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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.S. and D.S., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B276849
(Super. Ct. Nos. J070273, J070274)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.S.,

Defendant and Appellant.

K.S. appeals a juvenile court order terminating her parental rights to her two boys, S.S. and D.S., ages four and three. (Welf. & Inst. Code, § 366.26.)¹ The trial court found that the beneficial parent-child relationship exception does not apply and freed the boys for adoption. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

¹ All statutory references are to the Welfare & Institutions Code.

Facts and Procedural History

Appellant has a long history of drug abuse and domestic violence that renders her unable to safely parent her children. In September 2014, appellant voluntarily placed the boys with the maternal grandparents due to appellant's drug use, domestic violence, job loss, and eviction. Appellant's contact with the boys was erratic because appellant was still seeing the biological father (her husband) who was a drug addict and engaged in acts of domestic violence. Appellant took the grandparents' car without permission and stole their credit cards.

On December 2, 2014, the boys were detained after appellant and the biological father tried to take the boys back and were arrested for being under the influence of drugs. Appellant admitted using heroin and methamphetamine daily and said that her drug addiction was a "progressive illness that just gets worse."

On December 4, 2014, Ventura County Human Services Agency (HSA) filed a petition for failure to protect (§ 300, subd. (b)) and no provision for support (§ 300, subd. (g)), which was sustained at an uncontested jurisdictional/disposition hearing. The trial court placed the boys with the maternal grandparents and ordered reunification services. Appellant's drug addiction was intractable. On December 12, 2014, appellant entered the Prototypes drug rehabilitation program and left three days later. Appellant was readmitted on December 18, 2014 and left the program the next day. In January 2015, appellant entered Prototypes a third time and relapsed a month later due to methamphetamine use. Appellant relapsed again in March 2015 and started treatment at the Lighthouse Recovery Program.

Appellant showed some progress, moved in with the grandparents, and was granted a trial extended visit with the boys in September 2015. Appellant, however, relapsed on heroin and methamphetamine in October 2015, re-entered an outpatient substance abuse program, and left the program on November 12, 2015 after testing positive for opiates.

The trial court terminated services after 12 months, set the matter for a 366.26 hearing, and denied a section 388 petition to reinstate services based on appellant's extensive drug use and failed attempts to remain sober. At the section 366.26 hearing, the trial court found that the parent-child beneficial relationship exception did not apply and terminated parental rights.

Beneficial Parent-Child Relationship

Mother argues that the trial court abused its discretion in finding that the parent-child beneficial relationship exception does not apply. (§ 366.26, subd. (c)(1)(B)(i).) Historically, our courts have applied the substantial evidence standard of review when the trial court finds that the beneficial parent-child relationship does not apply. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) In *In re Bailey J.* (2010) 189 Cal.App.4th 1308, the Court of Appeal applied the substantial evidence standard to the trial court's determination whether a beneficial relationship exists, and the abuse of discretion standard to the court's determination whether the relationship is so important that it compels a plan other than adoption. (*Id.*, at pp. 1314-1315; see *In re J.C.* (2014) 226 Cal.App.4th 503, 530-531.) Here, we affirm under either standard.

To establish the parent-child beneficial relationship exception, appellant must show she maintained regular contact

and visitation, and that the children would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i); *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) It is a two prong test. “The exception applies only where the [trial] court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*Ibid.*) Because a parent’s claim to such an exception is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional cases that a court will chose a permanent plan other than adoption. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

Although appellant met the visitation prong, the evidence shows that the child-parent relationship is qualitatively insufficient and does not outweigh the benefit of adoption. (§ 336.26, subd. (c)(1)(B)(i); see, e.g., *In re J.C.*, *supra*, 226 Cal.App. 4th at p. 532.) “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.]’ 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.)

The trial court found that appellant has “not fulfilled a parental role for a long time” and the “[t]he maternal grandparents have filled that role and have done so for a very long time. [¶] [¶] Children deserve a stable, permanent home, and that’s what I’m going to order today.”

Appellant argues that guardianship would allow the grandparents to fulfill a parental role and permit the boys to

maintain a secure attachment with appellant. Appellant is essentially asking us to reweigh the evidence and to substitute our judgment for that of the trial court. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51-52.) The question is not whether the trial court could have found that the beneficial parental relationship applied, but whether it abused its discretion in finding otherwise. Once reunification efforts have been found unsuccessful, the state has a compelling interest in providing stable homes for children who have been removed from parental custody. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

In *In re S.B.* (2008) 164 Cal.App.4th 289, the child looked to her grandparents for comfort and guidance but had a positive relationship with her father who was the child's primary caregiver for three years. (*Id.*, at p. 298.) A psychologist reported that the bond between child and father was fairly strong and the child would suffer potential harm if parental rights were terminated. (*Id.*, at p. 296.) The Court of Appeal concluded that the relationship promoted the well-being of the child to such a degree that it outweighed the benefits of adoption. (*Id.*, at pp. 300-301.)

Unlike *In re S.B.*, the boys are closely bonded to the maternal grandparents and view them as their primary caregivers. Appellant acknowledged that the boys were "stable and happy" with the grandparents and have lived with the grandparents most of their lives. Appellant said that the boys were "sad" at the end of visits but "it doesn't seem to be too traumatic. They . . . get over it quickly." No social worker, therapist, psychologist, or caregiver reported that severing the parent-child relationship would be detrimental to the boys. (See,

e.g., *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

In *In re S.B.*, *supra*, 164 Cal.App.4th 289, the father complied with every aspect of the case plan, maintained his sobriety, and sought medical and psychological services. (*Id.*, at p. 298.) Appellant, in contrast, failed to remain sober and had many relapses. Although appellant did progress to extended visits, the maternal grandparents found drug paraphernalia in appellant's bedroom and were concerned when the FBI raided the house looking for appellant. (See, e.g., *In re C.F.* (2011) 193 Cal.App.4th 549, 558 [mother's failure to remain sober was an important factor in determining that parent-child beneficial relationship exception did not apply].)

A parent's drug use and failure to reunify with his or her child is strong evidence that continuing the parent-child relationship would not be beneficial. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1302-1304.) That is the case here. "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.* (2002) 97 Cal.App.4th 454, 466.)

Based on the boys' age and needs, the trial court reasonably concluded that the boys' long-term emotional and developmental interests would be better served by the permanency of adoption. It was a "quintessentially" discretionary decision but not a close call. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) The grandparents are closely bonded to the boys and continue to meet the medical, developmental, emotional, and educational needs of the boys.

“The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.” (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

The judgment (order terminating parental rights) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Nicole Williams, under appointment by the Court of
Appeal, for Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo,
Assistant County Counsel, for Respondent.