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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re L.H., a Person Coming Under the Juvenile Court Law.	B240465 (Los Angeles County) Super. Ct. No. CK56902)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DOMONIQUE B., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Tracey M. Blount, Deputy County Counsel for Plaintiff and Respondent.

Domonique B.'s parental rights with respect to her daughter L.H. were terminated pursuant to section 366.26 of the Welfare and Institutions Code.[1] Domonique B. claims on appeal that the juvenile court erred in failing to apply the parent-child relationship exception to the statutory preference for adoption. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

L.H. was born in 2009 while Domonique B. was on parole and living in a drug treatment center. Domonique B. had a history of substance abuse, syphilis, depression, bipolar disorder, and a life-threatening illness. She had also failed to reunify with a previous child. Although Domonique B. had tested positive for cocaine earlier in the pregnancy, she had three negative tests after entering her treatment program and L.H. tested negative for cocaine at birth.

The Department of Children and Family Services (DCFS) detained L.H. the week she was born. In March 2010 the juvenile court found that L.H. was a dependent child pursuant to section 300, subdivisions (b) and (g). Over DCFS's objection, the court ordered that Domonique B. receive family reunification services.

As of May 2010, Domonique B. had been attending individual counseling, substance abuse counseling, and parenting education, but she had missed some group and individual sessions. She had discussed attending Alcoholics Anonymous meetings but appeared not to have obtained a sponsor. Domonique B. reported attending Narcotics Anonymous and having a sponsor, but she could not provide the address for the locations of the meetings she claimed to have attended. All her weekly drug tests had been negative. At the time of DCFS's report, Domonique B. had not visited with L.H. for four days. The baby's caregiver, Deborah D., expected that Domonique B. was spending time with girlfriends, attending parties, or spending time with her boyfriend; and she reported that Domonique B. was very immature. Although she had obtained a low income

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

apartment and had a job, DCFS believed Dominique B. was behind on rent and did not have any money. Domonique B. was in partial compliance with her court ordered programs based on her clean tests, inconsistent attendance at program sessions, unstable housing, and financial difficulties.

In June 2010, Domonique B. stopped attending her court-ordered programs. The provider attempted to contact her but she either did not return calls or did not appear at arranged times. The DCFS social worker had attempted to reach her several times; Domonique B. left one return phone message but never called again. Domonique B. visited the baby several times per week. Deborah D. described her as a loving mother who visited regularly and for most of the day but was "a bit scattered" due to a lack of stable housing. Domonique B. had continued drug testing and her test results were negative. DCFS advised the court, "[M]other does not appear to be in full compliance with court orders. Mother is no[] longer attending her program consistently . . . , she does not appear to be in counseling, she does not appear to be attending A[lcoholics Anonymous] or N[arcotics Anonymous] and she does not appear to be in drug counseling." She was in contact with DCFS and affirmed her willingness to comply with court orders, but DCFS found that she "has not made the commitment to completing court orders in a timely manner." At the August 2010 review hearing the court found that Domonique B. "seem[ed] to be complying with the case plan" and continued family reunification services.

In late 2010, according to Deborah D., Domonique B. said that she no longer wanted to participate in testing or programs and that she approved of Deborah D. adopting L.H. DCFS met with Domonique B. to inquire about this statement. As DCFS described it, "Mother did not deny the statement. Mother asked if she will still receive a bus pass if she allows [Deborah D.] to adopt minor." Upon being advised that the bus passes would be discontinued in that event, "Mother was quiet for a while and then replied that she was still looking for a program and will continue with services."

Domonique B. enrolled in further services. As of February 2011, she was participating in mental health counseling and parenting, anger management, and domestic violence classes. She was reported to be doing very well.

The 12-month permanency hearing was set for February 17, 2011. L.H., now 18 months old, remained with Deborah D. and the two were completely bonded. She was healthy and well, although her language development appeared slow. Domonique B. continued to visit L.H. approximately twice per week. Deborah D. reported that during visits Domonique B. "spends her time talking about her life and lifestyle and spends some time interacting with minor but it is usually brief." Deborah D. was willing to adopt L.H. if Domonique B. failed to reunify with her. DCFS characterized Domonique B. as having been "discouraged and without direction" in the past but that she now "appear[ed] to be motivated to continue services and possibly complete her current program and be able to eventually reunite with minor." DCFS recommended that reunification services continue in light of mother's consistent attendance and participation in her new program but also that it proceed with a concurrent plan of adoption for L.H.

In April 2011, the court held a permanency review hearing. DCFS reported to the court prior to the hearing that Domonique B. had not undergone drug testing in several months. When asked why she had failed to test, Domonique B. "began to cry saying she recently broke up with her boyfriend who left her for another woman." She denied using drugs. Although she continued to do well in the services she was receiving, the program in which she was participating was not one that would permit her to complete a course and gain a certificate. DCFS had referred Domonique B. multiple times to appropriate programs, and the service provider was also prepared to assist in the search for a program. In light of Domonique B.'s failure to comply with the court orders and her failure to undergo drug testing since December 2010, DCFS recommended the termination of reunification services. The court terminated reunification services.

On March 20, 2012, the court took evidence and heard argument on the termination of parental rights over L.H. Domonique B. testified that she had visited her

daughter "every day" since she had been placed with Deborah D. Before Domonique B. started school, visits would last "pretty much all day." After she began school, she visited L.H. between the hours of 5:00 and 9:00. During visits, they played and watched television. Domonique B. would do L.H.'s hair, feed her, and bathe her. Just the day before, they had watched L.H.'s favorite television program, and then L.H. helped Domonique B. clean up L.H.'s bedroom. Domonique B. had cooked a meal and L.H. passed out plates. L.H. helped Domonique B. get her clothes ready for her bath, and then Domonique B. did L.H.'s hair. Domonique B. reported that L.H. addressed her as "Mommy." She claimed to be in the process of toilet-training her. The court concluded that L.H. was adoptable and that termination of parental rights would be not be detrimental to her under the statutorily-specified exceptions, then terminated parental rights. Domonique B. appeals.

DISCUSSION

"At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. When there is no probability of reunification with a parent, adoption is the preferred permanent plan. [Citation.] To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily specified exceptions (§ 366.26, subd. (c)(1)(A)-(B)), the juvenile court 'shall terminate parental rights.' (§ 366.26, subd. (c)(1).)" (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) Here, the juvenile court found that L.H. was adoptable, and, finding no reason that the termination of parental rights would be detrimental to her, terminated parental rights. Domonique B. appeals the termination, asserting that the parent-child relationship exception to termination of parental rights was applicable here. We review the determination whether a beneficial parental relationship exists for substantial evidence and the conclusion as to whether the existence of that relationship constitutes "a compelling reason for determining that termination would be

detrimental to the child" (§ 366.26, subd. (c)(1)(B)) under the abuse of discretion standard. (*In re K.P.*, at p. 622.)

"Section 366.26 provides an exception to the general legislative preference for adoption when '[t]he court finds a compelling reason for determining that termination would be detrimental to the child' (§ 366.26, subd. (c)(1)(B)) because '[t]he 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.' [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an 'emotional bond' with the child, 'the parents must show that they occupy "a parental role" in the child's life.' [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption 'characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.' [Citation.] 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.' [Citation.]" (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

Here, the juvenile court found that Domonique B. had never occupied the necessary parental role with respect to L.H.: the evidence was simply insufficient "under the second prong to enter into a parental role." We understand the court's statement as an implicit finding that some parent-child relationship existed here—that is, that Domonique B. maintained regular visitation and contact with L.H. This factual conclusion is supported by the substantial evidence of regular and frequent visitation by Domonique B., the evidence that she performed typical parenting tasks during visits, and the evidence that L.H. knew Domonique B. as her mother and had positive interactions with her.

We construe the juvenile court's comments about the evidence being insufficient to demonstrate a parental role within the meaning of the second prong of the parental relationship exception as a conclusion that the bond between L.H. and Domonique B. was qualitatively insufficient to constitute a compelling reason for determining that termination of Domonique B.'s parental rights would be detrimental to L.H. We review this determination for an abuse of discretion and find none.

L.H. had been removed from Domonique B.'s custody when she was less than one week old, and she had never resided with her mother after the first few days of her life. Domonique B. had never progressed beyond monitored visitation over the more than two years that the case had been pending. Domonique B. visited regularly and helped with the child's care during visits: she fed L.H., bathed her, combed her hair, and watched television with her for play. DCFS had observed some visits and found that "mother did not spend much time interacting with the minor," and that L.H. played on the carpet by herself or was held by Deborah D. This assessment was consistent with Deborah D.'s report that Dominique B. tended to use her visitation time to talk about her life and lifestyle and to visit with L.H. only briefly. The record contained some evidence of an emotional bond: Deborah D. had reported to DCFS that Domonique B. and L.H. appeared to be bonded, and Domonique B. testified that L.H. called her "Mommy." There was, however, little or no evidence of Dominique B. occupying a parental role with respect to L.H. rather than being a frequent friendly visitor. While the visits between L.H. and her mother may have been pleasant for both parties, there was no evidence that termination of the parent-child relationship would be detrimental to L.H. or that the relationship conferred benefits to L.H. more significant than the permanency and stability offered by adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [exception applies only if the severance of the parent-child relationship would "deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed"].) We cannot say that the juvenile court abused its discretion when it concluded that any detrimental impact from severance of L.H.'s relationship with her mother was outweighed by the benefits to her that would come from adoption.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.