evidence established that throughout the dependency proceedings, mother visited at most twice per month, despite the court order authorizing visits at least three times per week. “Regular visitation exists where the parents visit consistently and to the extent permitted by court orders.” (*In re I.R.* (2014) 226 Cal.App.4th 201, 212.) Unlike the mother in *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537, a case cited in mother’s brief, here mother did not visit the children to the extent permitted by the court’s orders. Further, until December 2015, mother’s visits were described as sporadic, with the caregiver noting multiple missed visits when mother did not show up. On this evidence, the juvenile court could reasonably conclude mother did not have regular visits

with the children, as required for application of the beneficial parent-child relationship exception. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396.)

Moreover, even assuming there was evidence of a beneficial parent-child relationship, the juvenile court did not abuse its discretion in concluding the relationship did not constitute a compelling reason for determining that terminating mother's parental rights would be detrimental to the children. (*Marcelo B.*, *supra*, 209 Cal.App.4th at p. 644 [despite warm and affectionate relationship with child, substantial evidence supported finding child would not suffer detriment from termination of relationship].) By the time of the section 366.26 hearing, mother had not moved beyond supervised visitation. While the children knew mother and enjoyed visiting with her, there was no evidence in the record that the relationship "conferred benefits [to the children] more significant than the permanency and stability offered by adoption." (*K.P.*, *supra*, 203 Cal.App.4th at p. 623; *Marcelo B.*, *supra*, 209 Cal.App.4th at p. 644; *Jason J.*, *supra*, 175 Cal.App.4th at p. 938.)

Mother argues her depression limited her ability to visit the children more often. However, " '[o]nce reunification services are ordered terminated, the focus shifts [from the parents' interests] to the needs of the child for permanency and stability.' [Citation.]" (*In re I.R.*, *supra*, 226 Cal.App.4th at p. 211.) At the section 366.26 hearing, the court properly focused its attention on whether a beneficial parent-child relationship existed, rather than on why the relationship might not be more robust. Mother offered no evidence of the relationship that existed between her and the children, other than their knowledge of her and evidence that they interacted with her during visits. The beneficial relationship required for application of the exception is one characterized by a significant, positive, emotional attachment from child to parent, resulting from the parent's attention to the child's needs, and arising from frequent interaction, companionship, and shared experiences. (*Jason J.*, *supra*, 175 Cal.App.4th at p. 936; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The emotional attachment must be one of parent and child, rather than the attachment a child might feel to a "friendly visitor" or nonparent relative. (*Jason J.*, at p. 938; *In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) There was no

evidence the children had this level of attachment to mother, such that termination of her parental rights would be detrimental to them. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1295-1296.) Mother did not establish that any bond between her and the children was so significant and compelling in the children's lives that the benefit of preserving it outweighed the stability and benefits of adoption. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 396.)

Mother did not establish that applying the beneficial parent-child relationship exception to termination of parental rights was appropriate in this case. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.) We can find no error in the juvenile court's order.

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.