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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Jayden H., et al., Persons
Coming Under the Juvenile Court
Law.

B276819

(Los Angeles County
Super. Ct. No. CK56256)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Mary Elizabeth Handy, 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 Peter Ferrera, Principal Deputy County Counsel, Plaintiff and Respondent.

In previous dependency proceedings, Desiree H. (Mother) had her parental rights over three of her older children terminated (a fourth child was removed from Mother's custody and placed in the sole custody of his father). Years later, the juvenile court in this case terminated Mother's parental rights over her other children: Jayden (then age 7), Jayda (then age 5), and H. (then almost 13 months old). We consider whether Mother carried her burden to demonstrate there was a compelling reason to refrain from terminating her parental rights, namely, the asserted existence of strong and beneficial parent-child relationships with Jayden, Jayda, and H. such that terminating her rights would be detrimental to the children and outweigh their need for a stable and permanent home that would come with adoption.

I. BACKGROUND

A. *The Juvenile Court Assumes Jurisdiction over Jayden, Jayda, and H.*

The Los Angeles County Department of Children and Family Services (the Department or DCFS) petitioned the juvenile court to take jurisdiction over Jayden, Jayda, and H. due to, among other things, their parents' failure to protect them from suffering, or a substantial risk of suffering, serious physical harm.¹ The first amended petition specifically alleged Mother

¹ Before this case, Jayden had been temporarily removed from his parents' custody during dependency proceedings that began in 2009. At that time, the juvenile court found Jayden was at risk of harm because (among other reasons) the parents had caused one of his siblings to miss 29 medical appointments in 11 months and failed to provide adequate amounts of food for the

and the children's father had a history of engaging in violent altercations in the presence of the children, left Jayden with other caregivers without making an appropriate plan for his ongoing care and supervision, and were rendered incapable of providing the children with regular care and supervision by virtue of the parents' illicit drug use.

At the initial detention hearing, the juvenile court ordered the children detained from their parents (both of whom were homeless) and placed with their paternal grandmother (Grandmother). The court ordered monitored visitation between the parents and the children at least two times per week, for an hour each visit.

The Department prepared a report for the court and the parties in advance of the adjudication hearing on the first amended petition. Jayden told a social worker he missed his "mom" and "dad," meaning his prior foster parents, but said he liked living with Grandmother. Jayden also reported that when he lived with Mother and his father, Mother would scream at him and hit him, which made him sad. Jayden's sister Jayda told a social worker that her parents fought a lot and her father left bruises on Mother when holding her arms tight. Jayda also

sibling. The court placed Jayden with foster parents before he was ultimately returned to the custody of Mother and his father. According to Jayden's former foster mother, after the court terminated jurisdiction over Jayden in May 2012, Mother "released" Jayden to her and her husband and Jayden stayed in their home more than 80 percent of the time over the course of the next two-and-a-half years. By the time of the dependency proceedings in this case, which commenced in July 2015, Jayden referred to his prior foster parents as "mom and dad."

revealed that Mother hit her and screamed at her, and that “it makes me feel sad when my mommy hits me.”² Grandmother told the Department there had been a lot of domestic violence issues between the parents, with Mother being the aggressor. As recounted in the Department’s report, Grandmother also believed “the parents do not have a relationship with . . . Jayden and both parents appear to pay more attention to . . . Jayda.” Grandmother said she was interested in adopting all three children in the event the parents did not successfully reunify with them.

At the adjudication hearing to decide the issue of dependency court jurisdiction, Mother and the children’s father failed to appear. The juvenile court (with certain amendments by interlineation) sustained the petition’s allegations under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).³ The juvenile court held a later disposition hearing at which Mother (but not the children’s father) was present. The court declared the children dependents of the court and ordered they be removed from Mother’s custody and placed with Grandmother. The court declined to order reunification services for the parents, pursuant to section 361.5, subdivisions (b)(10) and (b)(11),⁴ but

² The Department did not interview H. because she was less than a year old.

³ Statutory references that follow are to the Welfare and Institutions Code.

⁴ These statutory subdivisions state that a juvenile court need not provide reunification services to a parent who previously had his or her reunification services terminated in connection with a sibling of the dependent child, or previously had his or her

ordered that twice-weekly, hour-long monitored visits with the children should continue. The Department was also ordered to submit a report addressing whether the parents' rights over their children should be terminated at a hearing pursuant to section 366.26.

B. The Department's Section 366.26 Report

The Department's section 366.26 report, submitted approximately six months after the disposition hearing, discussed the parents' visitation with the children, the children's developmental progress, and the prospects for adoption. The Department's bottom line recommendation was that the juvenile court terminate the parental rights of both parents and place the children for adoption.

1. Visitation

DCFS reported that since the children had first been removed from their parents, both parents "have overall maintained regular reported weekly contact with all three children. In spite of the parents being homeless and transient, they have made an effort to participate in weekly visits with the children in hopes of preserving a relationship with them." During the Department-monitored visits, social workers observed the children's parents were consistently loving, attentive, and appropriate with all three children. Mother and the children's

parental rights over a sibling of the dependent child permanently severed, if the parent has not "subsequently made a reasonable effort to treat the problems that led to removal of the sibling" from the parent.

father played with the children and brought them toys as gifts; it was “obvious” to Department staff who monitored the visits that the parents have “a meaningful relationship with the children.”

Beginning in March 2016, however, Mother’s 20-year-old daughter Eileena replaced DCFS as the monitor of the parents’ visits with the children. The following month, Jayda’s therapist wrote to the Department to document her concern that Jayda had shown “some regression in her behaviors” (including increased defiance, unexplained bruises, and an increasingly guarded demeanor) that coincided with the time at which the Department had ceased monitoring the parents’ visits. In light of her increased concerns about the well being and safety of Jayda and her siblings, the therapist recommended that the Department resume monitoring the parents’ visits. DCFS reported it was working on a new visitation arrangement.

The Department also asked Jayden and Jayda about their feelings concerning visitation. Jayden told a social worker that he enjoyed the visits with Mother and his father, but he did not care if he visited with them or not. Jayda said she loved the visits and would like them to continue.

2. The children’s development

All three of the children were assessed to determine whether they suffered from developmental issues. Jayden was diagnosed with Global Development Delay because he had never been enrolled in school, was unable to recognize letters, and had other developmental problems. Jayda was also diagnosed with Global Developmental Delay, but she had made greater progress in addressing her developmental issues. H. was a Regional Center client after being diagnosed with Developmental Delay.

She was receiving early intervention services, and she was also being provided weekly occupational and motor skills development therapy.

DCFS reported that Grandmother had been providing for the children's developmental, medical, and emotional needs since they were placed with her. While in Grandmother's care, each of the children had been receiving individual therapy, and Grandmother worked with them on her own to develop their skills.

3. Adoption assessment and evaluation

The Department assessed Grandmother as the prospective adoptive parent for the children, and she cleared the required approval standards, including a home study. DCFS reported that "[Grandmother] and the children appear to have a loving relationship and attachment with each other[,]" and Grandmother told a social worker she wanted to adopt the children and provide a stable, safe, and loving home. When asked, both Jayden and Jayda told the Department they would like Grandmother to adopt them.

In making its recommendation in favor of termination of parental rights and adoption, the Department opined: "Given the parents' long[,] extensive substance abuse and [their failure] to reunify with the children's siblings on two separate occasions, which resulted in adoption, neither parent has demonstrated long periods of sobriety including the ability to keep the children safe from imminent risk of abuse and neglect as evidenced in their perpetual unhealthy and violent lifestyle towards each other." In the Department's view, Mother and the children's father had not addressed any of the central issues that led to removal of Jayden,

Jayda, and H. from their custody. In addition, the Department observed that “the parents have made efforts in attempting to occupy a parental role during visits, [but] the attachment and quality of bond the children have established with them appears to be limited only during visits as the children do not seek and/or inquire about their parents after visits.” By contrast, the Department believed the children had established a strong attachment and bond with Grandmother, “who has provided them with a loving, structured, and safe home environment” and has “been proactive in assuring the children’s needs are all met.”

*C. The Section 366.26 Hearing and the Order
Terminating Mother’s Parental Rights*

The parents and counsel (including counsel for the children) appeared at the section 366.26 hearing. There was no dispute that the children were likely to be adopted within a reasonable time. Instead, Mother testified, and her attorney argued, in support of the position that the court should refrain from terminating her parental rights because of the beneficial parental relationship she claimed to have with her children.

During her brief testimony, Mother described her interaction with the children during the monitored visits. She stated they would run to her with anticipation and open arms at the beginning of visits. Mother testified the children responded happily to her during visits, wanted to share what they had been doing at school or otherwise, and referred to her as “mama” or “mommy.” Mother further testified she had “a really good bond” with Jayda and that her son Jayden was “not as much affectionate, but he does . . . warm up to me as, you know, a boy would . . . with his mother.” When asked to describe her

relationship with H., Mother stated the child lived with her for five months after she was born, and Mother said she and the child's father would dance with H. during visits.

Mother's attorney argued the juvenile court should refrain from terminating Mother's parental rights because the parent-child relationship exception to termination applied. The children's attorney acknowledged the parents had worked hard to maintain and develop a meaningful relationship with their children despite the parents' circumstances, but argued the benefit the children would get from adoption outweighed any benefit from a continued relationship with their parents. Counsel for the Department noted the parents' visits had continued to be monitored and argued adoption was the goal that "needs to happen."

The juvenile court terminated Mother's parental rights (and the father's parental rights) and transferred care and custody of the children to DCFS for purposes of adoption planning and placement. In so ruling, the court explained why it concluded the parent-child relationship exception did not apply: "While the parents have clearly maintained regular and consistent visitation and contact even in light of the barriers that they have, the court cannot find that . . . visitation and contact has conferred a parental role and relationship. [H.] has only been in their primary care for five months of her life, but to the extent to which the parents have had these one or two hour monitored visits at the McDonald's, at the [DCFS] office, even with some interaction and activity [Mother] has described, really does not show it has conferred a parental role and relationship. [¶] And to the extent that it has, it clearly does not outweigh the benefits of permanence and adoption."

II. DISCUSSION

The juvenile court correctly found the parent-child relationship exception inapplicable. Mother had the burden to show (1) she had maintained regular visitation and contact with the children and (2) she occupied a parental role of such significance that the children would benefit from continuing the relationship and be greatly harmed if it were severed. (§ 366.26, subd. (c)(1)(B)(i); *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300 (*Noah G.*); *In re K.P.* (2012) 203 Cal.App.4th 614, 623 (*K.P.*).) We take no issue with Mother's showing as to the first of these elements, but her showing as to the second was insufficient.

A. *Standard of Review*

Court of Appeal cases have debated which standard of review should apply when, as here, an appellate court assesses whether an exception applies to the rule that requires termination of parental rights to fulfill the legislative preference for adoption. (See, e.g., *K.P.*, *supra*, 203 Cal.App.4th at p. 621.) While the modern trend is to apply a hybrid substantial evidence and abuse of discretion standard to resolve an appeal of an order terminating parental rights, the cases that discuss the applicable standard of review often acknowledge the differences in the standards are insignificant or inconsequential. (See, e.g., *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *In re Scott B.* (2010) 188 Cal.App.4th 452, 470; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [practical differences between the abuse of discretion and substantial evidence standards of review not significant].) That is our view in this case; we would affirm under any standard of review.

*B. The Juvenile Court Did Not Err in Terminating
Mother's Parental Rights*

“Section 366.26 establishes a detailed procedure for terminating parental rights. Subdivision (c)(1) states that a prior order under section 361.5 terminating reunification services ‘shall constitute a sufficient basis for termination of parental rights.’ If the court determines under a ‘clear and convincing standard’ that it is ‘likely the child will be adopted,’ the court ‘shall terminate parental rights and order the child placed for adoption.’ (§ 366.26, subd. (c)(1).) The goal is to provide ‘stable, permanent homes’ for children who are dependents of the juvenile court, and the first choice to achieve that goal is adoption. (§ 366.26, subd. (b); *In re Jasmine D.* [, *supra*,] 78 Cal.App.4th [at p.] 1348 [] (*Jasmine D.*.)

“This procedure recognizes that ‘[b]y the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.’ (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348 [].) Thus, to terminate parental rights under section 366.26, the court ‘need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated.’ (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249–250 [19 Cal.Rptr.2d 698, 851 P.2d 1307].) Under these circumstances, ‘the court shall terminate parental rights’ unless certain exceptions apply. (§ 366.26, subd. (c)(1).)” (*In re Logan B.* (2016) 3 Cal.App.5th 1000, 1009-1010.)

The parent-child relationship exception Mother invokes is found at section 366.26, subdivision (c)(1)(B)(i). In relevant part, the statute provides: “[T]he court shall terminate parental rights unless . . . [¶] . . . [¶] (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.” Mother bears the burden of proving the exception applies. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *K.P.*, *supra*, 203 Cal.App.4th at p. 621; see also *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [“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”] (*Angel B.*).)

