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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B236666
(Super. Ct. No. J1285858)
(Super Ct. No. J1285859)
(Super. Ct. No. J1285860)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
PROTECTIVE SERVICES,

Plaintiff and Respondent,

v.

RAFAEL M.,

Defendant and Appellant.

Rafael M. (Father) appeals from the juvenile court's order terminating his parental rights to two of his three biological daughters, C.M. (born July 2001) and E.M. (born April 2005). He contends the children have beneficial relationships with him and with their siblings that should have prevented the termination of his parental rights. (Welf. & Inst. Code, §§ 366.26, subd. (c)(1)(B)(i), (c)(1)(B)(v).)¹ We affirm.

¹ All statutory references are to this code unless otherwise stated.

Facts

Father is married to C.J. (Mother), who is not a party to this appeal. Mother has a son from a prior marriage, Saul (born March 1997). The couple also have three biological children: C.M. (born July 2001), E.M. (born April 2005) and Sara M. (born September 2003). All four children were removed from the parents' home in January 2009, after Saul complained that Father hit him with a closed fist on the face and back. After they had been placed in foster homes, Saul disclosed that Father frequently hit him. C.M. confirmed that Father often hit Saul and that he sometimes hit the other children.

Mother initially signed a safety plan in which she agreed to keep Father out of the home. She failed to do so. The children were detained in foster care. Sara soon began to have violent temper tantrums and exhibit other aggressive behavior toward her siblings and toward children who attended a day care in the foster mother's home. She was moved to a different foster home. Saul was eventually placed in a separate foster home as well. C.M. and E.M. remained placed together throughout this matter and were eventually placed together in the same potential adoptive family.

In March 2009, both parents stipulated to the juvenile court's jurisdiction. Although they completed required parenting courses and regularly attended supervised visits with the children, the parents made little progress toward reunification. During visits, Mother focused her attention almost exclusively on Saul, ignoring the other children. Father was reserved and soft spoken. Visits centered around the children eating food brought for them by the parents. The children were happy to see their parents, but generally spent the visiting time eating and playing with each other, rather than interacting with Mother and Father.

Child welfare workers soon expressed concern about Mother's odd behavior during visits. In addition to focusing her attention on Saul, Mother brought the children inappropriate gifts including a partially used bottle of rubbing alcohol, see-through underwear and a shot glass.

In October 2009, a preliminary psychological evaluation concluded that Mother likely suffered from bipolar disorder or some other mental illness. According to the evaluator, "The reports of anger displays, inability to receive or convey affection to her children, inappropriate gifts, and odd behavior with her children and staff are causes for legitimate concern. These factors suggest underlying mental health issues which would interfere with parenting ability." A second evaluation, conducted a few weeks later by a Spanish-speaking psychologist, concluded that Mother suffered from an unspecified psychotic disorder and from narcissistic personality disorder. The evaluator predicted that, because Mother was "detach[ed] from reality," and "not dealing consciously, let alone effectively, with the intervention" by respondent, "she will continue not only engaged in an abusive relationship, but perhaps [become] abusive herself. Thus, she will continue to place her children at risk of abuse." The evaluator also concluded, "The presence of dysregulated anger, which could underlie a bipolar disorder, along with a thought disorder interfere with the development of adequate parenting ability. These will prevent her from communicating adequately with her children, disciplining them, and not only adequately expressing affection to them, but also [be] a liability to their well-being."

Mother became very angry and verbally abusive to respondent's staff during visits. When Saul missed a visit, Mother refused to interact with the other children. She told the case aide that, if she could not visit with all of her children, she didn't want to visit with any of them. Father's only response to this outburst was to walk the girls to the car and say goodbye. On another occasion when Saul missed a visit, Mother attempted to physically assault the case aide. Father did not intervene, but left it to another case worker to step in and calm Mother down. Both C.M. and E.M. witnessed this outburst. Father later told a social worker that he knew Mother needed help but she would not accept it. The court suspended visits for Mother in early November 2009.

Mother's visits were never reinstated. Father, however, continued to attend supervised visits with the children. He also continued to reside with Mother, even as he told social workers and case aides that they had separated. Father did not seem to

appreciate the risk Mother posed to the children. At visits, the girls appeared happy to see him and were affectionate with him. They told case aides they enjoyed their visits. Visits continued to center around eating food that Father either brought with him or bought for the children. The girls would sit near him, or even on his lap while they ate and then go play among themselves. Father sometimes joined in the play, but not often.

By the time of the 12-month review hearing, Father was unemployed and still living with Mother, who was still resisting psychiatric treatment. In addition, respondent reported that it had recently learned Father had children from a previous marriage who lived in Riverside County and a prior, sustained allegation of sexual abuse against one of those children. In 1997, his then 10-year old daughter alleged that Father sexually abused her by touching her vagina under her clothes on two separate occasions. These allegations were substantiated by Riverside County Child Welfare Services. Father also had an outstanding warrant for a 1999 misdemeanor DUI in Riverside County.

Father made a variety of conflicting statements about the sexual abuse matter. During a psychological evaluation, Father at first denied that abuse had occurred. He later claimed not to remember the incidents. Ultimately, Father explained that the abuse occurred when he was drinking heavily and said he was probably very drunk when it happened. Because he no longer drinks alcohol, he did not think the incidents were relevant.

By the conclusion of the 12-month review hearing, the parties had agreed to extend reunification services to Father for an additional three months, until October 25, 2010. Father agreed to participate in a psychological evaluation and individual therapy to address the physical and sexual abuse allegations. The juvenile court terminated reunification services for Mother and scheduled a section 366.26 hearing for Saul only.

At the 18-month review hearing on October 25, 2010, respondent reported that, for much of the last review period, Father had been unemployed and living in a shelter. He had recently gotten a part-time job and was looking forward to getting full-time work. Father had also disclosed to the social worker that he was upset with Mother

because she refused to address her mental health condition and because "she wants him around all of the time for sex." In addition, a psychological evaluation performed in September 2010 concluded that Father might have an adjustment disorder and "at least mild brain damage" after years of heavy drinking. The evaluator also noted that Father "verbalizes that he understands the severity of [Mother's] mental illness, but has not so far exhibited an ability to hold his own in the relationship. She completely overwhelms the household and [Father] in particular. This triggers high levels of anxiety, emotional reactivity and aggressive behavior on his part." Although the evaluator recommended that Father participate in individual and family therapy, she also concluded that he would be able to care for the children with assistance.

Respondent reported to the juvenile court that Father regularly visited with his daughters, that they were affectionate with one another and that the girls appeared to enjoy the visits. On the other hand, Father's visits continued to focus on providing the children with snacks rather than playing or doing other activities with them.

The trial court continued the 18-month review hearing to early December 2010. At the December hearing, Father testified that he had rented a house in Guadalupe and was no longer seeing Mother. Although he had given her rides in the past, he had recently told her that he could no longer help her. The social worker testified, however, that the day before, while she was running errands for her own parents, she happened to see Mother walk up to Father's new house and enter it by the front door. Father denied any knowledge of Mother being in his house.

At the conclusion of the hearing, the juvenile court noted that respondent had failed to provide Spanish-language mental health treatment or counseling to Father, who appeared to be in need of it. Even though the court found that reasonable mental health services had not been provided to Father, it also noted that the case had been pending for 22 months. The court saw no point in continuing reunification services "because at this point I simply don't find that to be in the best interest of the children, who, again, are happy with their current placement. They deserve permanency, despite [respondent's] failures." The court also noted that, even if respondent had provided

reasonable services, it was unlikely the family would be able to reunite within six months because of the severity of both parents' mental health issues, "other information in the file and the increasing severity of the admittedly old sexual abuse report." The trial court terminated reunification services and set the matter for a hearing on the termination of parental rights pursuant to section 366.26.

