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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CESAR V., a Person Coming
Under the Juvenile Court Law.

B283261
(Los Angeles County
Super. Ct. No. DK08435)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Veronica S. McBeth, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

C.M. (mother) appeals the order of the juvenile court terminating her parental rights to her son Cesar V. (Cesar). We affirm.

BACKGROUND

On November 4, 2014, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging under Welfare and Institutions Code section 300, subdivision (a),¹ that domestic violence between mother and R.V. (father) posed a risk of serious physical harm to Cesar. The petition also alleged under section 300, subdivision (b), that mother and father failed to protect Cesar from their mutual domestic violence, and that father's abuse of marijuana and mother's failure to protect the child from the substance abuse also placed Cesar at a risk of harm.

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

A referral on October 23, 2014 alleged that mother and father had engaged in mutual domestic violence for over a year, and that four days earlier, father slapped mother in the face and mother slapped him back, making Cesar cry. On November 19, mother told the social worker the allegations were lies. She admitted she and father had a jealous fight the night before; he slapped her face causing a scratch, and she hit him back with a closed fist. Under a bandage on her left temple, mother had a half-inch scrape. She said two additional small bruises on her left cheek were “‘hickies.’” In October, father had “‘barely slapped her’” in the face. Cesar was not in the room during either incident. Mother falsely claimed Cesar was her first baby, and because she was “unstable,” she had given temporary legal guardianship over Cesar to her mother (MGM). Mother minimized the violence in their relationship, but also said father had anger management issues and refused to get help, was “‘crazy,’” and often was out with his friends smoking marijuana.

MGM explained she did not have legal guardianship of Cesar, but had told mother to lie about guardianship to prevent father’s family from taking Cesar away. MGM would not pursue temporary custody of Cesar because she already took care of mother’s older son by a different father. MGM had told mother to leave father and go to a shelter, but mother always went back to him.

Father told the social worker that mother was jealous and they argued all the time. Mother had hit him with her

closed fist more than 10 times, slapped him with an open hand, and bit him on his arm, leaving a mark. Father swung metal pliers at mother's face and struck her left temple, while Cesar was in the next room. In October, he slapped her face with an open hand. He agreed they both needed help with anger management. When mother was seven months pregnant, MGM kicked mother and father out of her home, father hit mother, mother hit him back, and the police arrested mother for domestic violence. Father did not have a medical marijuana card, but he smoked at least two to three blunts every day, although not around Cesar. Father's mother (PGM) confirmed that mother and father had physical fights throughout their relationship.

DCFS detained Cesar and placed him in foster care, with visitation for both parents two or three times a week for two to three hours. In the jurisdiction report, mother claimed she and father were " 'just arguing,' " but admitted that he had hit her with the pliers and she sometimes hit him (Cesar was never present). She confirmed father's daily use of marijuana. Father denied they fought frequently.

MGM reported that mother had psychiatric issues, had been hospitalized after attempting suicide, and refused to take her medication. After a monitored visit with Cesar, PGM told the caregivers that father was dangerous and violent, mother and father fought continuously, and both used drugs and were involved in a street gang.

On December 15, 2014, the juvenile court sustained the petition, and on December 30, 2014, the court removed Cesar

from mother and father and ordered reunification services, including separate monitored visitation. The court ordered mother to participate in a domestic violence support group, parenting education, a psychological assessment, and mental health counseling.

A six-month status review report on June 30, 2015 stated that Cesar's foster parents were loving and nurturing, and his development was age-appropriate. Mother completed her domestic violence, anger management, and parenting education, and attended weekly two-hour monitored visits with Cesar.

The foster parents reported that mother's visits went well; although Cesar did not seem uncomfortable, he seldom made eye contact or smiled when mother engaged him. The social worker monitored a three and a half hour visit in May 2015, during which mother interacted well with Cesar, but he only smiled at her occasionally. Mother told the social worker she was learning about boundaries, had ended her relationship with father, and wanted Cesar back. When the foster father arrived to pick Cesar up, Cesar immediately laughed and consistently made eye contact with him.

