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

In re EDUARDO L., a Person Coming
Under the Juvenile Court Law.

B232861

(Los Angeles County
Super. Ct. No. CK73511)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

NATALIE D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Rudolph Diaz, Judge. Affirmed.

Law Office of Lisa A. Raneri and Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrew Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Appellant Natalie D. (mother) appeals from the juvenile court's order terminating her parental rights over her son Eduardo (born June 2008). Mother contends the order must be reversed because the parental exception to terminating parental rights set forth in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) applies.¹ She further contends the juvenile court applied the wrong test and misinterpreted key evidence when it concluded that the exception did not apply.

Substantial evidence supports the juvenile court's determination that the parental exception to terminating parental rights did not apply, and the record discloses no reversible error. We therefore affirm the juvenile court's order.

BACKGROUND

1. Detention and Section 300 Petition

The Los Angeles Department of Children and Family Services (the Department) detained Eduardo in June 2008 after mother tested positive for amphetamine at the time the child was born. The Department filed a petition on Eduardo's behalf under section 300, subdivisions (b) and (g), alleging that mother had a nine-year history of substance abuse, including methamphetamine, and a positive toxicology screen for amphetamine at the time of Eduardo's birth. The juvenile court ordered Eduardo detained on July 3, 2008, and accorded mother monitored visitation two to three times per week.

The Department informed the juvenile court in September 2008 that it was investigating placing Eduardo with a paternal aunt, Teresa L. The Department also reported that mother was having three-hour weekly visits with Eduardo and was consistent in attending the visits.

The juvenile court sustained an amended section 300 petition at the jurisdictional hearing held on December 10, 2008. At that time, the Department informed the court that Eduardo had been placed with Teresa L. since October 28, 2008. The juvenile court

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

granted mother family reunification services and monitored visitation, and accorded the Department discretion to liberalize the visits.

2. Review Proceedings

In March 2009, the Department reported that mother had been enrolled in an outpatient drug treatment program, but her attendance was sporadic. Mother transferred to an inpatient treatment program in December 2008, was drug testing twice a month, and all of her tests had been negative. Mother completed a parenting program as well as the first phase of her three-part residential drug treatment program.

Mother continued to visit consistently with Eduardo. She walked from Sylmar to Reseda to visit Eduardo on one occasion because she had not yet received a bus pass. Although mother appeared nervous and awkward in her interactions with Eduardo, she listened to the social worker's suggestions and was trying very hard. After moving to a residential treatment facility, mother was permitted unmonitored visits with Eduardo at the facility.

Eduardo remained placed with Teresa L. and had made a positive adjustment to her home. Eduardo had difficulty, however, readjusting to his surroundings after his visits with mother.

In April 2009, the juvenile court found that mother had made significant progress and extended her reunification services. The court ordered the Department to prepare a report addressing the possibility of returning Eduardo to mother's care.

At a hearing held on May 8, 2009, the Department reported that mother and Eduardo had three eight-hour unmonitored visits and three overnight visits. The visits had not been further liberalized because Eduardo was having a difficult time adjusting to the longer visits. After the overnight visits, Eduardo became clingy and would scream when he was taken to day care. He had also become aggressive toward other children and was at risk of being expelled from his day care program. Teresa L. reported that Eduardo had experienced no behavioral issues at day care before his overnight visits with mother.

The parties agreed at a team decision meeting that Teresa L. would try to obtain a larger apartment for mother to move in with her and Eduardo after mother completed her drug treatment program. Mother said that having Eduardo returned to her care before she completed her treatment program would make it difficult for her to focus on her recovery.

In July 2009, mother went to court to resolve an outstanding warrant and was arrested and incarcerated for 45 days. During her incarceration, mother was discharged from her inpatient treatment program. When she was released from jail, mother was readmitted to the inpatient program but was placed back in the orientation phase of the program.

During mother's incarceration, Eduardo's negative behaviors stopped, but his behavioral issues resurfaced when visits with mother resumed. Eduardo's behavioral problems included clinging to Teresa L. and being aggressive toward other children and adults. Because of Eduardo's poor response to increased visitation with mother, the Department recommended terminating both the overnight visits and mother's family reunification services.

At the October 20, 2009 hearing, the Department reported that mother recently had two three-hour visits with Eduardo and that the social worker observed one hour of an October 11, 2009 visit. According to the social worker, Eduardo exhibited a flat affect and turned his head away from mother at the outset of the visit. Although Eduardo did not cry or act out, he was not very responsive to mother during the visit.

