

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TANIA G., et al.,

Defendants and Appellants.

B295559

(Los Angeles County
Super. Ct. No. CK92762)

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

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Tracey F. Dodds, Deputy County Counsel, for Defendant and Respondent.

Tania G. (mother) appeals the termination of her parental rights to her son, S.P. She argues the trial court erred in finding she had failed to establish the parental bond exception to termination. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Family*

Although only mother's parental rights to S. are relevant in this appeal, the dependency petition involved the entire family. Mother has two children: a girl, L., born in 2012, to father R.C.; and a boy, S., born in 2016, to father M.P.

L. would ultimately be adjudicated dependent because she was sexually abused by her step-father, M.P., and mother failed to protect her. Although mother and R.C. were granted reunification services with respect to L., the child was so traumatized by the sexual abuse, she began engaging in self-harm in order to avoid visiting her parents. Visits were suspended for her safety and emotional health, and never reinstated. Mother initially appealed the termination of her parental rights to both children, but pursued no arguments with respect to L. On August 12, 2019, we dismissed mother's appeal of the termination of her parental rights to L. as abandoned.¹

2. *S.'s Dependency*

On April 4, 2017, S. was declared dependent due to his father's sexual abuse of L., his parents' history of domestic violence, and his father's substance abuse. (Welf. & Inst. Code, § 300, subds. (b), (d) & (j).) An allegation regarding mother's history of substance abuse was dismissed. Both parents were

¹ Father R.C. appealed the termination of his parental rights, but filed a brief raising no issues, and we dismissed his appeal under *In re Phoenix H.* (2009) 47 Cal.4th 835.

granted reunification services. M.P. would eventually stop visiting S., and he did not appeal the termination of his parental rights. We therefore confine our discussion to mother's parental rights to S.

3. *Mother's Partial Compliance With the Case Plan Other Than Visitation*

Although the sole issue on appeal is the parental bond exception to termination, we discuss the ways in which mother complied, and failed to comply, with the case plan as these facts provide context to the parental bond. Mother's April 2017 case plan was for: (A) domestic violence counseling for victims; (B) individual counseling; (C) a psychological assessment; and (D) on-demand drug testing on reasonable suspicion. Reunification services were ultimately terminated on August 1, 2018, with a finding that mother had partially complied, but S. could not safely be returned to her care.²

Between the April 2017 declaration of dependency and the August 1, 2018 termination of reunification, mother's compliance took the following form:

A. *Domestic Violence Counseling for Victims*

Mother enrolled late in a domestic violence group, starting in October 2017. Once enrolled, she attended weekly. She had not completed the 52-week program by the time reunification services were terminated.

² Mother filed a notice of intention to challenge this order by writ, but never filed a writ petition. (See *T.G. v. Superior Court*, B291734.)

B. Individual Counseling

Mother enrolled in individual therapy even before the court directed it as part of reunification. She attended regularly and her therapist believed she was making progress.³

C. Psychological Assessment

Mother did not immediately do her psychological assessment. She reported participation in January 2018, but her attorney told her in February 2018 that she did the wrong one and needed to do another. The Department of Children and Family Services (Department) social worker gave her a referral for the assessment. In March 2018, mother reported back to the social worker that she inquired about the assessment, but did not have the money to pay for it. It does not appear that she ever obtained the correct assessment.

D. On-Demand Drug Testing on Reasonable Suspicion

The Department requested mother commence on-demand drug testing due to questions raised at one of her visits with L. She missed several on-demand tests over a number of months, offering various excuses. The court ordered her to random testing in November 2017, and she tested clean thereafter (with the exception of one test which was positive for codeine, which was explained by mother's contemporaneous prescription for Tylenol with codeine).

4. Visitation

Mother's reunification services with S. included monitored visitation of six hours per week minimum, with the Department granted discretion to liberalize.

³ Mother also enrolled in, and completed, parenting classes, without the court's direction that she do so.

S. was placed with his maternal aunt. Mother visited S. regularly and consistently, with the exception of a brief period of incarceration.⁴

A September 2017 status review report states that mother visits S. every weekend. The maternal aunt “does not have any concerns. She reports that [mother] cares for the child appropriately and interacts well with him by feeding him, playing, and being attentive to what he wants. They play together and eat together during the visits. [Maternal aunt] reports that [S.] likes to dance and [mother] often plays him music during the visits.” At one point in July 2017, S. called the maternal aunt “Ma” in a visit, and when mother heard, mother became upset. At the end of visits, S. would say “bye” to mother and does not cry for her.

In December 2017, maternal aunt reported that when S. sees mother, he gets excited and goes to hug her. Maternal aunt thought S. knew that mother was his mother and that maternal aunt was his “‘second mom.’”

In February 2018, the caseworker overheard S. say “Ma” when trying to get maternal aunt’s attention. Maternal aunt reported that visits were still consistent and that, during visits, S. spends most, if not all, of the time with mother.

⁴ In August 2017, mother was arrested for identity theft (Pen. Code, § 530.5, subd. (a)). She was sentenced to six months, but was released after serving only one. In its respondent’s brief on appeal, the Department states that mother was sentenced to six months in jail, but overlooks that she was released in one. While we do not minimize mother’s criminal activity, this appeal revolves around mother’s relationship with S. Being incarcerated for only one month of the reunification period is very different than being incarcerated during six months of it.

The March 15, 2018 status review report states that mother “continues to have monitored visits with [S.] every weekend. [Maternal aunt] does not have any concerns when mother is feeding and playing with [S.] She reports that [mother] cares for the child appropriately and interacts well with him by feeding him, playing, and being attentive to what he wants. Per [maternal aunt], ‘They play and eat together during the visits.’ [Maternal aunt] has inquired about mother having unmonitored visits as she does not have any concerns. [The social worker] has asked where mother resides and [maternal aunt’s] response was that she was staying with a friend and no further details were provided.” The social worker explained to mother that she could not have overnight visits until the Department could evaluate her home. It did not appear that the Department considered the possibility of unmonitored visits in the daytime.

Mother found a new home, and informed the social worker of her address on March 20, 2018. The social worker went to see it nine days later. Mother was renting a bedroom in her landlord’s house. She explained she was not staying for long and was looking for a new residence. At the inspection, mother asked if she would be getting S. back as she hoped, and the social worker explained that the Department was recommending no further reunification for either child. The record does not indicate whether the Department considered the rental suitable for unmonitored visitation.

In May 2018, mother reported that S. cries when mother leaves after her visits and notices when she is gone. By this time, the 12-month review hearing (at which reunification services would ultimately be terminated) had commenced, and the record includes no further reports on mother’s visitation with S. between May 2018 and August 1, 2018. After reunification was

terminated in August 2018, and the case proceeded toward a hearing to terminate parental rights (Welf. & Inst. Code, § 366.26), mother continued to visit S. consistently. The Department reported, however, that S. identified maternal aunt as his parent. He is bonded to her and looks to her “for guidance, support, fun and comfort as needed.”

5. *Evidence at the Termination Hearing*

Mother testified at the hearing. She explained that, before the petition was filed, S. lived with her for seven months. She visits S. regularly for three hours on Thursdays and three hours on Saturdays at maternal aunt’s home. When asked what she does during visits, she explained, “I teach him his ABC’s, his colors. We’ve done finger painting. We interact and play, play therapy with Batman and got him into dinosaurs, you know, the different types of dinosaurs. [¶] I read to him. We used to play with blocks, now we’re playing with the puzzles. Everything is at his age level. I’m trying to teach him how to potty train, you know. Sometimes we go shopping, so I also try to teach him how to say all his fruits, both in English and Spanish. He’s bilingual, so he understands both because I do repeat everything in both languages. [¶] We dance, we sing. Just do a lot of different activities throughout the times that I do visit him.” She testified that when S. sees her, he calls her “Mommy.” When she arrives, he gets excited and pays attention only to her. When visits end, he does not want her to leave; he cries and has tantrums. She talks to him and maternal aunt on the phone during her breaks at work and before he goes to bed, about four times per week. She has been to two of his medical appointments, both of his dental appointments, and a parent/teacher orientation.

6. *The Dependency Court's Findings*

The court agreed that mother's visitation had been consistent. The court further found that mother "to some extent has a parental role and does appear to have to some extent a parental relationship." The court found that mother is "more than just a friendly visitor." Nonetheless, the court recognized that mother saw S. only twice per week for a few hours each time. The court concluded that mother had not shown that terminating her relationship with S. would be detrimental to him, nor had she shown that continuing the relationship outweighed the benefits to the child of the permanence that adoption would bring. The court terminated mother's parental rights.

Mother filed a timely notice of appeal.

DISCUSSION

1. *Law of Termination of Parental Rights and Parental Bond*

Mother contends she established the parental bond exception with S. that precludes the termination of her parental rights. We review the applicable law. A juvenile court at a section 366.26 hearing must select a permanent plan for the child. (Welf. & Inst. Code, § 366.26, subd. (b).) Adoption is the permanent plan preferred by the Legislature for dependent children who are likely to be adopted if parental rights are terminated. If the dependency court finds that a child should not be returned to his or her parent and is likely to be adopted, it must select adoption as the permanent plan unless it finds a "compelling" reason for determining that termination of parental rights would be detrimental to the child under one of several specified exceptions. (*Id.* at subd. (c)(1)(B).)

The exception to termination found in subdivision (c)(1)(B)(i) of section 366.26 provides that detriment may be found

if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” There are two prongs to this exception: regular visitation and the child’s benefit from continuing the relationship. The regular visitation prong requires consistent visitation throughout the child’s detention. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1254.) It does not, however, “mandate day-to-day contact.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The standard requires the establishment of a beneficial parent-child relationship; such a relationship characteristically arises from day-to-day interaction, companionship and shared experiences. But “[a] strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction.” (*Ibid.*)

In order to prove the child would benefit from continuing the relationship, a particular type of relationship must be proven. “The standard is whether the children benefit from [m]other’s presence in their lives, not whether they could eventually be happy without her.” (*In re E.T.* (2018) 31 Cal.App.5th 68, 77.) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to 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 Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) The type of parent-child relationship that triggers the exception is a relationship 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 Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; accord *In re*

Jasmine D. at pp. 1349-1350.) The exception applies if “severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “[L]oving and frequent” contact with the child is alone insufficient to trigger the exception; the parent must occupy a parental role in relation to the child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) The exception “ “applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” ’ ” (*In re Melvin A., supra*, 82 Cal.App.4th at p. 1254.)

Such a relationship may be evidenced by a positive bonding study and testimony of a parental bond being observed during visits. (See *In re S.B.* (2008) 164 Cal.App.4th 289, 295, 298; compare *In re C.F.* (2011) 193 Cal.App.4th 549, 556-557 [termination upheld when there was no bonding study and visit supervisors did not observe a strong bond between the parent and children].)

2. Standard of Review

There is a dispute regarding the standard of review that applies to an appellate challenge to a juvenile court ruling rejecting a claim that the parental bonding exception applies.⁵ In *In re Jasmine D., supra*, 78 Cal.App.4th at page 1351, the court acknowledged that most courts had applied the substantial evidence standard of review to this determination. However, the court concluded that the abuse of discretion standard was “a

⁵ The issue is presently pending before our Supreme Court. (*In re Caden C.* (2019) 34 Cal.App.5th 87, review granted July 24, 2019, S255839.)

better fit” because the juvenile court was obligated to make “a quintessentially discretionary determination.” (*Ibid.*)

Other courts have concluded both standards apply. As the determination of whether a beneficial parental relationship exists may be more properly characterized as a factual one, substantial evidence review applies. But there is also a second, discretionary determination – whether that relationship is a compelling reason for finding detriment to the child. This determination should be reviewed for abuse of discretion. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We use the combined standard of review.

We note, however, that with respect to whether there is substantial evidence to support the court’s determination that a factor was *not* established, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations].” (*In re I.W.* (2010) 180 Cal.App.4th 1517, 1528.)

3. *The Court Did Not Err*

The court found the first prong – consistent visitation – established. It found the second prong – the child’s benefit from continuing the relationship – not established. Mother contends this finding is not supported by substantial evidence. As we have discussed, because mother had the burden of proof on this issue, she can only prevail if the evidence compels a finding in her favor as a matter of law. It does not. Mother’s testimony showed that S. obtained some benefit from their relationship and that, as the trial court noted, she was more than just a friendly visitor and “to some extent” acted as a parent. But mother did not establish, as a matter of law, that S. had a significant, positive emotional attachment to her. While she had some evidence that he called her “Mommy” and was upset when she left, she did not establish

that the S. relied on her for comfort when he was hurt or looked to her for guidance. There was no bonding study showing the strength of their relationship. While maternal aunt monitored all of mother's visits, mother did not call her to testify as to her observations.⁶ Mother's brief testimony regarding positive visits is simply inadequate to compel a finding that she established the existence of the parental relationship as a matter of law.

Moreover, even if we were to conclude mother established a parental relationship, the court did not abuse its discretion in not finding detriment to S. in terminating it. Although S. lived with mother for the first seven months of his young life, this hearing occurred when he had lived with maternal aunt for two years, having transitioned from infant to toddler in her care. He became verbal during this time and learned to walk. Although mother testified to helping teach S. the alphabet and some words, it is maternal aunt who was responsible for S. reaching most, if not all, of his developmental milestones. Mother visited regularly for six hours per week, but never graduated from monitored visitation, so never had the opportunity to be solely responsible for satisfying S.'s needs, even for a few hours at a time. That mother's visits were positive experiences for S. cannot be denied, but her influence in his life appears no greater than that of a regular babysitter or effective day care worker. The court did not

⁶ We note that, while different time periods were involved, maternal aunt's observations of earlier visits, as reported by the social worker, were in some ways contradictory to mother's testimony – with maternal aunt specifically indicating that S. did not call mother "Mommy" and did not cry after visits. In this regard, we are obligated to note that, at an earlier hearing, the juvenile court specifically found mother's testimony not credible. An objective observer's testimony may have held more sway.

abuse its discretion in concluding the relationship was not so valuable to S. that maintaining it would outweigh the substantial value to S. of a permanent home with adoptive parents.

In closing, we acknowledge mother's commitment to S. But at this moment in a dependency case the juvenile court must consider other factors in addition to a parent's commitment. When deciding whether a parent has carried her burden to establish the parent-child relationship exception to the rule otherwise requiring termination of parental rights, courts consider, among other things, 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; *In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) With these considerations in mind, and with the focus of the proceedings having shifted to S.'s need for permanency and stability (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317), mother has not demonstrated a compelling reason to avoid termination of parental rights.

DISPOSITION

The order terminating mother's parental rights is affirmed.

RUBIN, P. J.

WE CONCUR

BAKER, J.

KIM, J.