

Filed 11/30/17 In re G.N. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re G.N., a Person Coming
Under the Juvenile Court Law.

B283330
(Los Angeles County
Super. Ct. No. DK13931)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Frank J. Menetrez, Judge, and Stanley Genser, Juvenile
Court Referee. Affirmed.

Marsha F. Levine and Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

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

In this juvenile dependency case, defendant and appellant M.B. (mother) challenges both the juvenile court's order summarily denying her Welfare and Institutions Code section 388 petition for modification and order terminating her parental rights to her almost two-year-old daughter G.N. (daughter).¹ In particular, mother argues the juvenile court erred both by failing to hold a full hearing on her section 388 petition and by failing to find the beneficial parental relationship exception to adoption existed. We disagree and affirm.

BACKGROUND

1. Events Preceding Section 388 Petition and Termination of Parental Rights

Mother was 17 years old and a dependent of the court when she gave birth to daughter. Mother had a history of drug abuse and runaway behavior as well as mental health issues, including depression, anxiety, bipolar disorder, multiple personality disorder, and attention deficit hyperactivity disorder.²

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

² Daughter's father was approximately 17½ years old when daughter was born. He also had been a dependent of the court as well as a ward of the court prior to becoming an adult. Although

a. Section 300 Petition and Detention

On October 21, 2015, when daughter was approximately three months old and mother's and daughter's whereabouts were unknown, the Los Angeles County Department of Children and Family Services (Department) filed a two-count petition under section 300, subdivision (b) on behalf of daughter, alleging mother's drug use and runaway behavior rendered her unable to supervise daughter, thus putting daughter at risk. That same day, the juvenile court issued a protective custody warrant and made emergency detention findings.

A few days later, on October 23, 2015, mother appeared in court. The juvenile court ordered daughter detained and placed with daughter's maternal great aunt, where daughter remained for the duration of these proceedings. The court also ordered family reunification services, including monitored visits for mother. Mother failed to participate in counseling, parenting, or drug abuse programs; she continued to use drugs and run away; and she did not consistently visit with daughter.

b. Adjudication and Disposition

Approximately two months later, on December 18, 2015, the juvenile court sustained the two counts of the petition (which were amended slightly) and declared daughter a dependent of the court under section 300, subdivision (b). The court ordered family reunification services, including monitored visits. Mother did not challenge the juvenile court's jurisdictional findings or dispositional orders.

father was nonoffending, he also struggled with drug use and failed to comply with the court-ordered case plan. The juvenile court terminated family reunification services for father in September 2016. Father is not a party to the appeal.

**c. Termination of Reunification Services,
Adoption Home Study, and Mother's Attempts
at Treatment**

Again, however, mother did not comply with the court-ordered case plan, continued to run away and use drugs, and did not visit consistently with daughter. Thus, on August 11, 2016, the juvenile court terminated family reunification services for mother. In September 2016, the juvenile court found that “the parent(s) have not consistently and regularly contacted and visited with [daughter], that they have not made significant progress in resolving the problems that led to [daughter's] removal from the home, and that they have not demonstrated the capacity and ability both to complete the objectives of his/her treatment plan and to provide for [daughter's] safety, protection, physical and emotional well-being, and special needs.” The court set the matter for a permanency planning hearing.

In October 2016, following termination of reunification services but prior to the permanency planning hearing, Mother gave birth to a baby boy (brother).³

The Department assessed maternal great aunt for purposes of adoption and concluded she was an appropriate adoptive parent. Daughter had been in maternal great aunt's care since October 23, 2015, just days after these dependency proceedings began. In January 2017, the Department reported daughter was “thriving and has a positive attachment to [maternal great aunt],” who was committed to adopting daughter and providing a

³ In December 2016, the juvenile court ordered brother, whose father is not the same as daughter's father, removed from mother. Brother's status is not at issue in this appeal.

permanent and stable home for her. The Department made a similar report in March 2017.