Mother's substance abuse counselor reported that mother was doing much better since her release from jail. Mother would soon be eligible for phase I screening in her substance abuse program.

After hearing argument from the parties, the juvenile court terminated mother's reunification services, accorded her unmonitored daytime visits, and set the matter for a permanency planning hearing.

3. Section 366.26 Proceedings

In March 2010, the Department reported that Mother continued to have unmonitored visits with Eduardo at her residential treatment facility. Mother had progressed to phase II of her treatment program and was allowed to have offsite visits with Eduardo. She began to have six-hour visits with Eduardo on Sundays.

Eduardo continued to exhibit behavioral problems after his visits with mother. He was unable to sleep the night following a visit and was aggressive toward Teresa L. and other adults and children. Eduardo's aggressive behavior at school resulted in his placement in a classroom with older children. Eduardo's behavioral problems worsened after his visits with mother were increased in duration from three hours to six hours.

The Department's social worker observed a visit between mother and Eduardo on February 21, 2010. During the visit, mother offered Eduardo a snack and then played with him. Eduardo initially displayed a flattened affect and made limited eye contact with mother, but when mother expressed affection and told him "I love you; you're so sweet," the child smiled and immediately brightened. The social worker noted that mother had made "limited but plainly observable progress toward being emotionally engaged with" Eduardo during the visit. Although Eduardo responded to mother's expressions of affection, he did not seek out her affection and he avoided eye contact with her. In contrast, the social worker observed Eduardo to be emotionally expressive in Teresa L.'s home, where he frequently sought affection from Teresa L. and her family. The social worker concluded that although Eduardo's relationship with mother had improved, his primary attachment clearly remained with Teresa L.

4. Section 388 Petition

Mother filed a section 388 petition on March 23, 2010, asking that Eduardo be allowed to live with her at her residential treatment facility. In her petition, mother stated that she had completed a parenting education program and continued to participate in individual counseling, drug counseling, and random drug testing. All of her drug tests had been negative. Mother further stated that she had visited consistently with Eduardo

and that she loved him and would ensure that his physical and emotional needs were met. She claimed the requested change in court orders was in Eduardo's best interest because he shared a parent/child bond with her. The juvenile court granted mother an evidentiary hearing on her petition.

A dependency investigator observed a visit between mother and Eduardo on April 24, 2010 and reported that the lack of connection between Eduardo and mother was evident. Although Eduardo was active and cheerful during the visit and often smiled and made eye contact with the investigator, he would not make eye contact with mother, despite her efforts to engage him. He responded to mother by nodding his head with a flat effect while looking elsewhere.

Teresa L. told the investigator that Eduardo continued to have nightmares and to cling to her following his visits with mother, and that it took the child two days after the visits "to get back to normal."

On July 14, 2010, the Department informed the juvenile court that since mother had begun using offsite passes from her drug treatment program to visit with Eduardo, he had become increasingly distressed. Teresa L. reported that Eduardo was waking up screaming during the night. He became so clingy and disruptive at times that he could attend day care for only half the day. When the social worker contacted mother and told her that Eduardo might be over-stimulated during the visits, mother said that she took Eduardo shopping, to the park, and to the maternal grandmother's home. The social worker then told mother that spending the visits in multiple unfamiliar locations might be stressful for Eduardo, and suggested that mother take Eduardo to fewer places during the visits. Mother said that those places were familiar to Eduardo and did not follow the social worker's suggestion. The Department recommended that the juvenile court change mother's visits with Eduardo from unmonitored to monitored and that the court deny her section 388 petition.

In a June 16, 2010 addendum to her section 388 petition, mother requested as an alternative to returning Eduardo to her care that the juvenile court order further

reunification services and overnight and weekend visitation. She attached to the addendum drug test results from August 25, 2009 to June 3, 2010, all of which were negative; a progress letter from her treatment center counselor stating that mother was in the final phase of her program and was allowed to leave the program three days a week to seek employment; and a flyer for a sober living home. At a July 14, 2010 hearing, the juvenile court ordered that mother's visits with Eduardo take place either at her treatment facility or at Teresa L.'s home.

On August 18, 2010, the Department informed the juvenile court that a woman named Leticia reported she had used methamphetamine with mother three to four months ago and that she had used drugs frequently with mother shortly before Eduardo's birth. Mother said she knew Leticia but denied using drugs with her or having any interaction with her.

