Filed 6/9/16 In re D.T. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.T. et al., Persons Coming Under the Juvenile Court Law.	B265791
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHANCE T. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK95918)

APPEAL from an order of the Superior Court of Los Angeles County, Victor Greenberg. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant Chance T., Father.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant Kristine T., Mother.

Tarkian & Associates, Arezoo Pichvai for Plaintiff and Respondent.

Kristine T. (mother) and Chance T. (father), the parents of nine-year-old D.T. and six-year-old Kristine T., appeal from a juvenile court order terminating their parental rights, contending the court abused its discretion by finding they failed to show their relationship with the children outweighed the benefits adoption would bring. We affirm.

BACKGROUND

In 2005, the Juvenile Court of Clark County, Nevada, found D.T.'s and Kristine T.'s sibling, Chance T., then five months old, suffered severe injuries while in the custody and care of mother and father. Chance T. was removed from mother and father and never reunified with them, ultimately being adopted.

In 2011, the Nevada Department of Family Services received a referral stating that during a family gathering, one-year-old Kristine T. was observed to have a large bruise on the side of her leg, and mother and father were intoxicated paid no attention to her or to D.T. other than to yell at them. Kristine T. could not lift up her head or drink from a bottle, had a blank look on her face, and would "not respond to anything." Mother and father appeared before the juvenile court without the children, failed to produce them, provided several false addresses, and ultimately moved to California to avoid the allegations. They were located in October 2011, and the children were removed from their custody. The parents were offered reunification services but ultimately failed to reunify with the children.

On September 19, 2013, mother and father left the girls' younger sibling, Don T., then one year old, at home alone.[1]

This case was transferred from Nevada to Los Angeles County in February 2014, at which time the Department of Children and Family Services (DCFS or the department) filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j), on behalf of D.T. and Kristine T., setting forth the family's Nevada dependency history and stating mother and father had never reunified with D.T. or

[1] This appeal concerns only D.T. and Kristine T., not Don T. or Chance T.

Kristine T., and the children were now receiving permanent placement services.[2] Judge Victor Greenberg of the Los Angeles County Superior Court accepted the transfer, credited the findings and orders made by the Nevada court, and ordered that the children be detained with their maternal grandparents.

The maternal grandparents monitored weekly two-hour visits between the parents and D.T. and Kristine T. The visits were consistent, and the parents acted appropriately during them. The children were excited to visit with the parents, who provided food and played games with them. Mother and father also financed ballet and karate classes for the children, who stated they wished to return to their parents' custody and have visits with Don T.

In March 2014, the maternal grandparents informed DCFS they would likely move to the Philippines and would be unable to continue caring for the children.

On March 28, 2014, the juvenile court sustained the petition as to D.T. and Kristine T., appointed a special advocate for them, sustained the petition as to Don T., and terminated mother's and father's parental rights over him.

In April 2014, the children's maternal great-uncle, Don R., expressed an interest in adopting the children but requested that he have no contact with mother or father. The children's advocate recommended that the children receive therapeutic services for any transition into another placement.

On May 30, 2014, the court denied family reunification services to mother and father and in June 2014 ordered that they be permitted a minimum of three visits a week with the children, who were now placed in the home of Don R. The children stated they enjoyed living with Don R. and his wife, D.T. liked her new school, and Kristine T. enjoyed time alone at home while D.T. was at school. The girls sometimes stated they would prefer to return to mother's and father's home, but they felt safe and comfortable with Don R. and stated they did not miss parental visits when they did not take place.

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

The three weekly visits made them tired. Mother and father acted appropriately during the visits.

In July 2014, Don R. reported that mother had sent threatening messages to him and the maternal grandmother through Facebook, in which she wished death upon them. In August 2014, the court granted a temporary restraining order against mother on behalf of Don R., who reported he was happy to raise D.T. and Kristine and wanted to adopt them, but their schedule was busy and the parents' visits were exhausting and emotionally disruptive for the children. The children's advocate recommended that the parents' visits be reduced to once a week.