By that time, mother had enrolled in an outpatient substance abuse and mental health treatment program. However, she continued to struggle with relapse and to test positive for cannabinoid, did not attend all appointments, and, at one point, was referred to an inpatient program. Mother enjoyed visits with daughter monitored by staff at the outpatient program.

In April 2017, the Department reported the adoption home study for maternal great aunt had been approved. The Department again reported daughter was thriving in maternal great aunt's care and that adoption by maternal great aunt "remains the permanent plan."

2. Mother's Section 388 Petition

On April 28, 2017, mother filed a section 388 petition, asking the juvenile court to change its August 11, 2016 order terminating her family reunification services and setting a permanency planning hearing. Mother requested that the court take the permanency planning hearing off calendar and reinstate her reunification services. Mother stated circumstances had changed since the court's August 11, 2016 order. In particular, mother explained she had "been working hard on her sobriety," had entered a substance abuse program in January 2017, was participating in substance abuse and mental health services, consistently attended her sessions, had stable housing, was cooperating with the Department, and continued visiting with and had strengthened her bond with daughter. Mother claimed the requested relief would benefit daughter because daughter had a very strong bond with mother, is at ease and enjoys her

time with mother, and would benefit from growing up with her younger brother.

In connection with her section 388 petition, mother submitted an April 27, 2017 progress report from the substance abuse and mental health services program she was attending. The report stated mother had made “Limited Progress” in her treatment plan goals, which included gaining “stability pertaining to her marijuana use.” The report also stated mother was living in the program’s transitional housing, which gave her “some stability,” and “trie[d] hard to be committed to her program.” It was reported mother had “a very strong bond with her children and continues to build on that bond during her visits with them at our program.” The report also stated mother “struggle[d] with relapse prevention skills which continues to be a challenge for her.” The report included mother’s April 5 and 18, 2017 drug test results, both of which showed mother tested positive for cannabinoid, with the second result showing higher levels than the first.

On May 4, 2017, the juvenile court held a hearing in part to address mother’s section 388 petition. Counsel for mother urged the court to hold an evidentiary hearing on the petition. Mother argued the petition made a prima facie showing of changed circumstances and it was in daughter’s best interests to have the opportunity to reunify with mother and to have a relationship with her younger brother. Daughter’s counsel argued, however, the court should not hold an evidentiary hearing because mother’s section 388 petition did not show a material change in circumstance, stating it was “too little too late.” He noted mother still was struggling with relapse and had only recently started the program. Counsel for the Department noted it appeared

circumstances were “changing, but they haven’t really changed yet.”

After hearing argument, the juvenile court denied the petition without holding a full evidentiary hearing. The court held the petition did not state new evidence or changed circumstances and did not promote daughter’s best interests. Although the court commended mother for addressing her issues, the court explained that, despite participating in a substance abuse program, the most recent reports indicated mother continued to test positive for marijuana and, in fact, her most recent test results showed elevated levels.

3. Permanency Planning Hearing

In reports submitted prior to the permanency planning hearing, the Department continued to describe daughter as “thriving” in the care of maternal great aunt and explained that each had formed a healthy bond with the other.

A Department social worker also reported maternal grandmother told the social worker she did not believe mother was capable of caring for daughter. Maternal grandmother said mother was emotionally and mentally unstable and had unstable housing and poor relationships. Maternal grandmother did not trust mother and said she was manipulative. Maternal grandmother further reported daughter was doing well in maternal great aunt’s care, was emotionally attached to maternal great aunt, and called her “mommy.” Maternal grandmother believed it would be emotionally detrimental to daughter if she were removed from maternal great aunt.

The Department also reported mother’s most recent drug test result, dated May 23, 2017, was positive for cannabinoid and mother had admitted to continued drug use. Thus, at the end of

May 2017, and in light of mother's continued and admitted drug use, mother's case manager at the outpatient program was unsure whether mother would remain in the program's housing facility or return to an inpatient program.