5. Bonding Study and Other Evidence

Mother provided the juvenile court with a bonding study by Dr. Daniel Kramon, a psychologist, dated August 10, 2010. Dr. Kramon reviewed the Department's reports, interviewed mother, and observed mother and Eduardo in his office for approximately one hour on August 3, 2010.

During the August 3, 2010 office visit, Dr. Kramon observed that when Eduardo saw mother, he smiled, greeted her with outstretched arms, and hugged her. Although at first hesitant to enter the office, Eduardo smiled and did so when encouraged by mother. Eduardo immediately sat next to mother while looking at a coloring book. Mother spontaneously put her arms around Eduardo and kissed him.

Dr. Kramon reported that both mother and Eduardo initiated conversation with one another and that mother was loving and playful with him. He described Eduardo sitting on mother's lap and squealing with delight while playing with her. Eduardo "appeared to be thoroughly enjoying his mother's company."

When Dr. Kramon asked mother to leave the room for a few minutes so that he could spend time alone with Eduardo, the child became distressed as mother left the room

and ran toward her, calling “mama” or “mom.” For this reason, mother remained in the room. Mother told Eduardo that she loved him a couple of times. Eduardo smiled broadly and remained focused on mother while she sang to him. At the end of the session, Eduardo calmly separated from mother, and they mutually kissed.

In his report, Dr. Kramon stated that “[w]hereas it is unrealistic to make definitive and conclusive statements as to the degree of bonding after a one-time observation, it was clear that there were no negative indications that would conclude that this mother and child are not bonded. As to the extent of the bond that exists between the two of them, it appears likely, based on observing them, that there is a parent-child type of bond.”

Dr. Kramon conceded that his observations were “not meant to compare the apparent bond that Eduardo has with his mother to the bond he very likely has with his aunt.” He observed that Eduardo clearly recognized mother, was happy to see her, felt emotionally close with her, made frequent eye contact with her, spontaneously communicated with her, and ran to her for safety when he experienced momentary distress. Dr. Kramon concluded that these interactions were “indications of bonding.” Based on his conclusions, Dr. Kramon opined that “it appears likely that at some point, this child would be at detriment if he did not have a relationship with his mother.”

The Department objected to Dr. Kramon’s bonding study, arguing it was not reliable and not relevant to the section 366.26 hearing.

Mother also provided the juvenile court with declarations by two social workers engaged by mother’s counsel who each observed separate visits between mother and Eduardo in July and August 2010. Social worker Susana Preciado stated in her declaration that she observed the July visit, that mother and Eduardo were “comfortable in each other’s company,” that Eduardo sat on mother’s lap, and “there were several exchanges of spontaneous affection, such as smiles, hugs, and kisses.” Preciado observed that mother was able to anticipate Eduardo’s needs, encouraged him to explore his surroundings while keeping him safe, and effectively demonstrated her ability to care for

the child. Social worker Jessica Areniva observed an August visit, and her observations were consistent with that of Preciado.

In a September 8, 2010 status review report, the Department informed the juvenile court that mother had completed her residential treatment program and had moved to a sober living facility. Mother had also found employment and was working at a collection agency.

Eduardo's behavior at school and at home improved since the location of mother's visits had been restricted. His visits with mother now took place at Teresa L.'s home. Teresa L. reported that although Eduardo knew mother was his mother, he had begun referring to Teresa L. as "mom" and to mother as "Natalie." The Department acknowledged that mother had visited consistently, that Eduardo recognized his mother as a familiar person and that the two of them experienced many positive moments playing together. The Department noted, however, that Eduardo's primary bond was to Teresa L., who had raised him since infancy and who met all of his needs, and that Eduardo's response to Teresa L. and her family was "dramatically different" from his response to mother.

On October 4, 2010, the juvenile court accorded Teresa L. de facto parent status and appointed counsel to represent her. Also in October 2010, Teresa L. reported that mother had been ending her visits with Eduardo between one to one and a half hours early because she found the visits at Teresa L.'s home to be boring.

In December 2010, the Department interviewed Teresa L. regarding mother's visits with Eduardo. According to Teresa L., mother continued to visit consistently, but Eduardo's response to her was inconsistent. The child had recently told mother "leave me alone." In response, mother left Eduardo unattended for a time on the playground without adult supervision. The juvenile court thereafter ordered that Teresa L. must be present in the home during mother's visits.

