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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.A.R. et al., Persons Coming
Under the Juvenile Court Law.

2d Juv. No. B282220
(Super. Ct. Nos. J070650, J070651)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

M.R. (Father) appeals orders of the juvenile court declaring that his minor children M.A.R. and H.M.R. are adoptable, and terminating his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹ We conclude that the court properly

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

determined that the beneficial parental relationship exception to adoption does not apply, and affirm. (§ 366.26, subd. (c)(1)(B)(i).)

FACTUAL AND PROCEDURAL HISTORY

On February 27, 2014, Father committed domestic violence against his girlfriend and was later arrested. The Ventura County Human Services Agency (HSA) and Father agreed to a safety plan for his children that involved refraining from contact with his girlfriend. On August 31, 2015, Father and his girlfriend again engaged in domestic violence and this time she was arrested. HSA initiated another safety plan that involved Father refraining from contact with her. Father soon violated the safety plan, however, by permitting his girlfriend to return to the family home following her release from jail.

On September 8, 2015, HSA removed the children from Father's home. That day, HSA filed a dependency petition alleging that Father and his cohabitant girlfriend repeatedly engaged in domestic violence despite HSA referrals for assistance, and that Father has a history of substance abuse. (§ 300, subd. (b) [failure to protect].) HSA also alleged that the children's mother (Mother) did not maintain a relationship with the children and did not assume a parental role. (*Id.*, subd. (g) [failure to support].)² Mother also has a history of substance abuse and did not have physical or legal custody of the children.

The juvenile court ordered that the children be detained and it placed their custody and care with HSA. In an uncontested hearing, the court later sustained the allegations of the dependency petition, and ordered HSA to provide family reunification services. Father's reunification services plan

² Mother is not a party to this appeal.

included a 52-week domestic violence counseling program, parent education, and random substance abuse testing.

For 10 months following the children's removal, they lived in shelter care at Casa Pacifica. The children's paternal relatives were unable to provide them a home and three potential foster home placements fell through. Throughout the children's stay in shelter care, they received therapy and academic support while awaiting a foster home.

During the dependency period, Father minimally participated in his reunification services plan. He missed six random drug tests, and tested positive for methamphetamine at a January 4, 2016, random test. Father denied having a substance abuse problem and offered that he "[m]ust have consumed [methamphetamine] somehow." Father also brought his girlfriend to a visit with his children, although he later informed HSA that he had no contact with her.

At the time of the contested six-month review hearing, HSA recommended that the juvenile court terminate family reunification services to Father and Mother, and establish a permanent plan of long term foster care for the children. Prior to the contested proceeding, the children's former stepmother (Stepmother) sought placement of the children with her and her two children (half-siblings of M.A.R. and H.M.R.) in Michigan. Father agreed to the placement. On May 10, 2016, the court terminated family reunification services and set the matter for a permanent plan hearing.

Stepmother knew M.A.R. and H.M.R. nearly all of their young lives; despite her divorce from Father, she remained in contact with the children. Following their move to Michigan, the children made psychological, social, and academic progress.

M.A.R.'s Tourette Syndrome had all but disappeared. He receives academic tutoring and now enjoys school. H.M.R. has made many friends at her new school and has developed a good relationship with her teacher. H.M.R. is no longer defiant or aggressive. The children are thriving in their new home and have expressed a desire for adoption by Stepmother. Stepmother's two children are also in favor of her adoption of their half-siblings M.A.R. and H.M.R.

On March 23, 2017, the juvenile court held a contested section 366.26 hearing. The court received evidence of HSA reports and memoranda, and testimony from the HSA social worker and Father by telephone.³ Following argument by the parties, the court found by clear and convincing evidence that the children are adoptable and that the beneficial parental relationship exception to adoption did not apply. The court then terminated parental rights.

Father appeals and contends that the juvenile court erred by not applying the beneficial parental relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).)

DISCUSSION

Father asserts that the beneficial parental relationship exception to adoption precludes termination of his parental rights. (§ 366.26, subd. (c)(1)(B)(i).) He points out that he consistently visited with the children during their shelter care, and that the visits were appropriate and loving. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a primary attachment to parent for beneficial parental relationship].) Father asserts that he has been involved with the

³ Father was then incarcerated in federal prison and awaiting deportation.

children for nearly all of their lives and that he and the children are bonded. He adds that following the children's move to Michigan, he continued to call and Skype them every other day. Father argues that the detriment to his children in terminating his parental rights outweighs any benefits of adoption. He adds that a legal guardianship would have been in the best interests of his children.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly

found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 612-613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship exists where children in mother's care the majority of their lives].) "The application of the beneficial parent relationship exception requires a robust individualized inquiry given that '[p]arent-child relationships do not necessarily conform to a particular pattern,' and no single factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive." (*Grace P.*, at p. 613.)

Father did not meet his daunting evidentiary burden to establish that his relationship with his children was sufficiently compelling to outweigh the legal preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].) Although Father and his children enjoyed loving visits, the adoptive home with Stepmother would provide them with permanence, security, and stability. Twice HSA was involved with the family for reasons of Father's domestic violence with his

girlfriend. The children reported to the HSA social worker that Father and his girlfriend argued frequently and that they committed violent acts such as throwing objects and hitting each other. They also reported that Father frequently consumed alcohol and became angry.

The children were thriving under Stepmother's care. They were doing well in school and had made many friends. M.A.R.'s symptoms of Tourette's Syndrome were near non-existent and H.M.R.'s defiant attitude had dissipated. The children also were in favor of their adoption by Stepmother; H.M.R. informed the social worker that adoption meant that she was a permanent daughter to Stepmother. The children's counsel informed the juvenile court that the children understood the meaning of adoption and they were requesting Stepmother to adopt them. In sum, Father did not meet his evidentiary burden of establishing extraordinary circumstances warranting application of the exception to the legislative preference for adoption.

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

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

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