Filed 7/2/12 In re Crystal B. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re CRYSTAL B., a Person Coming Under the Juvenile Court Law.	B237590 (Los Angeles County Super. Ct. No. CK79445)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent. v. ARRIANA G., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Anthony Trendacosta, Commissioner. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel for Plaintiff and Respondent.

Arriana G. (mother) appeals from an order terminating her parental rights to Crystal B., born in October 2009, pursuant to Welfare and Institutions Code section 366.26.[1] Mother contends that the trial court erred in denying her a contested hearing on the applicability of section 366.26, subdivision (c)(1)(B)(i), which provides an exception to termination of parental rights where the parents "have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Mother's history with DCFS

Mother, born in June 1994, was a dependent of the juvenile court at the time of Crystal's birth. Mother had been a dependent since January 24, 2006, due to exposure to domestic violence. As a dependent, mother had a history of runaway behavior.

On July 12, 2009, the Compton station of the Los Angeles Sheriff's Department received a report that there was a verbal and physical altercation in the middle of the street. Deputies arrived and found mother, who had an outstanding section 300, subdivision (g) no-bail warrant. The male at the scene was mother's boyfriend, Bobby B. (father), who is Crystal's father.[2] Father was found to be in possession of marijuana and was taken to juvenile hall. Deputies contacted the Los Angeles Department of Children and Family Services (DCFS).

When the social worker arrived at the Compton station, it was discovered that mother was six months pregnant. The social worker attempted to interview mother, but mother was extremely angry, defensive and hostile. Mother refused to tell the social worker where she had been for the past three weeks since she ran away from her foster care placement.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

[2] Father is not a party to this appeal.

On August 9, 2009, the social worker was called to father's home due to allegations of domestic violence. According to the deputy sheriff on the scene, father was beating up mother because he thought mother was cheating on him. Mother had scratches on her neck and a black eye. The social worker could not get any information from mother about what had happened. When the social worker attempted to interview mother, mother responded, "Get the fuck away from me! I have nothing to say to you. You are stupid. I hate social workers because all of you are liars and don't give a shit about anyone. Just shut the fuck up and leave me the fuck alone." Mother was seven months pregnant. There was an outstanding warrant for her arrest because she was a runaway from DCFS. Mother refused to be medically evaluated or placed in foster care.

On August 26, 2009, DCFS held a Team Decision Making Meeting (TDM) with mother, the Department of Mental Health, and group home staff. Mother was uncooperative during the meeting, and appeared extremely upset and angry. Mother was not willing to cooperate with placement or other services. Mother was due to deliver her baby on October 21, 2009.

The social worker noted that mother's DCFS history reflected that she had extensive runaway behavior, a history of domestic violence with father, and that mother threatened to run away with the baby once it was born, which would place the newborn at risk. Mother consistently refused to receive services and placement. Mother had 10 to 14 separate runaway incidents within the preceding year, and nine different placements.

2. Section 300 petition and detention hearing

Crystal was born in October 2009. DCFS took Crystal into protective custody and placed her in a foster home. Mother and Crystal were in separate placements.

On October 20, 2009, DCFS filed a section 300 petition on behalf of Crystal, alleging that mother had a history of chronic runaway behavior and that mother and father had a history of domestic violence.

At the October 20, 2009 detention hearing, the juvenile court ordered Crystal detained. It ordered monitored visits for mother a minimum of three times per week.

3. Jurisdiction/disposition

In a November 12, 2009 jurisdiction/disposition report, DCFS reported that Crystal was doing well in her foster placement.

On October 26, 2009, mother ran away from her foster care placement. Mother had gone to the movies with the other foster children in the home. The other children reported that mother's boyfriend came to the movie and he and mother left together. A protective custody warrant was issued. The social worker went to the home of father, but paternal grandmother reported that mother was not residing at her home. At the time that the jurisdiction/disposition report was filed, mother remained AWOL.

On November 4, 2009, father met with the social worker at a DCFS office. He claimed that on the night of mother's injuries, his former girlfriend had seen him and mother walking together. The former girlfriend began beating up mother. Father broke up the fight and pulled his ex-girlfriend off of mother. Mother was injured, but not badly. Father denied seeing mother since he met her at the movies. He stated that they got in a fight and he had not seen her since.

Mother had participated in two visits with Crystal. On October 21, 2009, mother had her first visit with Crystal. Mother held the baby, fed her, and behaved appropriately. At a second visit on October 23, 2009, mother was affectionate with Crystal. Father inappropriately questioned mother about whether she had another boyfriend, and the social worker had to redirect the parents about the purpose of the visits. Mother had no other visits with Crystal because she ran away on October 26, 2009.

In a January 19, 2010, last minute information for the court, DCFS reported that mother had been placed in a foster home on November 12, 2009. However, mother ran away on November 16, 2009, and as of January 2010, mother was still AWOL.

At the January 19, 2010 adjudication hearing, the juvenile court sustained counts b-1 and b-2, alleging that mother's chronic runaway behavior, and the history of domestic violence between mother and father, put Crystal at risk of harm. The juvenile court declared Crystal a dependent of the court and provided the parents with reunification services, including monitored visits. Mother was permitted monitored visits three times

per week for a minimum of one hour. The court also ordered a TDM to address the possible placement of mother with Crystal in a foster home.

4. Interim reports and six-month review hearing

In a July 5, 2010 status review report, DCFS reported that on May 13, 2010, mother ran away from her placement. As of July 2010, mother's whereabouts were unknown.

Mother was in a foster care placement from February 2 through May 11, 2010. She had monitored visits with Crystal for two hours per week. Mother was compliant during the visits but the foster parent observed that mother did not pay full attention to Crystal. Mother was consistently on her cell phone talking or sending text messages, and had to be redirected to provide proper care to Crystal, including feeding her and changing her diaper. No visits occurred since mother ran away from her placement.

Crystal continued doing well in her foster home.

In an August 13, 2010, last minute information for the court, the social worker reported that mother had called on July 20, 2010, stating that she was at father's home and wanted to surrender herself. The social worker went to father's home and father reported that mother was not there, although she had been there earlier. On July 26, 2010, mother again contacted the social worker, stating she was at father's home and wanted to surrender. The social worker placed mother in a foster home on that date, but on July 28, 2010, mother ran away from the placement. Mother's whereabouts were unknown at the August 13, 2010 six-month review hearing.

At the six-month review hearing, the court found mother in partial compliance and terminated reunification services. The matter was set for a section 366.26 permanency planning hearing.

5. Mother's section 388 petition

DCFS filed a section 366.26 report on December 10, 2010. DCFS reported that there were several families interested in adopting Crystal.

Mother ran away from her placement on May 8, 2010, and did not reappear until September 18, 2010. Since September 18, 2010, mother had only completed two

monitored visits with Crystal. The social worker noted that mother was again pregnant and due on April 19, 2011.

On April 7, 2011, mother filed a section 388 petition, requesting that Crystal be returned to mother's custody, or in the alternative, placed in the same foster home as mother or that the court reinstate reunification services and provide mother with unmonitored visits.[3] As changed circumstances, mother alleged that she had been in a stable placement for seven months and that she had been compliant with the rules of her foster home. Mother claimed that the change of order would be in Crystal's best interest because mother had weekly visits with Crystal for the past seven months and had a positive relationship with Crystal. The juvenile court set mother's section 388 petition for a hearing.

In an April 8, 2011, last minute information for the court, DCFS reported that Crystal's prospective adoptive parents' home study had been approved since December 13, 2010. Crystal was placed in the prospective adoptive parents' home on January 11, 2011. Crystal was adjusting well in the home and the prospective adoptive parents were committed to adopting Crystal and raising her as their own daughter.

In its May 25, 2011 interim review report, DCFS stated that mother had not made enough progress and had not bonded enough with Crystal to justify a change in the court's orders.

Mother gave birth to her second child in April 2011.

At the May 31, 2011 hearing on mother's section 388 petition, the juvenile court granted mother's petition in part. The court granted mother further reunification services, including weekly monitored visits three times per week for three hours each.

6. Section 366.26 permanency planning hearing

In an October 28, 2011, last minute information for the court, DCFS reported that mother was not consistently visiting with Crystal. Mother was provided with visits three

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[3] Section 388 allows a parent to file a petition seeking to change, modify, or set aside any order of the court on the ground that there has been a change of circumstance or new evidence. (§ 388, subd. (a).)

times per week, but was only visiting once per week. In addition, the social worker noted that on October 17, 2011, mother ran away from her most recent placement with her second child.

Crystal had blossomed in the prospective adoptive parents' home, and had a strong parent-child bond with her prospective adoptive parents.

Mother was not present at the October 28, 2011 section 366.26 hearing. The juvenile court terminated reunification services because mother had run away and put her second child at risk. The court determined that it was not in Crystal's best interest to continue reunification services.

Mother's counsel requested that the juvenile court set the section 366.26 hearing for a contest. The juvenile court asked mother's counsel for an offer of proof. Mother's counsel said that mother had been regularly visiting Crystal from May through October 17, 2011, when she ran away. Mother's counsel claimed that mother had a bond with Crystal and that it would be detrimental to Crystal if the bond were terminated.

Crystal's counsel requested that the juvenile court proceed to permanency, since mother had not regularly and consistently visited with Crystal.

The juvenile court noted that mother was "whereabouts unknown" with her second child and that "speaks for itself." The juvenile court found that mother had not regularly and consistently visited with Crystal. The court explained to mother's counsel that it could not accept her offer of proof because mother was essentially arguing "Well, she's had regular and consistent visits up until the time she stopped having regular and consistent visits because she ran away." Because mother's offer of proof was insufficient, the court denied mother's request for a contested hearing and indicated it was "ready to proceed today."

The court then terminated mother's parental rights. The court noted that "for almost ten months, almost all of last year, the mother . . . was AWOL and did not make any inquiries into the child." The court acknowledged that mother returned and started visits again, but that "she's again AWOL with her new baby and has no contact." The

court also noted that mother had 15 separate runaway incidents. In addition, during the visits that she did have, it did not appear that mother paid full attention to Crystal.

The court found by clear and convincing evidence that Crystal was adoptable, and terminated parental rights, freeing Crystal for adoption.

On November 15, 2011, mother filed a notice of appeal.

DISCUSSION

I. Relevant law and standard of review

At a section 366.26 hearing, the juvenile court must make a permanent plan for the child. (§ 366.26, subds. (b)(1)-(5).) The permanent plan preferred by the Legislature is adoption. If a juvenile court finds a child adoptable, it must terminate parental rights absent specified circumstances in which termination of parental rights would be detrimental. (§366.26, subds. (c)(1)(A) & (B).) "After the parent has failed to reunify and the court has found the child likely to be adopted, it is the parent's burden to show exceptional circumstances exist" to justify a decision not to terminate parental rights. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574 (*Autumn H.*).)

At a permanency planning hearing pursuant to section 366.26, the juvenile court may exercise its power to request an offer of proof to identify the contested issues and "to insure that before limited judicial and attorney resources are committed to a hearing on the issue, [there is] evidence of significant probative value." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) "The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued." (*Id.* at p. 1124.) If the trial court finds the offer of proof insufficient and declines to hold a contested hearing, the issue is preserved for appeal so that a reviewing court can determine error and assess prejudice. (*Ibid.*)

"It is the burden of the proponent of evidence to establish its relevance through an offer of proof . . . . [Citation.]" (*People v. Schmies* (1996) 44 Cal.App.4th 38, 51.) A trial court's rejection of an offer of proof is generally reviewed for abuse of discretion. (See, e.g., *People v. Babbitt* (1988) 45 Cal.3d 660, 684; *People v. Foss* (2007) 155 Cal.App.4th 113, 124-125.)

II. The juvenile court did not err in denying mother's request for a contested hearing

The parent-child bond exception to termination of parental rights is set forth in section 366.26, subdivision (c)(1)(B)(i). This exception permits a court to decline termination of parental rights if "[t]he parents have maintained regular visitation with the child and the child would benefit from continuing the relationship." Mother acknowledges that she bore the burden of proving the parent-child bond exception to the termination of parental rights. Mother further acknowledges that in order to prove this exception, she would have to prove that she occupied a parental role in Crystal's life, resulting in a significant, positive emotional attachment, and that regular visits and contact have continued or developed that attachment. (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

Mother argues that her offer of proof was sufficient to show regular contact and visitation with Crystal. She states that she regularly began visiting Crystal immediately after Crystal's October 20, 2009 detention, including one visit on October 21, 2009, and another visit on October 23, 2009. Mother also points out that she visited with Crystal twice weekly between February and May 2010. Mother admits that there may have been some gaps in her visitation -- and that it may not have been frequent enough for DCFS's liking -- but nevertheless, mother argues, mother and Crystal shared visitation over the two-year period of Crystal's detention. Mother argues that this was enough for a successful offer of proof meriting a contested hearing.

The juvenile court found this offer of proof insufficient. This decision did not constitute an abuse of discretion. The record shows that mother did not maintain regular visitation with Crystal. Mother had two visits with Crystal after her initial detention in October 2009, but no further visits until February 2010. During these visits, mother did not pay full attention to Crystal -- instead, she was consistently on her cell phone. Mother ran away from her placement and did not visit Crystal between May and September of 2010. While mother consistently visited Crystal between September 2010 and April 2011, she did not take advantage of the juvenile court's permission to visit with

Crystal three times per week starting in May 2011. Instead, she visited Crystal only once per week, until mother ran away again in October 2011. Mother was "whereabouts unknown" at the time of the section 366.26 hearing in October 2011.

In order to prove that the parent-child bond exception to termination of parental rights applies, a parent is required to show that her relationship with her 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 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*, 29 Cal.App.4th at p. 575.) Even frequent and loving contact is not sufficient if the parent does not "occupy a parental role" in relation to the child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

Where a parent does not "act parentally," and does not focus her full attention on the child during visits, there is insufficient evidence to support the section 366.26, subdivision (c)(1)(B)(i) exception to termination of parental rights. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 954-955.) The record supports the trial court's findings that mother did not visit regularly, and that when she did visit, she did not act parentally and did not focus her full attention on Crystal. Under the circumstances, the juvenile court did not err in declining to find mother's offer of proof sufficient to merit a contested hearing.

III. Any error was not prejudicial

Even if the juvenile court had erred in declining to set a contested hearing on termination of mother's parental rights -- which it did not -- we would not reverse the judgment because there is no evidence that a result more favorable to mother would have resulted if the court had granted mother a contested hearing.

Under the California Constitution, article VI, section 13, reversal of a judgment is impermissible unless the error complained of resulted in a "miscarriage of justice." (See also Evid. Code, § 354 [judgment shall not be set aside unless the erroneous exclusion of evidence resulted in a miscarriage of justice].) A miscarriage of justice occurs when the

appellate court determines, after reviewing the entire record that "'"it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."' [Citation.]" (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.)

It is not reasonably probable that a more favorable result would have been reached if mother had been granted a contested hearing on termination of parental rights. As set forth above, mother did not maintain regular visitation with Crystal. Instead, her visits with Crystal were interrupted on the several occasions when mother disappeared, sometimes for months at a time, without informing DCFS of her whereabouts. During these absences from Crystal's life, mother did not inquire about Crystal's well-being. When mother did visit with Crystal, she did not pay full attention to Crystal, instead talking on her cell phone or sending text messages. When the court granted mother a new opportunity to reunify with Crystal, mother did not take advantage of this opportunity. Instead of visiting three times per week as the court allowed, mother visited only once a week.

Further, there was no evidence that Crystal would suffer any detriment from severance of the parent-child relationship. Crystal never lived with mother. She was in a permanent home with prospective adoptive parents, whose adoption home study had been approved. Crystal was bonded to her prospective adoptive parents, and they were committed to providing her with a permanent home. Mother points to no evidence suggesting that the potential benefit from Crystal's continuing relationship with her could possibly outweigh the benefit Crystal would obtain in her new, adoptive home. Under the standard explained above as set forth in *Autumn H.*, the section 366.26, subdivision (c)(1)(B)(i) exception to termination of parental rights does not apply in this case.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST