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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re HAYDEN M., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B267350
(Super. Ct. No. J070287)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

BETH M.,

Defendant and Appellant.

Beth M. appeals a September 30, 2015 juvenile court order terminating her parental rights and freeing her eight-year-old son, Hayden M., for adoption. (Welf. & Inst. Code, § 366.26.)¹ Appellant contends that the beneficial parental-child relationship exception bars the child's adoption. (§366.26, subd. (c)(1)(B)(i).) We affirm.

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

Facts and Procedural History

On December 12, 2014, Ventura County Human Services Agency (HSA) detained Hayden and his siblings after drug paraphernalia, methamphetamine residue, drug scales, and hypodermic needles were found in appellant's house, all within Hayden's reach.² Appellant admitted smoking methamphetamine the day before and was arrested for being under the influence. Two other adults in the house were arrested on outstanding warrants.

HSA filed a dependency petition alleging that appellant was abusing drugs and maintaining an unsafe home that posed a substantial risk of serious harm to Hayden.³ It was Hayden's second juvenile dependency hearing. From 2012 until March 2014, Hayden was a dependent of the court in Los Angeles County based on appellant's chronic drug abuse and habit of leaving drugs within the child's reach. The Ventura County petition alleged that appellant had not resolved her substance abuse and that Hayden was at substantial risk of harm.

On May 14, 2015, the trial court sustained the dependency petition for failure to protect (§ 300, subd. (b)), no provision for support (§ 300, subd. (g)), and sibling abuse (§ 300, subd. (j)). Services were bypassed based on appellant's chronic drug abuse and prior failure to comply with court-ordered drug treatment. Before the jurisdiction/disposition hearing, appellant missed a scheduled visit, was pregnant with a new child, and was arrested and incarcerated for identity theft, three counts of child

² Appellant is the biological mother of Alexis B. (age 12), Hayden M. (age 8), Cooper E. (age 2), and Skylar M. (5 months old). The whereabouts of Hayden's alleged father, Kevin S., was unknown.

³ Ventura County Deputy Sheriff James McCollum assisted in the probation search and reported that piles of dirty clothes were in the living room; the downstairs bathroom had a clogged toilet filled with feces and urine; very little food was in the house; the cabinets above and around the stove were charred from a stove fire; the house walls were black with dirt and grime; the bedroom where Hayden's sister slept was covered with dirty clothes, trash, food, and dishes; Hayden's upstairs bedroom had an open bottle of vodka and open window with no screen; and the upstairs bathroom was filthy and had a broken bathroom medicine cabinet hanging askew.

endangerment, being under the influence of a controlled substance, and two counts of possession of drug paraphernalia.

At the contested section 366.26 hearing, appellant argued that severing the parent-child relationship would be harmful to Hayden. The trial court found that Hayden was adoptable and that the parent-child relationship and sibling bond exceptions did not apply.

Beneficial Parent-Child Relationship

Appellant argues that the trial court erred in finding that the benefits of continuing the parent-child relationship do not outweigh the benefits of adoption. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) On appeal, the parent-child beneficial relationship exception is reviewed under a hybrid substantial evidence and abuse of discretion standard. (*Ibid.*)

To establish the beneficial relationship exception, appellant must show that she maintained regular contact and visits with Hayden. (§ 366.26, subd. (c)(1)(B)(i).) Once that has been established, the burden is on appellant to show that Hayden would benefit from continuing the relationship and that it outweighs the benefits of adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "The exception applies only where the [trial] court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Evidence that a parent maintained "frequent and loving contact" is not sufficient. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

Appellant failed to maintain regular contact and never progressed beyond supervised visits. Out of 12 weekly supervised visits from January 2015 through May 2015, appellant missed three visits and was late for six visits. In June and July 2015, there were no visits because Hayden was recovering from dental surgery and appellant

gave birth to another child. When appellant was released from jail, she was given the choice of enrolling in a drug rehabilitation program (Prototypes) or serving a five year jail sentence. Appellant opted for drug rehabilitation.

The trial court found that appellant "missed visits. She was late at many. She was incarcerated during many." The court was concerned about appellant's "track record" and doubted that a five year suspended sentence "will make a difference. . . . Having your kids removed from you didn't make a difference." The trial court reasonably concluded that sporadic visitation is insufficient to satisfy the first prong of the beneficial relationship exception. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 554.)

With respect to the second prong, appellant failed to show that continuing the parent-child relationship outweighed the benefits of adoption. Hayden was attached to appellant but physically and emotionally harmed by appellant's drug abuse and neglect. When Hayden was detained, his teeth were in a terrible condition. He had to have two root canals and six cavities filled. Hayden was behind in school and had to repeat the second grade. His therapist reported that Hayden had many behavioral problems and "struggled in school, with boundaries, manipulation, lying and following directions."

Appellant's supervised visits were stressful and detrimental. The caregiver reported that Hayden would wake up crying and had melt-downs and behavioral issues after visits. When appellant missed a Mother's Day visit, Hayden sulked, dropped his shoulders and head, and cried. Hayden was more upset when appellant cancelled a July 2015 visit to give birth to another child, Skylar M. Hayden had a breakdown in a store, was unable to play with neighborhood children, cried hysterically at 2:00 in the morning, and complained of stomach aches. Hayden felt bad for appellant and told his foster mother, "I'm so sad about the choices my mom made. I hope she never does this again." Hayden feared that if he went back to appellant that they would not have a place to live. Hayden was very stressed when he was told that his older sister, Alexis, was not coming back to live with appellant.

After appellant enrolled in the drug rehab program, the visits were more consistent but Hayden struggled emotionally. He wanted to live with appellant but knew that appellant had no place to live. Hayden said that he wanted to stay with his foster-adopt parents but felt guilty about it. Hayden's therapist reported that Hayden was "clouded with confusion and guilt" and appellant's visits were not beneficial. The social worker testified that terminating parental rights would be difficult for Hayden but would not be harmful or detrimental. The prospective adoptive parents were bonded to Hayden and providing the family values, structure, support, and love that he so badly needed.

Appellant presented no evidence that "severing the natural parent-child relationship would deprive [Hayden] of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, emphasis added.) Appellant's reliance on *In re Scott B.* (2010) 188 Cal.App.4th 452 is misplaced. There an autistic child was strongly bonded to his mother and was sure to suffer serious emotional and developmental setbacks if adopted. (*Id.*, at p. 472.) The social worker recommended that adoption be placed on hold. Unlike *In re Scott B.*, no social worker, caregiver, therapist, or teacher has recommended guardianship as an alternative to adoption.

Based on Hayden's age and needs, the trial court reasonably concluded that Hayden's long-term emotional interests would be better served by the permanency of adoption. (See e.g., *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1013.) It was "a 'quintessentially discretionary decision'" but not a close call. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.) Adoption is the preferred permanent plan and is clearly in Hayden's best interests. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1031, 1038.)

The judgment (section 366.26 order terminating parental rights) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Tari Cody, Judge

Superior Court County of Ventura

Linda B. Puertas, under appointment by the Court of Appeal, for Defendant and Appellant.

LeRoy Smith, County Counsel, County of Ventura and Joseph Randazzo, Assistant County Counsel, for Respondent.