The Department also stated that, since approximately January 2017, mother's visits with daughter had been somewhat consistent, appeared appropriate, and were monitored by staff at the outpatient program mother was attending. It was also reported maternal grandmother and brother's family members refused to monitor mother's visits with the children because mother was unpredictable and often became belligerent. According to the Department social worker, it was difficult to determine whether daughter and brother had formed a sibling bond because they were both very young. The social worker believed daughter and brother were unable to share significant common experiences or form a strong bond because they were not raised in the same home and family members were not willing to monitor visits in a more familiar setting. The social worker also reported, however, that with mother's guidance daughter interacted age-appropriately with brother.

The permanency planning hearing was held on June 7 and 8, 2017. At the hearing, mother testified about her relationship with daughter. Mother said she had two 3-hour monitored visits with daughter each week. Mother testified daughter was happy to see her at the start of each visit (daughter would smile, run to mother, and say, "Mommy") and sad at the end of each visit (daughter would cry). Mother stated she read books with daughter, brought snacks for her and ate with daughter, napped with daughter, and redirected her behavior when necessary. Mother also explained brother was with them at

the visits. Mother said daughter loved brother, gave him kisses, and called him “my baby.” Finally, mother testified she had not seen daughter outside of monitored visits since the case began in October 2015, and similarly daughter did not see brother outside of their monitored visits.

Instead of termination of parental rights, counsel for mother asked the juvenile court to order legal guardianship. Counsel argued both the beneficial parental relationship and sibling bond exceptions applied. In particular, counsel noted the Department social worker and staff at mother’s drug abuse program reported mother’s visits with daughter were positive. Counsel also explained the court could find the beneficial relationship exception applied based on monitored visits only. As to the sibling exception, counsel argued it was not in daughter’s best interests, including her long-term emotional interest, to sever her relationship with brother. Counsel noted daughter had a strong and affectionate bond with brother.

On the other hand, counsel for daughter asked the court to terminate parental rights and order adoption by maternal great aunt. Daughter’s counsel argued mother had not occupied a parental role since the case began, but instead was more like a friend to daughter while maternal great aunt had been the parent. Counsel also argued any bond daughter had with brother was not sufficiently strong to overcome the preference and stability of adoption and termination of parental rights. Finally, counsel also noted mother’s unresolved drug abuse. The Department’s recommendation was for the juvenile court to terminate parental rights and order adoption by maternal great aunt. Counsel for the Department stated, despite mother’s

position to the contrary, it was not clear daughter's relationship with brother would end if parental rights were terminated.

After hearing the testimony and argument, the juvenile court found daughter was adoptable and ordered mother's parental rights terminated. The court found mother's testimony self-serving and held mother had not met her burden of proof to show a beneficial relationship with daughter. The court stated, "I don't believe that, despite mother's testimony, the fact that for the last five months [mother] has had visits twice per week rises to the level of establishing such a strong parental relationship with the child as to outweigh the benefit of permanency through adoption with basically the only parent the child has ever known." The juvenile court also found mother had not shown the requirements for application of the sibling relationship exception.

4. Notice of Appeal

Mother filed a notice of appeal on June 12, 2017, stating she was appealing the juvenile court's "[f]indings and orders made on 6/7/17 and 6/8/17, including but not limited to the termination of parental rights." Her notice of appeal also stated the hearing dates for the orders appealed were held May 4, June 7, and June 8, 2017. The notice of appeal does not specifically address the juvenile court's May 4, 2017 summary dismissal of mother's section 388 petition.