In September 2014, mother filed a section 388 petition for modification requesting that the children be returned to her care or that the court order family reunification services for her. Mother stated that she regularly attended parenting classes and weekly individual therapy, and was addressing the anger management, conflict resolution, child development, stress management, positive parenting, communication skills, and discipline issues that had resulted in DCFS's involvement with her family. However, Don R. reported that when the children returned home from their visits with the parents, their behavior would change, and they would not follow rules in his home. The juvenile court denied mother's section 388 petition, finding the proposed change would not be in the children's best interest.

In October 2014, Don R. informed the department he could not continue as the children's caregiver because mother made it too difficult for him. He asked that the children be removed from his home.

On October 22, 2014, the children were placed into the foster home of Mr. and Mrs. B. At first, they had difficulty adjusting to the replacement, and would have nightmares and cry daily. However, they eventually adjusted well to the placement and appeared comfortable and happy in the foster home, and the foster parents expressed an interest in adopting them.

Mother's visits with the children continued to go well. They were attached to her, and she assisted them in completing their homework and engaged them in activities.

Father began visiting the children in December 2014, and interacted appropriately with them. Mr. and Mrs. B. ensured the children attended all of their medical, therapeutic, and school appointments, and developed a loving relationship with them. The children stated they would be happy to be adopted by Mr. and Mrs. B. They were adamant that they not be moved to another placement. At one point D.T. refused to get on the foster care bus in the morning because she was afraid she would be taken away from Mr. and Mrs. B.

The girls attended two weekly monitored visits each week, one with mother and one with father, which Kristine T. said she enjoyed but to which D.T. appeared indifferent. Both children stated they wished to stay with Mr. and Mrs. B.

In January 2015, the girls were removed from Mr. and Mrs. B. due to the foster parents' health issues and were placed with new foster parents, Mr. and Mrs. W. They grew comfortable in the new home and stated they felt safe there and did not want to move again. They sometimes had crying outbursts, and D.T. sometimes told Mr. and Mrs. W., "if you want me to leave just tell me." The children referred to Mr. and Mrs. W. as "mommy" and "daddy," and D.T. consistently stated she was afraid she and Kristine T. would be "taken away again." Kristine stated she did not remember living with mother and father, although she enjoyed visiting with them. She wished to remain in the home of Mr. and Mrs. W.

The children settled in well in the W. home. They had their own room and the house was filled with age-appropriate books and toys. However, after visits with mother and father, which always went well, they would sometimes cry and throw tantrums. They attended individual therapy once a week and performed above grade level in school. Both informed the department they wished to remain in Mr. and Mrs. W.'s home, and Mr. and Mrs. W. said they wanted to adopt them. The children repeated that they did not want to be moved again and would not miss visits with mother and father if they ended. Mrs. W. stated, "We want [the children] to be emotionally and physically strong and stable. It hurts me to see them always wondering if they're going to leave or if we're going to give up on them if they make a mistake."

For the permanency hearing, the department reported visits between the parents and children went well. The children were excited to see their parents, and would greet them with outstretched arms and call mother "Mommy" and father "Dad." Mother would ask the children about their day, and they would describe it to her. If they brought homework with them, mother would help them complete it. The mother played with the children during the visits, and the relationship was loving. However, the children would leave the visits without any problems, and during the car rides back to the foster home never mentioned that they wished to live with mother. When they returned to the foster home, they would run to Mrs. W. and hug her. The children referred to Mrs. W. as "mommy."

At the permanency hearing, Kristine testified that she felt happy when she saw mother and father in court that morning, and she loved them and gave them a hug. She would sit on mother's lap, which made her happy, and would be sad if she could no longer do so. However, she loved Mr. and Mrs. W., and testified both that she wanted to live with mother and father and with Mr. and Mrs. W.

D.T. testified she enjoyed visits with mother and father and was sometimes sad when the visits ended and would be sad if she could not see them anymore. However, she wanted to live with Mr. and Mrs. W. because, she said, "I'm tired of moving and because I like where I am."

