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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re I.B., a Person Coming
Under the Juvenile Court Law.

B280823

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. CK93743

Plaintiff and Respondent,

v.

MONIKA B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Monika B. (mother) appeals from the juvenile court's order terminating her parental rights under Welfare and Institutions Code section 366.26¹ and setting adoption as the permanent plan for her seven-year-old daughter, I.B. (minor). Mother challenges the court's finding that the beneficial parent-child relationship bar to adoption (§ 366.26, subd. (c)(1)(B)(i)) does not apply. The court determined that although mother consistently visited the minor during the four and one-half years of the dependency proceedings and the two have a loving and affectionate bond, the benefit of maintaining the parent-child bond does not outweigh the benefit adoption would provide the minor in this case. That finding, which rests not only upon the written reports from the Department of Children and Family Services (Department) but also upon testimony by mother and the minor's long-term therapist, is supported by substantial evidence. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The Department first became aware of the minor in May 2012, after receiving a report of multiple domestic violence incidents between mother and her male companion, J. Gutierrez, which took place in front of her three young children: Sienna (then three years old), the minor (then two years old), and

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

Kimberly (then three months old).² The court removed all three children. Shortly thereafter, Sienna was released to her biological father, R. Vasquez, where she remained for the duration of these proceedings.³ Initially, the minor and Kimberly were placed separately in foster care but later the Department moved the minor into the foster home where Kimberly had been placed.

The court found jurisdiction existed and mother pled no contest to the following allegation under section 300, subdivision (b):

“Beginning in May, 2011 the children [Sienna and the minor and Kimberly] have been exposed to verbal an[d] physical violent altercations between mother, ... and mother’s male companion [J.] Gutierrez, father of [the minor] and Kimberly, including, but not limited to father striking mother, calling her names in the presence of the children and on or about 5/09/2012 mother struck father with a metal pan and father struck mother in the presence of the children. The domestic violence between the parents in the presence of the children place[s] the children at risk of harm.”

Mother’s case plan required her to attend individual counseling as well as domestic violence, anger management, and parenting classes. The court ordered reunification services for mother as well as monitored visitation twice weekly for three hours, with discretion for the Department to liberalize.

² Gutierrez is the biological father of the minor and Kimberly. Because Gutierrez is not a party to this appeal, we limit our discussion of facts relating to him to those necessary to resolve mother’s appeal.

³ Sienna is not the subject of this appeal.

Mother consistently visited with Kimberly and the minor and visits were “positive and appropriate,” though sometimes shorter than the allotted time. Mother was in partial compliance with her case plan and progressed to unmonitored visitation with the girls in June 2013. The girls’ foster mother reported the girls responded well to mother and “appear[ed] comfortable and content in her presence.” She also said they “look forward to their visits with their mother and get excited when they are told that they will be seeing their mother soon.”

Also during this time, the minor began receiving regular therapy to address behavioral issues (temper tantrums, hitting, biting) that were surfacing at home and at her preschool. The therapy proved helpful to some extent.

The girls adjusted well to their placement with the foster parents. The Department stated the foster mother was “an exceptional caregiver with a long history of taking care of young children.” Within a few months of their placement, the foster parents expressed their willingness to adopt both girls. In April 2014, however, they changed their minds and said they would only be willing to adopt Kimberly. The Department recommended against separating the girls because they had a strong sibling bond but was unable to find another adoptive match for them. The girls remained in the care of the foster parents.

Throughout early 2014, mother continued to have successful visits, including overnight visits, with Kimberly and the minor. In April 2014, the court changed the visitation order to include discretion for the Department to allow overnight visits between mother and the two girls. In July 2014, upon the

Department's recommendation, the court ordered the minor and Kimberly to be placed in mother's home.

Unfortunately, the girls were removed from mother again in February 2015. The Department filed a supplemental petition under section 387 and mother pled no contest to the following allegation:

"The children[s] mother, ... has a history of substance abuse and is a recent user of methamphetamine which renders the mother incapable of providing the children with regular care and supervision. On 12/12/2014 and 01/09/2015, the mother had positive toxicology screens for methamphetamine. The mother failed to provide a urine sample on 01/29/2015 and 02/17/2015. The mother failed to regularly participate in an Outpatient Substance abuse program resulting in the mother being terminated from the program on 02/17/2015. The mother's failure to participate in services for the safety of the children place[s] the children at risk of physical harm."

Mother subsequently entered an inpatient substance abuse treatment program. The minor and Kimberly returned to the home of their former foster parents who stated then that they would like to adopt both girls if mother failed to reunify. According to the Department, the foster parents "showed their continued interest and desire to maintain a relationship with the children even after the children were returned to the care of the mother, by providing child care for them, when the mother asked them to."

At the disposition hearing in April 2015, the court did not order family reunification services for mother because the statutory time for reunification had lapsed; the court set the matter for a hearing under section 366.26. Shortly before that

hearing, mother filed a request to reinstate family reunification services and/or return the girls to her custody under section 388, noting that she continued to maintain regular and frequent visitation with her daughters and had made “excellent progress” in her inpatient substance abuse program.