DISCUSSION

1. Scope of the Notice of Appeal

As an initial matter, we address the scope of mother's notice of appeal. Mother acknowledges that her notice of appeal does not specifically state she sought to appeal the juvenile court's May 4, 2017 order denying her section 388 petition. Rather, the notice of appeal states mother appealed from the

court's findings and orders made on June 7 and 8, 2017. As mother also notes, however, she did reference the May 4 hearing in her notice of appeal, which was filed within 60 days of the May 4 hearing. We construe the notice of appeal liberally and conclude mother's appeal from the order terminating her parental rights encompasses the denial of her section 388 petition because the juvenile court issued its denial during the 60-day period prior to mother filing her notice of appeal. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1449.)

2. Section 388 Petition

Mother argues the juvenile court erred because it denied her section 388 petition for modification without holding a full evidentiary hearing on the matter. As discussed below, we disagree and find no abuse of discretion.

a. Applicable Legal Standards and Standard of Review

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point, ‘the focus shifts to the needs of the child for permanency and stability.’” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) “The burden thereafter is on the parent to prove changed circumstances pursuant to section 388 to revive the reunification issue. Section 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information.’” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) Thus, “after reunification services have terminated, a parent’s petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child’s need for permanency and stability.” (*In re J.C.* (2014) 226

Cal.App.4th 503, 527.) The parent’s best interests “are simply no longer the focus.” (*Ibid.*)

The juvenile court is not required to hold a full hearing on a section 388 petition. “The parent seeking modification must ‘make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]’ [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

“We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion.” (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318–319.)

b. The juvenile court did not abuse its discretion when it denied mother’s section 388 petition without holding a full hearing on the matter.

Although mother’s section 388 petition showed to a certain extent things had changed since the juvenile court had terminated family reunification services, we conclude the court did not abuse its discretion in finding it was not the “genuine change of circumstances” necessary before the court must hold a

full hearing on the matter. As noted above, mother's section 388 petition stated her circumstances had changed because she (i) had been working on her sobriety, (ii) had entered a substance abuse program, (iii) was participating in substance abuse and mental health services, (iv) consistently attended her sessions, (v) had stable housing, (vi) was cooperating with the Department, and (vii) continued visiting with and had strengthened her bond with daughter. However, the documents submitted with her petition showed mother continued to use drugs, had made "Limited Progress" in her treatment goals, and continued to struggle with relapse prevention. Thus, the juvenile court acted within its discretion when it found no changed circumstances sufficient to warrant a hearing on the petition.

Similarly, we conclude the juvenile court did not abuse its discretion in finding mother had failed to establish the requested modification would be in daughter's best interests. By the time of the hearing on mother's petition, daughter had been in the care of maternal great aunt for most of her life. It was undisputed daughter was thriving in maternal great aunt's care and both shared a strong bond with one another. Although mother believed daughter would benefit from continuing to bond with mother and build a relationship with brother, mother did not establish how either would promote daughter's need for permanency and stability, especially given daughter was, and had been for well over a year, in a loving and stable environment. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re J.C.*, *supra*, 226 Cal.App.4th at p. 527.) Thus, given the procedural posture of the proceedings and the fact that, at that time, the juvenile court's "foremost concern" was daughter's interest in stability and not any interest mother might have in reunification (*In re*

Anthony W., *supra*, 87 Cal.App.4th at pp. 251–252), we find no abuse of discretion.

We are not persuaded otherwise by the cases on which mother relies, both of which are factually distinct from the facts of this case. (See *In re Hashem H.* (1996) 45 Cal.App.4th 1791; *In re Aljamie D.* (2000) 84 Cal.App.4th 424.)

3. Termination of Parental Rights and the Beneficial Parental Relationship Exception

Mother also argues the juvenile court erred when it held the beneficial parental relationship exception to adoption did not apply. As discussed below, we disagree and find no error.

a. Applicable Legal Standards and Standard of Review

“At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299.) At that stage of the proceedings, the preferred plan for the dependent child is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.) “If there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic.” (*In re Zacharia D.*, *supra*, 6 Cal.4th at p. 447.)