6. Section 388 Hearing

An evidentiary hearing on mother's section 388 petition was held on August 18, 2010, and concluded on March 11, 2011. At the conclusion of the hearing, the juvenile court denied mother's petition and set the matter for a section 366.26 hearing. Mother filed a timely notice of appeal.²

7. April and May 2011 Review Reports

In April 2011, the Department reported that mother continued to visit consistently with Eduardo. According to Teresa L., mother "tries very hard," but was "still learning" because she did not recognize potential risks to the child's safety and well-being. On April 10, 2011, Eduardo had run into the parking lot, but mother did not chase after him.

According to Teresa L., Eduardo did not mind when mother left at the end of the visits. During one visit, Eduardo held on to Teresa L. in mother's presence and told mother, "this is my mommy." During another visit, Eduardo repeatedly ran from mother into a bedroom, and Teresa L. had to retrieve him and return him to mother each time.

In a December 2010 interview with the social worker, Eduardo referred to Teresa L. as "mommy" and to mother as "Natalie." He said his visits with mother were "fun."

An adoptive home study had been approved for Teresa L., who was committed to providing Eduardo with a permanent home. Teresa L. stated that if she adopted Eduardo she would continue to facilitate contact with mother.

8. Section 366.26 Hearing

At the contested section 366.26 hearing, the juvenile court admitted into evidence all of the Department's reports, Dr. Kramon's bonding study, and the declarations of social workers Preciado and Areniva. Both Teresa L. and mother each testified at the hearing.

² Mother's appeals from the denial of her section 388 petition and from the section 366.26 proceedings were subsequently consolidated. In the instant appeal, mother challenges only the orders and findings from the section 366.26 proceedings.

Teresa L. testified that she was Eduardo's paternal aunt, that Eduardo had lived in her home since he was three months old, that Eduardo called her "Mommy," and that she loved Eduardo. She also testified that she had an approved home study.

Mother testified that throughout Eduardo's life, she visited with him consistently and was present for all of his developmental milestones. She said Eduardo is excited to see her and screams her name when she walks in the door. She brings Eduardo gifts, Eduardo tells her about his week, and they play together in Teresa L.'s home or in the playground outside Teresa L.'s building. Mother said Eduardo enjoys being tickled and she knew Eduardo's favorite color and his favorite foods. She also said that she was teaching Eduardo how to tie his shoes and to spell his name. Mother said that she and Eduardo share a significant bond and asked the juvenile court to order legal guardianship rather than adoption as the permanent plan.

Areniva testified that she observed a visit between mother and Eduardo in June 2010. Eduardo was excited to see mother at the outset of the visit and ran toward mother and hugged her. Mother was affectionate with Eduardo, anticipated and attended to his needs, fed him, and played with him. Eduardo, in turn, was comforted by mother's interactions with him.

On June 3, 2011, after hearing argument from the parties, the juvenile court ruled that mother had not met her burden of establishing that the beneficial parent-child exception to terminating parental rights applied. The court found that Eduardo considered Teresa L. to be his mother, that the child was entitled to stability and permanence, and that his best interests would be served by adoption.

The juvenile court stated that it had considered Dr. Kramon's bonding study and observed that "as of the date of the report, [Dr. Kramon's] conclusion was it would not be a detriment to terminate the parental rights of mom." The court terminated mother's parental rights and designated Teresa L. as Eduardo's prospective adoptive parent.

This appeal followed.

DISCUSSION

I. Applicable Law and Standard of Review

Section 366.26, subdivision (c)(1) provides for the termination of parental rights if family reunification services have been terminated and the juvenile court finds by clear and convincing evidence that the child is likely to be adopted. Once reunification services have been terminated, “[f]amily preservation ceases to be of overriding concern . . . the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citation.]’ [Citation.]” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) “Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)). Although the statutory preference is in favor of adoption, section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The exception relevant to the instant case provides as follows: “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).)

The parent bears the burden of proving that this exception applies. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-954.) “[T]he 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.)

For the exception to apply, the parent must have maintained regular visitation with the child, and the juvenile court must determine that the parent/child relationship “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. In other words, 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent must establish more than merely some benefit to the child by continuing the parent/child relationship. That relationship must be “a substantial, positive emotional attachment such that the child would be greatly harmed” if the relationship were severed. (*Ibid.*) To overcome the benefits associated with a stable, adoptive family, the parent seeking to continue a relationship with the child must prove that severing the relationship will cause not merely some harm, but *great harm* to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.)