When deciding whether Mother has carried that burden, we take into account the 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 the parent and child, and the child’s particular needs. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938; *Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) Mother must do more than show her children would receive some benefit from continuing a relationship maintained during periods of visitation. (*Angel B.*, *supra*, at p. 466.) Even if the parent-child contact has been loving and frequent, and notwithstanding the existence of an “emotional bond” with the child, Mother must show she occupies “a parental role in the children’s lives.” (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; accord, *K.P.*, *supra*, 203 Cal.App.4th

at p. 621.) For this reason, a parent-child relationship that satisfies the section 366.26, subdivision (c)(1)(B)(i) exception characteristically (though not necessarily) arises from day-to-day contact between the parent and child; it will be difficult for a parent who has not progressed beyond monitored visitation to show the exception is applicable. (*K.P.*, *supra*, at pp. 621-622; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

As to Jayden and H., Mother fell well short of demonstrating the parent-child relationship exception applied. H. was just 13 months old at the time of the section 366.26 hearing, and she had spent the majority of her short life in Grandmother's—not Mother's—care. (See, e.g., *K.P.*, *supra*, 203 Cal.App.4th at pp. 622-623 [parent-child relationship exception not shown where parent maintained regular visitation with child but child removed from the parent's custody when one month old and parent did not progress beyond once-per-week monitored visits]; *In re J.C.* (2014) 226 Cal.App.4th 503, 532; *Angel B.*, *supra*, 97 Cal.App.4th at pp. 467-468 [finding exception inapplicable partly because the child was “very young, too young to understand the concept of a biological parent”].) Mother occupied no parental role in H.'s life, as evidenced in part by the fact that it was Grandmother, not Mother, who worked to address H.'s developmental issues. Mother also occupied no parental role in Jayden's life, as was clear from his own statements when interviewed by the social workers (e.g., calling his former foster mother “mom” and stating he did not care if he visited with Mother or not). Even Mother's own testimony at the section 366.26 hearing seemed to acknowledge her bond with Jayden was not very strong. Although significantly older than H., Jayden had also spent a substantial portion of his life in the care and

custody of others. And Mother introduced no evidence to suggest she was capable of ensuring (as Grandmother was) that Jayden would receive treatment for his developmental issues.

As to Jayda, Mother also failed to satisfy her burden to show the parent-child relationship exception applied. There was some evidence Mother's relationship with Jayda was stronger than her relationship with Jayden, but ample evidence indicated it still was not a parental relationship, much less a parental relationship of such significance that Jayda would be greatly harmed if the relationship were severed. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 468 ["[W]hile the evidence indicated that Mother, too, acts lovingly and appropriately with Angel during visits, Mother failed to present any evidence that Angel's relationship with Mother was so significant that its termination would cause her any detriment"].) Mother's visits with Jayda, while fun and loving, never progressed beyond monitored visits once or twice a week, and DCFS reported Jayda (and her siblings) did not "seek and/or inquire about their parents after visits." (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 644 [finding exception inapplicable where child was sometimes excited to see his parents and affectionate during their supervised visits but had no difficulty separating from the parents when the visits were over and adjusted well when returning to his caregiver].) Moreover, when a Department social worker asked Jayda about adoption, she responded that she wanted Grandmother to adopt her; this is a strong indication that termination of Mother's parental rights would not greatly harm Jayda by depriving her of a substantial, positive attachment. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555 (*C.F.*).) Indeed, with Mother's untreated issues, including substance abuse that

Grandmother believed to be ongoing and prior physical abuse of Jayda, there was reason to believe that maintaining the relationship—not severing it—is what would cause Jayda harm. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1304 [mother’s long-standing drug abuse is evidence continuing the parent-child relationship would not be beneficial].)

Mother nevertheless contends—incorrectly, in our view—that *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) supports her argument for reversal of the parental rights termination order. *S.B.* holds that a juvenile court erred in terminating the parental rights of a father who had a long history of methamphetamine use but who complied with every aspect of his case plan and maintained his sobriety. (*Id.* at pp. 300–301.)

Courts have explained that the decision in *S.B.* is “confined to its extraordinary facts” and “does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is “some measure of benefit” in continued contact between parent and child.” (*Noah G.*, *supra*, 247 Cal.App.4th at pp. 1302-1303; see also *C.F.*, *supra*, 193 Cal.App.4th at pp. 557-559; *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 937.) *S.B.* is of no assistance to Mother on the facts we confront here. At the time of the section 366.26 hearing, Mother had not adequately addressed the substance abuse and domestic violence issues that gave rise to the dependency proceedings. (*Noah G.*, *supra*, at p. 1303.) In addition, the children here, unlike the child in *S.B.*, were not upset when parental visits ended and (in the case of Jayden and Jayda) expressed a preference for adoption. (Compare *S.B.*, *supra*, at p. 298 [the father complied with “every aspect” of his case plan and the child spontaneously told the father she wished she lived with him].)

DISPOSITION

The juvenile court's order terminating Mother's parental rights is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.*

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