Neither D.T. nor Kristine T. remembered living with mother and father. Both called Mr. and Mrs. W. "Mommy" and "Daddy."

Mother and father testified that during the visits they would talk with the girls about school and friends, the children would be excited and run to them at the beginning of the visits, and at the end of some visits the girls seemed sad.

The juvenile court found D.T. and Kristine T. were adoptable, although the parents had maintained regular visitation and contact with them. The court noted "that the minors have said inconsistent things at different times regarding who they wish to live with. However, the court does note that whenever they have indicated that they wish to live with either the parents or the maternal grandmother, that has been in the presence of

the parents or the maternal grandmother. When queried outside of their presence, the children have been consistent that they wish to remain in their present home." The court stated that although it accepted the children's answers when asked whether they would be unhappy if there was no further contact with the parents, the parents had not stood in the parental role with them, and the children had spent "a long portion of their lives outside of the parents' care." Therefore, the court found, "the benefit[] that the minors would gain through termination of parental rights and adoption far outweigh any incidental benefit or purported benefits shown in the parents' case. . . . [T]he court has weighed the sadness the minors would feel, the desires they have to continue to see their parents in the monitored setting, and their excitement and happiness regarding the visits as balanced out against the stability and benefit that they would receive from adoption following a termination of parental rights, which is particularly necessary given the facts of this case." The court found the parents had not shown the beneficial parental relationship exception to the termination of parental rights under section 366.26, subdivision (c)(1)(b)(i), existed, and ordered the mother and father's parental rights terminated.

Mother and father timely appealed.

DISCUSSION

Mother and father argue the juvenile court abused its discretion in finding they failed to show their beneficial relationship with the children precluded terminating their parental rights. We disagree.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. 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.]'" (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subdivision (c)(1) provides that if the court finds by clear and convincing evidence that "it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the

Legislature"].) The statutory preference is in favor of adoption, unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies, including that the juvenile court finds "a compelling reason for determining that termination would be detrimental to the child" because 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 "benefit" prong of the exception requires the parent to prove his or her relationship with the child """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 re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 ["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"].) Even frequent and loving contact between a child and a parent is insufficient, by itself, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A "*parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one" because "[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile "'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. 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.'" (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "The factors to be considered include: '(1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and

the child, and (4) the child's particular needs.'" (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

We review the juvenile court's factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court's discretionary decision—whether the relationship constitutes a compelling reason for determining termination of parental rights would be detrimental to the child—under the abuse of discretion standard. (*Ibid.*)

Here, mother and father failed to establish the parent-child relationship exception applied to their relationship with D.T. and Kristine T. Their relationship with the children never progressed beyond monitored visitation, and no evidence suggests they attended to the children's physical care, nourishment, or medical needs, assisted in managing their school or personal lives, or participated in such day-to-day and hour-to-hour interactions as the children enjoyed with Mr. and Mrs. W.

The juvenile court could reasonably conclude the permanency and stability the children enjoyed from interactions with Mr. and Mrs. W. far outweighed any benefit they would receive from reunification with mother and father. We therefore cannot say the court exceeded the bounds of reason in finding that the parents' frequent visitation failed to demonstrate reunification was in the children's best interests.

Quoting from *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 848 (*Kelsey S.*), mother argues a "'child has a genetic bond with its natural parents that is unique among all relationships the child will have throughout its life. "The intangible fibers that connect parent, and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility."'" She argues that in this case, legal guardianship rather than adoption would preserve the parental bond and therefore better serve the children's interests.

We agree with the sentiment expressed in *Kelsey S.*, and do not necessarily disagree that legal guardianship would have served the children's interests here. But the question before us is whether the juvenile court's contrary conclusion exceeded the

bounds of reason. As discussed above, it did not. This case and these two girls have long cried out for consistency and permanency. Adoption is the preferred permanent plan for children in California. Accordingly, the juvenile court was within its discretion to select adoption as the permanent plan and terminate mother's and father's parental rights. Its orders are therefore affirmed.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.