Filed 9/16/19 In re S.R.L. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.R.L., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B295196 (Super. Ct. No. J071275) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. S.M. et al., Defendants and Appellants.	

S.M. (Mother) and D.L. (Father) appeal from the juvenile court's order that terminated parental rights to their minor daughter, S.R.L., and selected adoption as the permanent plan. (Welf. & Inst. Code,[1] § 366.26.) Mother and Father

[1] All further statutory references are to the Welfare and Institutions Code.

(collectively, the parents) contend the court erred when it determined: (1) that S.R.L. was specifically adoptable, and (2) that Mother did not qualify for the beneficial relationship exception to adoption. They also contend the termination order should be vacated because the Ventura County Human Services Agency (the County) did not comply with the notice requirements of the Indian Child Welfare Act (ICWA). We conditionally vacate the order terminating parental rights and remand with directions to comply with ICWA. We otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

Mother gave birth to S.R.L. in October 2016 after 26 weeks of pregnancy. Both Mother and S.R.L. tested positive for amphetamines at birth. S.R.L. was placed in an incubator in the neonatal intensive care unit. She suffered from multiple medical issues, including chronic lung disease, obstructive sleep apnea, a bicuspid aortic valve, vision damage, and diffuse white matter loss, and had difficulty feeding and gaining weight. She remained in the hospital for the next seven months.

In December, the County petitioned the juvenile court to detain S.R.L. The court sustained the County's petition and ordered reunification services for the parents. The parents visited S.R.L. in the hospital multiple times each week, and occasionally stayed overnight. Hospital staff had no concerns about their interactions with their daughter.

At the detention hearing, Father stated that he had no Indian ancestry. Mother indicated that she may have Tule River Indian ancestry through her maternal relatives. The County did not inquire with those relatives about their possible Indian heritage. It sent notices to the Bureau of Indian Affairs (BIA) and Tule River tribe that listed the maternal

grandmother's and great-grandmother's names, the cities in which they resided, the grandmother's date and place of birth, and partial birth information for the great-grandmother. The notices did not list the grandmother's maiden name, and did not specify whether the name listed for the great-grandmother was her maiden name or married name. They listed no former addresses for these women, nor did they provide information about the maternal grandfather or great-grandfather. They also listed S.R.L.'s last name differently than on her birth certificate. The County did not receive a response from either the BIA or the tribe. The juvenile court found that proper notice had been given, and that ICWA did not apply.

In the months after the detention hearing, the parents completed parenting classes. Mother entered a drug rehabilitation program, but admitted that she used methamphetamine when she was approved to visit S.R.L. in the hospital. Father sporadically attended Al-Anon meetings. Both parents were suspected of being under the influence of alcohol after an April 2017 visit with S.R.L.

S.R.L. was discharged from the neonatal intensive care unit in May 2017, and placed with a medically trained foster mother. At the six-month review hearing, the juvenile court ordered continued reunification services for the parents. It ordered an interim nine-month hearing to gauge their progress.

The County gradually liberalized the parents' visits with S.R.L. Starting in September, the parents were allowed three supervised visits each week. By November, they had three overnight visits each week. By December they had four per week.

The social worker reported that Mother passed her drug tests, completed an inpatient substance abuse program, and

enrolled in an outpatient services. Father attended individual therapy and Al-Anon meetings. S.R.L. remained in her foster home. She gained some weight, but had to be fed through a tube.

At the 12-month review hearing in February 2018, Father said he was no longer interested in reunification services. He admitted that he had used methamphetamine and alcohol. The juvenile court ordered his services terminated. It decreased his visits with S.R.L. to one hour per week, supervised. The court ordered six more months of reunification services for Mother.

Mother relapsed on methamphetamine later that month. She missed scheduled drug tests in March, and stopped communicating with the social worker in May. Her visits with S.R.L. were reduced to one hour each week.

S.R.L. failed to thrive. She vomited several times each day, and had to undergo surgery to insert a feeding tube. She gained some weight after the surgery, but continued to require oxygen at night.

In July, the juvenile court terminated Mother's reunification services and scheduled a section 366.26 hearing to develop a permanent plan for S.R.L. The County subsequently reported that S.R.L.'s medical needs required someone "educated, willing[,] and able to care for [her]." She was not generally adoptable. She transitioned into the home of prospective adoptive parents in October.

At the section 366.26 hearing in January 2019, the County recommended that the juvenile court terminate parental rights and find S.R.L. specifically adoptable. S.R.L. enjoyed playing with her foster siblings, and appeared comfortable in her new home. She vomited much less frequently, and continued to gain weight. She was learning to count, learning new

vocabulary, and improving her motor skills. Though her prospective adoptive parents had no specialized medical training, they had been instructed on managing her feeding tube. Medical professionals had provided additional information. The social worker deemed the prospective parents' knowledge about S.R.L.'s medical conditions "adequate." They were committed to adopting S.R.L.

The social worker reported that Mother "clearly adore[d]" S.R.L. S.R.L. responded well to Mother. They practiced counting together. S.R.L. went to Mother without hesitation. She often smiled at Mother.

Mother testified that she had custody of S.R.L. approximately 70 percent of the time from November 2017 to March 2018. S.R.L. was in her home six days per week. She called her "Momma." The two went to the park, sang songs, and spent time with S.R.L.'s grandparents.

Mother continued to visit S.R.L. weekly even after the juvenile court terminated reunification services. S.R.L. was excited to see her each time. Mother would check with the prospective adoptive parents about S.R.L.'s well-being. She loved her daughter very much and wanted to maintain contact with her.

Father testified that he visited S.R.L. in the hospital every night he did not have to work. He received training on how to feed her and how to handle her oxygen tube. During their visits S.R.L. called him "Daddy."

The juvenile court determined, by clear and convincing evidence, that S.R.L. was specifically adoptable by her foster parents. It also determined that the beneficial relationship exception to adoption did not apply: Mother and Father were not

S.R.L.'s "only parents," and they did not show that S.R.L. looked to them for "affection and security and comfort and . . . all of [her] emotional needs." Any detriment S.R.L. may suffer from separation from her parents would be overcome by the permanency of a new home. The court ordered parental rights terminated. Its order did not preclude an agreement with the prospective adoptive parents to continue contact between S.R.L. and her parents.

DISCUSSION

Adoptability

The parents contend the juvenile court erred when it determined that S.R.L. was specifically adoptable and would be adopted within a reasonable time. We disagree.

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the juvenile court finds clear and convincing evidence that a child is likely to be adopted within a reasonable time, it may terminate parental rights and order the child placed for adoption. (*In re J.W.* (2018) 26 Cal.App.5th 263, 266; see § 366.26, subd. (c)(1).) Where, as here, a child is "specifically adoptable" due to poor health or physical disability, the court must focus on the caregiver willing to adopt the child. (*In re J.W.*, at p. 267; see *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650.) It should determine whether the prospective parents are able to meet the child's needs. (*In re J.W.*, at p. 268.)

"The 'likely to be adopted' standard is a low threshold. [Citation.]" (*In re J.W.*, *supra*, 26 Cal.App.5th at p. 267.) "On review, '"we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the child was likely to be

adopted within a reasonable time."'" (*Ibid.*, internal alterations and citations omitted.) "'We give the court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]' [Citation.]" (*Ibid.*)

Substantial evidence supports the juvenile court's determination that the prospective adoptive parents would be able to meet S.R.L.'s needs. Before she was placed in their care, the prospective parents "spent considerable time" with S.R.L. They visited her in her foster home, took her on outings, and progressed to overnight and weekend visits. They understood her medical conditions, and received training to meet her health needs.

S.R.L. was comfortable in her new home. She enjoyed playing with her prospective siblings. Her prospective parents taught her new skills. They quickly mastered S.R.L.'s feeding tube; S.R.L. vomited much less frequently, and gained weight under their care. The prospective parents took S.R.L. to all of her medical appointments. They had a large support network of family and friends, including a neighbor who could provide assistance and medical referrals.