When determining whether a parent/child relationship confers more than incidental benefit to a child, courts have noted that such a “relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent seeking to establish the existence of such a relationship need not, however, prove that “the child has a ‘primary attachment’ to the parent, or to show the parent and the child have maintained day-to-day contact. If that were that standard, the rule would swallow the exception. [Citation.]” (*In re S.B.*, *supra*, at p. 299.)

Factors that the juvenile court should consider when determining the applicability of the exception include “[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” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

We review the juvenile court’s ruling on whether an exception applies to terminating parental rights pursuant to section 366.26 for substantial evidence. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Under this standard, an appellate court must affirm the juvenile court’s order if there is evidence that is reasonable, credible, and of solid value to support the order (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080), and the evidence must be considered

“in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.

[Citations.]” (*Autumn H.*, at p. 576.)

II. No Reversible Error

Mother contends the juvenile court committed reversible error by applying the wrong test and misinterpreting key evidence when it determined that the parental exception to terminating parental rights did not apply. She maintains the juvenile court erroneously based its decision on an improper inquiry -- whether severing Eduardo’s relationship with Teresa L. would be detrimental to the child -- whereas the court instead should have focused on Eduardo’s relationship with mother and whether severing that relationship would be harmful. Mother further contends the juvenile court mistakenly believed Dr. Kramon concluded that Eduardo would suffer no detriment if mother’s parental rights were terminated.

The record discloses no reversible error on the part of the juvenile court. The juvenile court did not apply the wrong test in determining whether mother had sustained her burden of establishing the applicability of the section 366.26, subdivision (c)(1)(B)(i) exception to terminating parental rights. Rather, the record shows that the juvenile court properly balanced Eduardo’s relationship with mother against the security and the sense of belonging he would gain from adoption by Teresa L. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The court expressly found that Eduardo was entitled to stability; that Eduardo had spent nearly his entire life with Teresa L., whom Eduardo viewed as his parent; and that adoption by Teresa L. was in Eduardo’s best interest.

The juvenile court did not misinterpret the results of Dr. Kramon’s bonding study. The court’s comment that “as of the date of the report, [Dr. Kramon’s] conclusion was it would not be a detriment to terminate the parental rights of mom” is not inconsistent with Dr. Kramon’s assessment that Eduardo might suffer some future detriment if he did not have a relationship with mother. Dr. Kramon stated in his report that “it appears likely

that at some point, this child would be at detriment if he did not have a relationship with his mother.” (Italics added.)

In re S.B., on which mother relies, is distinguishable. In that case, the five-year-old subject minor had lived with her father for three years and the psychologist who conducted a bonding study had concluded that because the bond between minor and father “was fairly strong, there was a potential for harm to [the minor] were she to lose the parent-child relationship.” (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 296.) The conclusions in Dr. Kramon’s report are substantially more equivocal. They are prefaced by Dr. Kramon’s acknowledgment that “it is unrealistic to make definitive and conclusive statements as to the degree of bonding after a one-time observation.” The only “clear” statement articulated in the report is that “there were no negative indications that would conclude that this mother and child are not bonded.” *In re S.B.* is thus inapposite.

There is substantial evidence in the record to support the juvenile court’s conclusion that mother’s relationship with Eduardo did not rise to the level of “a substantial, positive emotional attachment such that the child would be greatly harmed” if that relationship were severed. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Despite the frequency and consistency of mother’s visits with Eduardo, as well as evidence of some bond between them, there was overwhelming evidence that Eduardo’s need for stability and permanence, as well as his very strong bond with Teresa L., weighed in favor of freeing him for adoption by Teresa L.

Eduardo clearly identified Teresa L., and not mother, as his parental figure. He referred to Teresa L. as his mother and went out of his way to tell mother that he viewed Teresa L., and not mother, as his mother. He insisted on referring to mother by her proper name, despite being encouraged to call her mom.

There was evidence that Eduardo’s visits with mother caused him great distress at times. Eduardo’s negative reaction to offsite and overnight visits with mother

necessitated restricting the visits to Teresa L.'s home. During the visits, Eduardo sought out Teresa L. whenever he was hungry, tired, or thirsty.

Substantial evidence supports the juvenile court's determination that mother failed to establish that the exception set forth in section 366.26, subdivision (c)(1)(B)(i) precluded the termination of her parental rights in this case.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ J.

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST