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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.D., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B264172
(Super. Ct. No. J069985)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.D., et al.,

Defendants and Appellants.

A.H. (mother) and T.D. (father) appeal the juvenile court's order terminating their parental rights and selecting adoption as the permanent plan for their minor child S.D. (Welf. & Inst. Code,¹ § 366.26.) Appellants contend the court erred in finding that the beneficial parental-child relationship exception to adoption did not apply. (*Id.* at subd. (c)(1)(B)(i).) We affirm.

FACTS AND PROCEDURAL HISTORY

S.D. was born May 2012. In April 2014, the Ventura County

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

Human Services Agency (HSA) filed a section 300 petition alleging that S.D. had been observed on numerous occasions putting her head out of a second-story window in her bedroom. Drug paraphernalia and prescription pills were found inside the home. S.D. had also been the subject of numerous prior referrals. She was born addicted to opiates and mother breastfed her while taking methadone. Both parents had histories of selling and abusing drugs and often engaged in violent fights with each other.

S.D. was placed with her maternal grandparents after a brief stay in foster care. The court sustained the dependency petition, declared father to be S.D.'s presumed father, and ordered that reunification services be offered to both parents.

At the six-month review hearing, HSA recommended that reunification services be terminated. HSA reported that mother and father had failed to comply with various components of the case plan, which father had refused to sign. Neither parent had enrolled in a drug treatment plan or completed a parent education course. Moreover, they both missed every one of their scheduled drug tests and failed to attend AA/NA meetings.

The court adopted HSA's recommendation by terminating reunification services and set the matter for a section 366.26 hearing. At that hearing, both parents asserted that the beneficial parent-child relationship exception to adoption applied. The court rejected that assertion, terminated parental rights, and selected adoption as S.D.'s permanent plan.

DISCUSSION

Mother and father contend the court erred in finding that the benefits of continuing the parent-child relationship do not outweigh the benefits of adoption. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We review for substantial evidence and determine whether the trial court abused its discretion. (*Ibid.*) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

To establish the parent-child relationship exception, mother and father first had to demonstrate that they maintained regular contact with S.D. (§ 366.26, subd. (c)(1)(B)(i).) Once that was established, they had the burden of demonstrating that S.D. would benefit from continuing the relationship to an extent that outweighed the benefits of adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) They had to show that severing "the natural parent-child relationship would deprive [S.D.] of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

It is essentially undisputed that mother and father maintained regular contact with S.D. They failed to show, however, that the child would benefit from continuing the relationship such that her adoption was precluded. Their relationship with her does not establish the sort of consistent, daily nurturing that marks a parental relationship. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) Both parents spoke to the child on the telephone on a daily basis, yet they only visited her a few times a month and never progressed past supervised visitation. Although S.D. was always excited to see them and referred to them as "mommy" and "daddy," the social worker noted that the child was more attached to the maternal grandmother, whom she also called "mom." Moreover, S.D. sought nurturing, comfort and support from the maternal grandmother, who was committed to adopting her. Recognizing that "[t]he importance of stability and permanence for the child is critical to her healthy development," the social worker concluded that terminating parental rights would not be detrimental to S.D.'s well-being.

None of the parents' cited authority compels a contrary conclusion. The nine-year-old minor in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, had spent over six years of his life with his mother, had numerous unsupervised overnight visits with her, and had expressed his desire to live with her. (*Id.* at p. 1207.) A psychologist who had observed their interactions had "opined that if the relationship were severed Jerome would grieve and could experience emotional and behavioral difficulties, and that continued contact would benefit him developmentally." (*Ibid.*) Moreover, the

prospective adoptive parent had "serious shortcomings as a caretaker, including violence toward the Mother in the children's presence." (*Id.* at p. 1208.) In two other cited cases, there were bonding studies resulting in expert opinions that severing the parent-child relationship would be detrimental to the child. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689; *In re S.B.* (2008) 164 Cal.App.4th 289, 296.) No such evidence is present here.

The final case, *In re Brandon C.* (1999) 71 Cal.App.4th 1530, is offered for the proposition that this court "would have been on firm ground in affirming" an order of legal guardianship based on a finding that the parent-child beneficial relationship to adoption applied. But we are not reviewing such an order here. Although the parents correctly note that S.D.'s appointed counsel believed the child was "deriving more than an incidental benefit by having contact with the parents" and suggested the possibility of legal guardianship, counsel ultimately declined to recommend a particular disposition. In any event, the issue is not merely whether S.D. would benefit from continuing the relationship with her parents, but rather whether doing so outweighed the benefits she would enjoy if adopted. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 558 [noting that *In re S.B.*, *supra*, which contains "problematic" language that parental rights should not be terminated if the minor derived "some measure of benefit" from continuing the relationship, must be "confined to its extraordinary facts"].) Moreover, there is no "legal guardianship" exception to adoption, which is the statutorily preferred plan. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Mother and father also claim the court impermissibly considered the possibility they would still be able to visit with S.D. after their parental rights were terminated. (See *In re C.B.* (2010) 190 Cal.App.4th 102, 128.) This claim is belied by the record. Although the court remarked it was "pretty clear" that visitation would continue, it expressly declined to consider this in issuing its decision. The court went on to conclude that although there might be some detriment to S.D. if the parent-child relationship were to end, it did not outweigh the benefits of adoption. Substantial evidence supports this conclusion, so parental rights were properly terminated.

The judgment (order terminating parental rights) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Claire Abrams, under appointment by the Court of Appeal, for Defendant and Appellant A.H.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant T.D.

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