Most significantly, despite her medical challenges, the prospective parents were committed to adopting S.R.L. There was no evidence that they would not do so as soon as the legal process permits. Considered as a whole, this evidence supports the juvenile court's determination that "it is reasonably likely that [S.R.L.] will in fact be adopted within a reasonable time." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292-1293.)

The parents claim the juvenile court's specific adoptability finding was premature because there was not

evidence that the prospective adoptive parents could meet *all* of S.R.L.'s medical needs, putting her at risk of becoming a "legal orphan." But this claim would require us to draw inferences different than the court below, something we cannot do on appeal. (*In re J.W.*, *supra*, 26 Cal.App.5th at p. 267.) Moreover, there is little chance S.R.L. will become a "legal orphan": The court retains jurisdiction over S.R.L. until the adoption is finalized (§ 366.3, subd. (a)), and counsel will continue to represent her (§ 317, subd. (d)). And if she has not been adopted within three years of the termination order, the court can reinstate parental rights. (§ 366.26, subd. (*i*)(3).) S.R.L. is specifically adoptable.

Beneficial relationship exception

The parents contend the juvenile court erred when it determined that Mother did not establish the beneficial relationship exception to adoption. We again disagree.

A juvenile court should not terminate parental rights if it "finds a compelling reason for determining that termination would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) Termination will be detrimental if there is a beneficial relationship between a parent and child. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; see § 366.26, subd. (c)(1)(B)(i).) We review the court's determination that Mother did not prove the existence of such a relationship with S.R.L. for substantial evidence. (*In re E.T.* (2018) 31 Cal.App.5th 68, 76.)

To show the existence of a beneficial relationship, a parent must prove that: (1) they have "'maintained regular visitation and contact with the child,'" and (2) "'the child would benefit from continuing the relationship.' [Citations.]" (*In re E.T.*, *supra*, 31 Cal.App.5th at p. 76.) The first of these

requirements is not at issue here; the County concedes Mother visited S.R.L. "consistently and to the extent permitted by court orders." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212.) As to the second, Mother must show that her relationship with S.R.L. "promotes the well-being of the child to such a degree as to outweigh the well-being [she] would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Whether Mother did so requires us to consider S.R.L.'s age, how much of her life she spent in Mother's custody, whether her interactions with Mother were positive or negative, and her particular needs. (*In re E.T.*, at p. 76.)

All of these factors weigh in favor of adoption. First, S.R.L. was just two years old at the section 366.26 hearing, "too young to understand the concept of a biological parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) Second, S.R.L. spent the first seven months of her life in the hospital, lived in a foster home for the next 15 months, and was then placed in her prospective adoptive parents' home, where she remains today. (*Id.* at pp. 467-468 [adoption favored where child spent "relatively few hours" with parent versus "many hours" with foster family].)

Third, while S.R.L.'s interactions with Mother were generally positive, "nothing in the record indicates that . . . [they] were particularly like those of a child with her mother." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.) Mother was with S.R.L. about 70 percent of the time from November 2017 to March 2018. But after she relapsed on methamphetamine, Mother had just one hour of supervised visits with S.R.L. each week. The social worker reported that the visits were appropriate: The two practiced counting and reading, went to the park, and played together, and S.R.L. generally enjoyed the time

she spent with Mother. But such interactions, while "pleasant and emotionally significant to [S.R.L.], . . . bear[] no resemblance to the sort of consistent, daily nurturing that marks a parental relationship." (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; see also *In re Casey D.* (1999) 70 Cal.App.4th 38, 52 [beneficial relationship exception did not apply where parent was no more than a "'friendly visitor'"].)

Finally, "there is no evidence that [S.R.L.] has any particular needs that can be met by Mother but not by [her prospective adoptive] family." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.) Mother has thus failed "to prove that 'severing the natural parent-child relationship would deprive [S.R.L.] of a substantial, positive emotional attachment such that [she] would be greatly harmed.'" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643, italics omitted.)

We reject Mother's claim that the juvenile court relied on "'an unenforceable expectation that [S.R.L.'s] prospective adoptive parents [would] voluntarily permit future contact between the child and [Mother]'" when it found that the beneficial relationship exception did not apply. (*In re E.T.*, *supra*, 31 Cal.App.5th at p. 78.) The court merely stated that "[c]ourt-ordered visits [would] end . . . , but that does not mean that there can't be a voluntary agreement to visits." It did not rely on the possibility of future visits when making its beneficial relationship finding.

We also reject Mother's claim that the juvenile court applied the wrong standard because it said that she and Father had to show that they were the "only parents" of S.R.L. for the exception to apply. The court also said that the parents "need to show that [they are] who [S.R.L.] looks to for the kinds of things

children look to their parents to meet, needs for affection and security and comfort and meeting all of their emotional needs." These are proper considerations. (*In re E.T.*, *supra*, 31 Cal.App.5th at pp. 76-77.) The court's "only parents" comment, in context, does not suggest that it applied an incorrect standard when it found the beneficial relationship exception inapplicable here. Substantial evidence supports the court's finding.

ICWA

The parents contend, and the County concedes, the order terminating parental rights should be vacated because the County failed to comply with ICWA's notice requirements. We agree.

An ICWA notice must enable a tribe to investigate and determine whether a minor is an Indian child. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) The notice "must therefore contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership." (*Ibid.*) This includes "[a]ll names known of the . . . child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known." (§ 224.3, subd. (a)(5)(C).)

We review the juvenile court's finding that ICWA's notice requirements were met for substantial evidence. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991.) If substantial evidence does not support the court's finding, the error is "generally prejudicial." (*In re Cheyanne F.*, *supra*, 164 Cal.App.4th at p.

577.) Remand is required "so proper notice can be given." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 850.)

Substantial evidence does not support the juvenile court's determination that ICWA's notice requirements were met. The notices sent to the Tule River tribe and BIA listed the wrong last name for S.R.L. They had incomplete information about the maternal grandmother: no maiden name, and no former addresses. They had incomplete information about the maternal great-grandmother: an incomplete current address, no former addresses, and no year of birth. The notices also failed to specify whether the name listed for the maternal great-grandmother was her maiden name or married name. And they had no information about the maternal grandfather or great-grandfather. This prevented the Tule River tribe and BIA from conducting a meaningful review of their records to determine S.R.L.'s eligibility for membership. (See, e.g., *In re Brooke C.* (2005) 127 Cal.App.4th 377, 384 [ancestors not properly identified]; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1116-1118 [lack of information about grandfather and great-grandparents, and unclear whether married or maiden names provided]; *In re Louis S.* (2004) 117 Cal.App.4th 622, 631 [incomplete names, lack of birth dates].)

Moreover, the County undertook no efforts to obtain the required information. If a county agency has reason to know that a child may have Indian ancestry, it has a duty to inquire about and obtain the child's ancestral information by interviewing the child's parents and extended family members. (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1396; see Cal. Rules of Court, rule 5.481(a)(4)(A).) The juvenile court is required to ensure that the social worker performs this duty. (*In re Glorianna K.* (2005) 125 Cal.App.4th 1443, 1449.) That did not

happen here, despite the County's access to the maternal grandmother and great-grandmother.

Remand is therefore required. On remand, the County must make a "genuine effort" to locate and interview the maternal grandmother and great-grandmother, plus any other family members who may have information about S.R.L.'s possible Indian heritage. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 655.) It must thereafter provide new ICWA notices that include all of the required information. (*Ibid.*) The juvenile court shall then determine whether ICWA's notice requirements have been satisfied and, if so, whether S.R.L. is an Indian child. (*Ibid.*)

DISPOSITION

The juvenile court's January 17, 2019, order terminating parental rights and referring S.R.L. for adoption is conditionally vacated, and the matter is remanded with directions to order the County to comply with ICWA notice requirements. If, after proper inquiry and notice, a tribe determines that S.R.L. is an Indian child, or if other information suggests that S.R.L. is an Indian child as defined by ICWA, the court shall conduct a new section 366.26 hearing in conformity with all relevant provisions of ICWA and the Welfare and Institutions Code. If the court determines that S.R.L. is not an Indian child, it shall reinstate its termination order.

In all other respects, the juvenile court's termination order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J. YEGAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

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