Nonetheless, there are statutory exceptions to the preferred plan of adoption. “One exception to adoption is the beneficial parental relationship exception. This exception is set forth in section 366.26, subdivision (c)(1)(B)(i) which states: ‘[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child

due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Thus, at the permanency planning hearing, the juvenile court conducts a two-step inquiry. “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 645–646.)

For the beneficial parental relationship exception to apply, the parent “has the burden of proving her relationship with the children would outweigh the well-being they would gain in a permanent home with an adoptive parent.” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Courts consider “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] 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.”’” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Noah G.*, at p. 1300 [“Evidence of frequent and loving contact is not enough to establish a beneficial parental

relationship. [Citations.] The mother also must show she occupies a parental role in the children’s lives”].) “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 Breanna S.*, at p. 646.)

In reviewing challenges to the juvenile court’s decision as to the applicability of the beneficial parental relationship exception, we employ the substantial evidence or abuse of discretion standard of review, depending on the nature of the challenge. “In evaluating the juvenile court’s determination as to the factual issue of the existence of a beneficial parental relationship, . . . courts review for substantial evidence. [Citations.] But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion.” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; see *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.)

b. The juvenile court did not err in finding the beneficial parental relationship exception did not apply.

Mother does not dispute that daughter was likely to be adopted. Accordingly, the juvenile court was required to order adoption unless it found an exception to adoption applied. (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 645–646.) Below, mother argued unsuccessfully that both the parental relationship and the sibling relationship exceptions applied. On appeal, however, mother claims only that the juvenile court erred in finding the parental relationship exception did not apply. She does not

challenge the court's ruling with respect to the sibling relationship exception.

Specifically, mother argues the beneficial parental relationship exception applies because, by the time of the permanency planning hearing, she had been maintaining regular visitation with daughter, shared a special bond with daughter, and daughter would benefit from continuing that relationship with mother. However, even assuming substantial evidence supports mother's position that she had maintained regular visitation with daughter and shared a special bond with daughter, we conclude the juvenile court did not abuse its discretion in finding the relationship between mother and daughter did not outweigh the benefits daughter would gain through adoption by her maternal great aunt, who had been daughter's primary caregiver for most of her life.

Although the evidence showed mother's visits with daughter were positive, daughter was happy to see mother, mother cared for daughter appropriately while visiting with her, and daughter was sad when the visits ended, the evidence also demonstrated mother continued to struggle with addiction and relapse, as well as long-term stable housing, all of which were key reasons these proceedings were instituted. In addition, for most of the proceedings, mother had not visited daughter. Mother began to participate in regular, monitored visits with daughter only after the juvenile court terminated reunification services. Meanwhile, daughter was thriving in a stable environment and bonded with her prospective adoptive parent with whom daughter had lived for most of her life. We conclude the juvenile court did not abuse its discretion in finding mother failed to demonstrate she occupied a parental role in daughter's

life or that her relationship with daughter outweighed the stability and well-being she would gain in a permanent home with her maternal great aunt. (See *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1301 [affirming order of adoption and termination of parental rights despite undisputed evidence that children were bonded with mother, who visited with children daily, helped her older son get ready for school, prepared his breakfast, took him to and from school, and helped him with homework, as well as cared for her younger son by bathing and feeding him].)

We are not persuaded otherwise by the cases on which mother relies. In both *In re Amber M.* (2002) 103 Cal.App.4th 681 and *In re S.B.* (2008) 164 Cal.App.4th 289 experts conducted bonding studies and determined beneficial parent-child relationships existed. The courts in those cases held the parent-child relationships outweighed the benefits of adoption. (*In re Amber M.*, at p. 690; *In re S.B.*, at pp. 300–301.) In addition, *In re S.B.* has been “confined to its extraordinary facts. It does not support the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact. [C]ontact between parent and child will always ‘confer some incidental benefit to the child,’ but that is insufficient to meet the standard.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 558–559.)

DISPOSITION

The May 4, 2017 and June 8, 2017 orders are affirmed.
NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.