In March 2011, C.M. and E.M. were moved from their foster home in Santa Maria to a potential adoptive family in Santa Ana, California. Saul and Sara remained in separate foster placements in Santa Barbara County. Father regularly visited with them, although he canceled some visits because of work. He did not visit with C.M. and E.M. after they were moved. Father explained to the social worker that he was not able to travel to Orange County because his truck needed new tires and brakes which he could not afford. The social worker could not provide Father with transportation to Orange County. She told Father that he could ask for telephone visits with the girls. He never did. As a consequence, Father did not visit with C.M. and E.M. between March 2011 and the termination hearing in July 2011.

Prior to the section 366.26 hearing, Saul filed a section 388 petition in which he asked to participate in the termination hearing. He opposed the termination of Father's parental rights as to C.M. because, he said, they shared a strong sibling relationship. Saul also filed a declaration describing his very close relationship with both C.M. and E.M. He expressed the fear that, if his sisters were adopted, he would not be able to see them or communicate with them at all.

Father opposed the termination of his parental rights on the ground that the he had a beneficial relationship with the girls. The girls were bonded to him and would, he contended, be harmed by severing the relationship. In his testimony at the hearing, Father repeated his explanation that he had not visited the girls since their move because his truck needed repairs before he could make such a long trip. He also disagreed with the social worker's characterization of his visits with the girls. Father testified that he always tried to play with them during visits. He believed that the girls loved him very

much and benefitted from their relationship with him. He believed they would also suffer if their relationships with Saul and Sara were terminated.

The social worker testified that C.M. and E.M. were happy in their prospective adoptive home and wanted to be adopted. She did not ask them whether they missed their siblings, or whether they wanted to have visits with their siblings.

C.M. testified that she wanted to be adopted by her foster parents. She also would like to see Father "twice a week." C.M. testified that she talks to Saul on the telephone about once a week and that she would like to see him more often. It would make her sad if she could not see Saul again. The juvenile court judge asked C.M. to tell him about Father. She cried as she answered, "'He's very nice and care[s]. He protects us. . . . He loves us very much."

At the conclusion of the hearing, the court ordered Father's parental rights terminated as to C.M. and E.M. Although the court recognized that the girls had strong ties to Father and to their siblings, it found that their interest in permanency and stability outweighed their interest in maintaining the parental and sibling relationships.

Discussion

Father contends the trial court erred when it found that the exceptions for beneficial relationships with a parent or with siblings did not apply to prevent the termination of his parental rights. We are not persuaded.

Section 366.26 requires the juvenile court to terminate parental rights and select adoption as the permanent plan for a child who cannot be returned to parental custody and who is likely to be adopted, unless a statutory exception applies. (§ 366.26, subd. (c)(1).) Two exceptions are at issue here. First, parental rights should not be terminated where "termination would be detrimental to the child" because the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Second, parental rights should not be terminated where, "There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same

home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).) " '[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.' (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

Standard of Review

We affirm the juvenile court's factual findings if they are supported by substantial evidence. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) "We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

In addition to making factual findings, however, the juvenile court is required to balance the benefit children derive from maintaining parental and sibling relationships against the benefit they derive from being adopted. Here, the juvenile court struck that balance in favor of adoption. We review that portion of its order under the deferential abuse of discretion standard. As the court noted in *In re Bailey J.*, this is "a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the [parental or sibling] relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

Beneficial Parental Relationship

"To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer

detriment from its termination." (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) A beneficial relationship "is one that '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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by '[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.' (*Id.* at p. 576.)" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.)

Overcoming the statutory preference for adoption and avoiding the termination of parental rights requires the parent to show both that he or she has maintained regular visitation with the child and that the child would benefit from continuing the relationship. (§ 366.26., subd. (c)(1)(B)(i).) "Sporadic visitation is insufficient to satisfy the first prong" of the exception. (*In re C.F., supra*, 193 Cal.App.4th at p. 554.) Satisfying the second prong requires the parent to prove that "severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Evidence that a parent has maintained " 'frequent and loving contact' is not sufficient to establish the existence of a beneficial parental relationship." (*In re Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316.)