Mother had moved into MGM's home in San Bernardino County after Cesar was placed in foster care. She reported that in February 2015, she went to Los Angeles to visit her cousin. Father showed up and asked her to go to his house. She agreed, afraid that he would pull her arm or yell at her if she said no. Mother spent the night with father. The next morning, she told father she was going

back to San Bernardino County. Father accused mother of leaving him for someone else, and grabbed a hammer and swung it at mother, hitting her forehead. Father's sister called paramedics and police, who interviewed mother in the emergency room. She received four stitches.

After a hearing on June 30, 2015, the juvenile court terminated father's reunification services. The court ordered mother to begin individual counseling on domestic violence, and twice-weekly monitored visits to include weekly Parent Child Interaction Therapy (PCIT) parenting education.

An interim review report stated that mother had left MGM's home to go to Los Angeles for the June 30, 2015 hearing, but mother was arrested a couple of days before the hearing and not released until July 20. Except for the three weeks she was incarcerated, mother attended her monitored visitations, but had difficulty engaging Cesar in age-appropriate play. Mother appeared alternately overly affectionate and emotionally disconnected. Cesar showed no emotional reaction when mother left.

Subsequent reports stated that in October through December 2015, mother attended six individual counseling sessions to work on anger management and stress reduction techniques; the therapist suggested mother be tested for learning disabilities. Mother later attended four sessions with another therapist in August and September 2016.

Mother's weekly monitored visits continued. The foster parents reported that mother brought unapproved family members to the visits at a local McDonald's, requiring the

social worker to mediate. The social worker arranged to move the visits to the San Bernardino DCFS office. Mother was eager to see Cesar, and in general was more responsive to his physical needs. During one visit in December 2015, however, she was emotionally distant and silent for long periods while Cesar sat in a high chair. When he squirmed and was restive, she needed prompting to take him to the play area. At another December visit, mother was responsive and Cesar was affectionate, giving her a kiss and patting her cheek.

A report from mother's PCIT therapist explained that the program focused on the structure, engagement, nurturing, and challenge necessary for good parent-child relationships. Mother struggled with understanding and did not complete most activities. After her initial evaluation on November 24, 2015, mother did not show up on time (even after the therapist rescheduled to accommodate her) and services had not begun. A March 16 report stated that mother had made little progress, had trouble regulating her emotions and responding to Cesar's needs, and continued to arrive late.

Mother was prescribed Zoloft and Risperdal for depression.

Efforts to schedule a learning disabilities assessment for mother in San Bernardino were hampered, as mother would not travel to neighboring cities. In June 2016, mother's application had been processed and she was being scheduled for an appointment. On July 19, 2016, DCFS

reported that mother had graduated from a nurturing parent program on June 24. Cesar came to the class for 30 minutes and mother “did great,” although she had a learning disability. On July 16, the police arrested MGM and management removed mother and others from the hotel where they all had been living, after management reported gang and other activity. Mother attempted to reenroll in the PCIT program, but PCIT staff reported that mother was often late or absent, struggled to understand the requirements of the sessions, and did not seem to benefit from the program.

Cesar showed a strong attachment to his foster parents. When the foster parents left, Cesar would engage with mother, sometimes kissing and hugging her. At other times, mother did not engage Cesar and left him seated in a high chair or stroller. At one visit in August 2016, Cesar pointed out of the visiting room calling “ ‘ma’ ” and “ ‘da,’ ” and tried to leave the room; at another, Cesar called out for “ ‘ma-ma’ ” and “ ‘da-da,’ ” tried to leave the room, refused to interact with mother, and screamed inconsolably. Cesar immediately stopped screaming when mother left, and ran to his foster father when he arrived to pick Cesar up.

At a status review hearing on September 20, 2016, the court terminated mother’s family reunification services. On September 27, the court denied a section 388 petition from the paternal grandparents requesting custody of Cesar. Cesar received speech therapy once a week, and the foster

parents attended parent education for children with language delays.

Mother did not visit Cesar in September 2016, but she visited regularly in October through January. At the end of the visits, Cesar ran to his foster parents and did not say goodbye to mother. In March 2017, Cesar's PCIT therapist reported that he showed increased trauma and aggression after mother's visits, which impeded his progress in therapy.

On April 7, 2017, mother filed a section 388 petition requesting that Cesar be returned to her custody or that reunification services be reinstated. An attached regional center assessment concluded that although mother had challenges, she could perform everyday skills and interact appropriately, and recommended she continue with mental health and psychiatric services.

Cesar's foster parents wanted to adopt him, and a home study was approved on April 11, 2017.

At a combined contested hearing on May 31, 2017, the trial court denied mother's section 388 petition, as mother had not completed individual counseling, had visited sporadically, and had been discharged from PCIT. Circumstances had not changed and it would not be in the child's best interest to grant the petition.

Mother testified in opposition to the termination of her parental rights, arguing that the allegations of domestic violence were lies. She and father argued, but not physically, and they were no longer in a relationship. Mother stated she visited Cesar every week, playing,

talking, and singing with him; he laughed and smiled and raised his arms to be picked up. Cesar came to her, called her mommy, was always happy to see her, and was sad and tried to follow her when she left. She believed Cesar would be traumatized if he did not see her again. Mother's counsel argued that mother's visitation had created a bond. If Cesar was not doing well, that was because visitation was infrequent, and his aggressive behavior would increase if mother's parental rights were terminated. Counsel for DCFS pointed out that the visitation monitor had to intervene to engage mother, Cesar's aggressive behavior increased after the visits, and according to Cesar's therapist, continued visitation would impede Cesar's progress.

The court commented that while mother and Cesar might have fun for brief periods during visitation, mother was often disengaged and had not finished her programs during the two and a half years that Cesar had been detained. Permanency was in Cesar's best interests, and the parental benefit exception did not apply. The court terminated mother's and father's parental rights and ordered adoption as the permanent plan.

Mother filed this timely appeal, arguing that the trial court should have applied the beneficial parent-child relationship exception.

DISCUSSION

We review the court's section 366.26 findings for sufficiency of the evidence.² (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

A section 366.26 hearing takes place after reunification services have been terminated. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307–309.) “Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.” (*Id.* at p. 309.) The court “‘must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.’” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) If the children are adoptable, there is a strong preference for adoption over the alternatives of guardianship or long-term foster care. (*Id.* at p. 528.) “[A] parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under

² Courts have applied different standards of review, reviewing whether a beneficial parental relationship exists for substantial evidence and whether there is a compelling reason to apply the exception for abuse of discretion (*In re K.P.* (2012) 203 Cal.App.4th 614, 621–622); reviewing for abuse of discretion while reviewing purely factual findings for substantial evidence (*In re C.B.* (2010) 190 Cal.App.4th 102, 122–123); and reviewing for abuse of discretion (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351). On the record before us, we would affirm under any of these standards.

one of the exceptions listed in section 366.26, subdivision (c)(1)(B).” (*Ibid.*)

Section 366.26, subdivision (c)(1), provides that the court “shall terminate parental rights” if the minor is likely to be adopted, unless termination would be detrimental to the child under one or more statutory exceptions. (§ 366.26, subd. (c)(1)(B).) “Section 366.26, subdivision (c)(1)(B)(i), provides for one such exception when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) “It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ‘ “Interaction between [a] natural parent and child will always confer some incidental benefit to the child” ’ [Citation.] For the exception to apply, ‘a *parental* relationship is necessary.’ ” (*Id.* at p. 529.) The preference for adoption is overcome only 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Mother has not met her burden to show a parental relationship. Even if we were to consider her visitation to be regular, she has not shown that Cesar would be harmed if their relationship did not continue. Although at times their interaction was friendly and loving, mother did not occupy a parental role in Cesar’s life, needing frequent redirection from the visitation monitor. Cesar showed a marked

preference for the foster parents he had known since he was two months old, and mother's visits increased his aggression and impeded his progress in therapy. "Moreover, '[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it 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 K.P., supra*, 203 Cal.App.4th at p. 621.) This is not such an extraordinary case.

DISPOSITION

The order terminating parental rights is affirmed.
NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.