During this time, the minor continued to exhibit anger and strong oppositional behavior. The foster parents began working with a therapist, M. Stueber, to learn how to better address the minor’s issues. In September 2015, Stueber indicated she was open to conducting therapy sessions with the minor and mother, provided mother was committed to attending the sessions. The Department subsequently recommended that mother be granted unmonitored day visits with the girls on the condition that mother participate consistently in therapy sessions with the minor.

On September 15, 2015, the court granted mother’s section 388 petition and reinstated family reunification services. The court’s case plan required mother to continue to participate in an inpatient or outpatient substance abuse program as well as weekly therapy sessions with the minor. The court set a permanency planning hearing for March 15, 2016.

On March 15, 2016, by last minute information, the Department notified the court that mother had relapsed and tested positive for methamphetamine. The Department recommended the court terminate mother’s reunification services and set the matter for a hearing under section 366.26. The court set a contested permanency planning hearing for April 29, 2016. The Department subsequently reported that mother missed several drug tests. In addition, the girls reported that mother

beat them with a belt during a recent visit and also that they witnessed mother's boyfriend yelling at her.

On June 6, 2016, the court terminated mother's reunification services as to Kimberly and the minor and set the matter for a contested hearing under section 366.26 to take place on October 3, 2016. The Department's final report acknowledged mother had maintained consistent visitation with the girls but recommended adoption with the long-term foster parents as the permanent plan for both Kimberly and the minor. Further, the minor's therapist provided a letter to the court discussing the therapy sessions she conducted with the minor and mother. Stueber indicated that the minor was very focused on her living situation and did not understand why she could not live with mother. Mother, in turn, had difficulty being honest with the minor about the circumstances which prevented their reunification—her drug use relapse. Stueber thought the therapy sessions with mother and the minor “actually increased the suffering of the child in an unclear placement situation,” and therefore discontinued the sessions after learning mother was no longer complying with the court's drug testing requirement. She also advised the Department that it would be “conducive for the child if she would know with whom she will be living permanently.”

Mother requested a contested hearing as to the minor only. The matter was ultimately heard on January 18, 2017, at which time both mother and Stueber testified.

Mother recounted largely undisputed facts. She regularly visited with her daughters twice a week for several hours throughout the time they were not living with her. She continued regular visits even after her relapse, despite the fact that she

knew it was unlikely she would be able to regain custody of the girls. Mother stressed that she was bonded with the minor, saying “any onlooker would see that I have a bond between my girls.” During their visits, mother sometimes helped the minor with school work. When they visited on weekends, they often also saw the girls’ older half-sister, Sienna. Mother said the minor often expressed the desire to live with her. But mother acknowledged that during the four and one-half years of the dependency proceedings, the minor was in her custody for only six months.

Stueber, who specializes in providing therapy to young children, began treating the minor in July 2015 and conducted 78 sessions with her. Some sessions included the foster mother, others included mother, and the minor had some individual sessions as well. Describing the minor’s initial presentation, Stueber explained she exhibited some severe behaviors including hitting Kimberly, and hitting and biting the foster mother. Stueber suggested the acting out behaviors were related to separation from mother and placement in foster care, as well as the fact that she witnessed severe violence at home and suffered general neglect in mother’s home. Stueber indicated that due to the minor’s emotional and behavioral issues, it is particularly important for her to have a warm home environment with consistent rules and clearly defined consequences.

Stueber agreed that the minor is bonded with mother and loves her. She observed that mother and minor were physically and verbally affectionate during their sessions. But she also said that the minor wants mother to care for her but because mother has been unable to do so consistently, minor has a pervasive concern about abandonment. Also, although the minor

frequently expressed a desire to live with mother during the early therapy sessions, the minor had not spoken about that issue during the six months prior to the hearing.

Stueber also explained how the uncertainty of her living situation was affecting the minor. At times, the minor was looking forward to reunifying with her mother, but was then disappointed when she was unable to return to mother's home due to mother's drug use. Stueber observed it was emotionally difficult for the minor to see mother in therapy with the hope or expectation of reunification, only to be told later it wasn't going to happen. Out of concern for the minor's well-being, Stueber stopped therapy sessions with mother after learning mother was no longer complying with the drug test case plan requirement.

In addition, Stueber observed the minor with her foster mother during multiple therapy sessions. Stueber indicated the minor calls the foster mother "mommy," and the two have developed a strong bond. The minor knows she can count on foster mother with "100 percent trust." The minor looks upon the foster parents as her parents and relies on them for everything. When she needs to be comforted, the minor seeks out the foster mother.

Finally, Stueber explained the minor has been, and continues to be, emotionally impacted by uncertainty about her living situation. In Stueber's view, adoption would be beneficial for the minor because it would provide much-needed long-term stability. The foster parents have cared for the minor for the better part of six years—most of her life—and have been willing and able to give her the permanency and stability she needs. The minor also benefits from the fact that her sister, Kimberly, was placed with the family too, so the minor has some biological

family in the home as well. Stueber acknowledged that, at least initially, the minor would suffer if visitation with mother stopped, but said she would adjust over time, “stabilize herself” and “come to some peace and quiet.”

After considering the testimony and the evidence submitted by the Department and mother, the court found that mother had consistently visited the minor throughout the dependency proceedings and agreed mother and the minor had a strong bond. However, the court did not believe the benefit of maintaining the relationship outweighed the significant benefits of adoption in this case. Accordingly, the court terminated mother’s parental rights as to both Kimberly and the minor and transferred the matter to the Department for adoptive planning and placement. This timely appeal followed.

DISCUSSION

Mother contends the court erred by finding that the beneficial parent-child relationship exception to the mandatory termination of parental rights after failure to reunify (§ 366.26, subd. (c)(1)(B)(i)) does not apply in this case.⁴

We review the factual basis for the trial court’s finding of adoptability and termination of parental rights for substantial

⁴ Although mother’s notice of appeal purported to challenge the termination of parental rights as to both Kimberly and the minor, mother’s appellate briefs only address the court’s ruling as to the minor. Accordingly, mother has forfeited any challenge to the court’s termination of her parental rights as to Kimberly. (See, e.g., *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1033 [party’s failure to raise issue in appellate briefing forfeits claim]; cf. 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, p. 769–770 [points not properly raised in opening brief may be deemed waived].)

evidence. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 422–423.) We “presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

“The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

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)). Here, the court found the minor was adoptable and, finding no reason that the termination of parental rights would be detrimental to her, terminated mother’s parental rights.

Pertinent here, 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.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 620–621.) 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 Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

In view of the Legislature’s stated preferences, our courts have held that the scope of the beneficial parent-child relationship exception is quite limited. “To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show 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. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) In analyzing whether the parent-child relationship is important and beneficial, a court must examine: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction, and (4) the child's particular needs. (*Id.* at p. 467.)

The showing required to avoid termination of parental rights is considerable. It is not enough for the natural parent to show regular, pleasant visits with the child. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 559 “[C]ontact between parent and child will always ‘confer some incidental benefit to the child,’ but that is insufficient to meet the standard”].) The relationship must reflect a significant bond, the termination of which would be detrimental to the child: “[T]he parents must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.] [They] must show that they occupy ‘a parental role’ in the child's life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) This “significant attachment from child

to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We find the present case similar to *In re Clifton B.* (2000) 81 Cal.App.4th 415, in which a different panel of this court affirmed the juvenile court's termination of the father's parental rights concerning his son, despite his contention that the beneficial relationship exception of section 366.26, subdivision (c)(1)(A), applied. There, as here, the court was confronted with a close case. On one hand, the father had maintained a significant relationship with the child during monitored visitation, the child had lived with his father for a six month period when he was three and one-half years old, the father had maintained his sobriety for seven months, and a social worker acknowledged that terminating the parental relationship would involve some risk to the child; on the other hand, the child was young (roughly two years old) when removed, had adjusted well to the foster family that was willing to adopt him, and there was a risk that the father, who had long history of drug abuse, would suffer relapse. (*In re Clifton B.*, *supra*, 81 Cal.App.4th at p. 424–425.)

As our colleagues observed, "*Autumn H.* teaches that the juvenile court must engage in a balancing test, juxtaposing the quality of the relationship and the detriment involved in terminating it against the potential benefit of an adoptive family. [The child] is young and has adjusted well to his foster family, who are willing to adopt him. As the social worker commented, 'If he has good structure and affection and he's safe and stable

from an early age ... he's going to have a better chance in life than he's had so far.' The juvenile court balanced this potential benefit against the risk that returning him to [the father] would result in another disruption in his life, further eroding his ability to develop trust and to bond with others. Substantial evidence supports the court's conclusion, and we will not disturb it." (*In re Clifton B.*, *supra*, 81 Cal.App.4th at pp. 424–425.)

As explained in detail above, mother maintained consistent visitation with the minor throughout the proceedings and even progressed to the point that the minor was briefly returned to her custody. It was undisputed that mother and the minor had a loving and affectionate relationship. But as Stueber noted, the uncertainty in the minor's relationship with mother and their living situation also caused stress and psychological problems for the minor, and most likely contributed to her significant behavioral challenges. Further, and similar to *In re Clifton B.*, the minor here is young and in need of structure, stability and permanency. As Stueber explained, the minor is attached to the foster parents, has been living with them most of her life, and they are ready and willing to adopt her and her sister Kimberly. The court properly weighed these factors and concluded that, on balance, the benefits of adoption outweigh the benefit of maintaining mother's parental rights in this case. As a reviewing court, "[i]t is not our function, of course, to reweigh the evidence or express our independent judgment on the issues before the trial court." (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 423.) We conclude the court's decision is supported by substantial evidence and therefore affirm the order terminating mother's parental rights and setting adoption as the permanent plan.

DISPOSITION

The order terminating mother's parental rights and setting adoption as the permanent plan for the minor is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

STONE, J.*

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