Here, the juvenile court made factual findings that the relationship between Father and the girls was warm and affectionate. The girls enjoyed their visits with Father and would be sad if they were permanently separated from him. His behavior with the girls was appropriate, if somewhat distant. At the same time, Father never progressed beyond supervised visits and had not maintained contact with the girls after they were moved to Orange County. Relying on those factual findings, the juvenile court made the discretionary determination that, although there were beneficial aspects to the parent-

child relationship, those benefits did not outweigh the benefits the girls would obtain from being adopted.

The juvenile court's factual findings are supported by substantial evidence. Although Father regularly attended supervised visits with the children while they lived in Santa Barbara County, he failed to visit them after their move to Orange County, or even to request telephone contact with them. Moreover, as the juvenile court found, Father never progressed to unsupervised visits. Although the girls enjoyed their snacks and play time with Father, and were affectionate toward him, it was not abuse of discretion for the juvenile court to conclude that the relationship was not "parental" or so beneficial that it would outweigh the benefit of their having a permanent adoptive home.

We also note that Father never completely severed his relationship with Mother, whose mental illness, uncontrolled anger and bizarre behavior posed a serious risk of harm to the children. Father even acknowledged at one point that Mother's behavior made him feel anxious and triggered his own aggressive behavior. In addition, Father failed to disclose his older children in San Bernardino County and his sexual abuse history. Given all of these facts, we conclude the juvenile court struck the proper balance when it found that the benefit to the girls from maintaining their relationship with Father was outweighed by the benefits they would obtain from having a permanent adoptive home. Its order terminating Father's parental rights was not an abuse of discretion.

Beneficial Sibling Relationship

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to termination of parental rights where termination would substantially interfere with a significant sibling relationship, the severance of which would cause detriment to the child. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017, disapproved on other grounds, *In re S.B.* (2009) 46 Cal.4th 529, 537 fn. 5.) "Reflecting the Legislature's preference for adoption when possible, the 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial

interference" with a sibling relationship.' (*In re Daniel H.* [(2002)] 99 Cal.App.4th [804], 813, quoting § 366.26, subd. (c)(1).) Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952-953.)" (*In re Celine R.* (2003) 31 Cal.4th 35, 61.)

For reasons similar to those we have already discussed, we conclude the juvenile court did not abuse its discretion when it found that this exception did not apply. As the juvenile court acknowledged, C.M. and E.M. had close, affectionate relationships with their older brother, Saul.² The children lived together even after their initial detention, until Saul was moved to a different foster placement. Even after that separation, they visited with each other frequently. They also maintained telephone contact after the girls were moved to Orange County. We are convinced, however, that the juvenile court struck the proper balance when it concluded that any detriment to the girls caused by interference with their sibling relationships would be outweighed by the benefits of adoption. Although C.M. testified she would be sad if she could not talk to her brother anymore, there was no evidence either girl would be unable to adjust to a disruption in their relationship. The girls were thriving in their new home and wanted to be adopted, even though they had not seen Saul since the move. We also note there was never any realistic possibility these children would be reunited in a single foster placement, given the differences in their ages and needs and their parents' failure to reunify. (See, e.g., *In re Jacob S.*, *supra*, 104 Cal.App.4th at p. 1018.) As a consequence, the juvenile court properly exercised its discretion when it found the benefits of adoption outweighed the benefit of maintaining these sibling relationships.

² The girls' relationships with Sara were less significant and less likely to cause detriment if severed, primarily because of Sara's early separate foster placement and her many special needs.

Conclusion

The order terminating Father's parental rights as to C.M. M. and E.M. M. is affirmed.

NOT FOR PUBLICATION

YEGAN, J.

We concur:

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GILBERT, P.J.

PERREN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Cameryn Schmidt, under appointment by the Court of Appeal, for
Appellant.

Dennis A. Marshall, County Counsel, County of Santa Barbara, and Toni
Lorien, Deputy, for Respondent.