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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B262551
(Los Angeles County
Super. Ct. No. CK82278)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.H.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of Los Angeles County.
Amy M. Pellman, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant
County Counsel and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and
Respondent.

P.H. (mother) appeals from findings and orders related to the termination of parental rights to G.H. (G.), the permanent plans for G. and Ezequiel H. (Ezequiel), and the denial of her petition pursuant to section 388 of the Welfare and Institutions Code.¹ We find no error and affirm.

FACTS

Mother gave birth to Ezequiel in 2003 and G. in 2006.

In 2010, the Department of Children and Family Services (Department) filed a petition pursuant to section 300, subdivision (b) alleging that mother was incapable of providing regular care for Ezequiel and G. due to her abuse of methamphetamine, marijuana and alcohol. In June of that year, the petition was sustained and Ezequiel and G. were placed in foster care. A year and a half later, the children were placed with mother under the Department's supervision.

In 2012, mother gave birth to Dominic O. (Dominic). The father of the child was Jose O. (Jose). In April 2013, a section 300 petition was filed on behalf of Dominic, and a section 342 petition was filed on behalf of Ezequiel and G. The petitions alleged, inter alia, that the children were at risk of harm due to Jose's violence against mother, and mother's continuing use of methamphetamine, marijuana and alcohol. The juvenile court ordered the children detained and temporarily placed into shelter care.

Mother gave birth to Jocelynn O. (Jocelynn)² in late 2013. She was detained, and the Department filed a section 300 petition on her behalf.

Eventually, the juvenile court sustained the section 300 petitions as to Dominic and Jocelynn, and the section 342 petition as to Ezequiel and G. The juvenile court set a section 366.26 hearing with respect to Ezequiel and G., and the plan was adoption or legal guardianship. As to Ezequiel and G., reunification services were discontinued.

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

² In the record, Jocelynn's name is also spelled Jocelyn, and there is no indication which spelling is correct. We have opted to use "Jocelynn" throughout this opinion.

Ezequiel, G., Dominic and Jocelynn were all placed in foster care with Mr. and Mrs. R. Mr. and Mrs. R. informed the Department that they wanted to adopt Ezequiel and G.

Mother filed a section 388 petition in late 2014. She indicated she was living in a domestic violence transitional living program. Further, she stated that she was attending Alcoholics Anonymous and Narcotics Anonymous three times a week, participating in substance abuse treatment, participating in after care treatment, and drug testing. She stated that she had completed parenting, anger management and domestic violence classes, and she was participating in domestic violence counseling, group counseling and individual therapy. She asked the juvenile court to take the section 366.26 hearing off calendar and order six months of reunification services for Ezequiel and G. In the alternative, mother requested a change of the proposed permanent plan to legal guardianship.

The juvenile court held a hearing on February 24, 2015, to rule on the section 388 petition and determine the permanent plans. The section 388 petition was denied. The matter then proceeded to a permanency planning hearing for Ezequiel and G. Mother's counsel argued that Ezequiel and G. should not be on "different tracks," and that they should both have a plan of legal guardianship. In the alternative, counsel argued that with Ezequiel and G., "there's strong bonds to get into the exception[.]" Because Ezequiel, who was 12 years old, wanted legal guardianship, that was the plan selected for him. With respect to G., the juvenile court found that there was "no exception to adoption" and proceeded to terminate mother's parental rights.

This timely appeal followed.³

On March 24, 2015, mother was granted monitored visits with Ezequiel once a week for two hours.

On September 15, 2015, the juvenile court terminated parental rights with respect to Ezequiel, Dominic and Jocelynn. The juvenile court selected adoption as the permanent plan for all three of them.

We placed the matter on calendar for oral argument in December 2015.

Subsequently, mother's counsel sent the court a letter advising that there was a second appeal pending in case No. B268296 in which she was challenging the termination of parental rights to Ezequiel, Dominic and Jocelynn. Counsel advised us that if we did not delay submission of this appeal and decide the two appeals together, there would be a risk of the minors receiving different permanent plans, and counsel argued that having different plans would not be in the children's best interests. Accordingly, we delayed submission of this appeal until case No. B268296 was fully briefed.

On January 19, 2016, mother's counsel filed a "no merit" brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. On March 8, 2016, we dismissed the appeal in case No. B268296.

³ In her opening brief, mother states, "The notice of appeal . . . covers a section 388 [petition] regarding the younger two children, Dominic [], and Jocelynn []. That [petition] was denied in a hearing at which reunification services were terminated for [mother] with respect to both of these children and a permanency planning hearing set for both of them. These orders are dated February 24 and 26, 2015. [Mother] concedes that these orders involving Dominic [] and Jocelynn [] are not appealable but only may be the subjects of an extraordinary writ. That writ was filed and dismissed in case [No.] B262547 on April 23, 2105, and is now final on appeal." We therefore do not consider Dominic and Jocelynn to be subjects of this appeal.

DISCUSSION

I. The Section 388 Petition.

The notice of appeal indicates that mother appealed from, inter alia, the findings and orders of February 24, 2015, and mother contends that her appeal encompasses the order denying her section 388 petition. But she offers no argument on the topic in her opening brief, and she did not file a reply brief. Consequently, we conclude that she waived any challenge to the order. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.)

II. Termination of Parental Rights to G.; the Permanent Plans.

Mother contends that the juvenile court erred when it terminated the parental rights to G. because: (1) the sibling relationship exception applied, and (2) the permanent plan for both Ezequiel and G. should be the same to avoid placing them in unequal positions. Though mother's appeal also pertains to Ezequiel's permanent plan, mother does not argue that it was improper.

Under section 366.26, subdivisions (b) and (c), parental rights to a dependent child shall be terminated and the child freed for adoption if certain criteria are met. However, there is an exception if the juvenile court finds a compelling reason for determining that termination of parental rights would be detrimental to the child because, inter alia, "[t]here 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).)

A finding regarding the nature of a sibling relationship is reviewed under the substantial evidence test. In contrast, we review the decision to apply the sibling relationship exception for an abuse of discretion. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622 [opting for a hybrid standard of review after noting that case authority is split as

to whether a ruling on an adoption exception should be reviewed for substantial evidence or an abuse of discretion].)

Mother does not offer any argument tailored to the standard of review. Rather, she states that “bonded siblings who are placed in the same household on a permanent basis should have the same permanent plan—adoption or guardianship—absent extraordinary circumstances. It promotes the best interests of the siblings and promotes a healthy equality between them and a strong basis for future relationship as adults. Allowing one child to maintain a relationship with the biological parents but prohibiting it for the other child places the children in unequal positions and has more than a mere potential for future havoc and unwarranted interference and tension in their relationships. There may be circumstances in which this risk must be taken but it is not at all certain that this case is one of those in which the risk must be taken. Remand is required to fully explore all of the risks involved and then, and only then, can an informed decision be made about the future of [G.]”

Assuming that Ezequiel and G. have a strong bond, we perceive no abuse of discretion. Because the record indicates that they both live with Mr. and Mrs. R., Ezequiel and G. will have every opportunity to maintain their sibling bond. In other words, the record does not suggest that their bond would be damaged by having different permanent plans. Mother’s suggestion otherwise is based on conjecture. Moreover, her argument is moot. Due to the juvenile court’s order terminating mother’s parental rights to Ezequiel, which is now final after we dismissed case No. B268296, he has the same permanent plan as G.

DISPOSITION

The findings and orders are affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT