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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B287801
(Super. Ct. Nos. 1435506, 1435507)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

K.V.,

Defendant and Appellant.

K.V. (Mother) appeals orders of the juvenile court terminating her parental rights to J.G. and J.G., children coming under the juvenile court law. (Welf. & Inst. Code, § 366.26.) We conclude, among other things, that the juvenile court did not err in ruling that the beneficial parental relationship exception to the termination of Mother's parental rights did not apply. We affirm.

FACTS

On February 5, 2016, the Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition (Welf. & Inst. Code, § 300, subds. (b) & (g)) alleging Mother failed to provide “adequate food, clothing, and shelter” for J.G., 21 months of age, and J.G., four months of age.

In its petition CWS said Mother and the children’s father (Father) “had been bouncing from motel to motel” and could not find shelter. Mother said they could not enter a homeless shelter because “she wouldn’t be able to pass a drug test.” CWS said the children were “at substantial risk of suffering serious physical harm or illness by the inability of the mother to provide regular care due to her untreated mental illness.”

Since October 2009, CWS had received referrals regarding Mother’s “mental health and cognitive delays, and her ability to protect her children.”

On February 1, 2016, a relative told CWS that the children “would regularly have layers of dirt on their bodies.” On a cold day the children did not have jackets to wear. The relative said Mother “doesn’t pay very close attention to the children.” The motel room where Mother had resided was “cluttered with trash and dirty clothes and [there were] dirty dishes on the floor.”

At a detention hearing the juvenile court ordered the children “detained in the custody of [CWS] for temporary placement” in a foster home. The court sustained the dependency petition at the jurisdictional hearing.

In a disposition report CWS recommended the children “remain placed in out of home care” and that Mother receive family reunification services. The court ordered Mother to receive visitation with the children and follow the CWS case plan.

That plan included, among other things, the requirement that Mother 1) “stay free from illegal drugs,” 2) participate in substance abuse assessment and drug testing, 3) participate in individual therapy, 4) take a parenting class, and 5) show her ability to have custody of her children.

In a September 26, 2016, status review report, CWS recommended that the children remain in “out of home care.” In a February 2, 2017, report, CWS said it could not recommend returning the children to Mother. Mother and Father had received a 30-day notice to move out of the one-bedroom home where they had been residing.

In August 2017, at the 18-month review, CWS recommended reunification services for Mother be terminated. Mother had been referred to a Safe Care parenting program. But the services could not be completed because of Mother’s failure to communicate with that program. CWS said Mother had completed many parenting classes, but she “is not implementing the learned skills and behaviors.” Mother had not been providing breakfast for the children. A person from a shelter reported to CWS that Mother lacked the parenting skills to deal with a tantrum by one of her older children. A care provider who picked up the children after a visit noticed they “had an unclean, urine smell to them.” “The care provider had to empty the tub three times due to the dirt and sand that kept coming off the children.” One child had a rash “around his upper leg in his diaper region.” After visits with Mother, the children were hungry. One child was at a playground and Mother was not present to supervise the child. Mother and Father argue in front of the children. One child saw “the parents fight and it makes him very upset.” CWS

said Mother had not “addressed the reasons [for the] removal” of the children.

In an August 28, 2017, addendum report, CWS said Mother and Father “have been unable to demonstrate any long term ability to have a sufficient and regular income sufficient to provide for housing or other basic needs for their children.” On September 12, 2017, the juvenile court terminated Mother’s family reunification services.

In December 2017, Mother filed a request to change court order, form JV-180. She said she had filed a domestic violence restraining order against Father and she had obtained a housing voucher so the “children [could] live together and have stable housing.” In a “366.26 WIC Report,” CWS recommended that following termination of parental rights the court should approve “a permanent plan of adoption.” It said given the children’s “young age and health, it is highly likely that they will be adopted,” and prospective adopted parents “have been identified.” “The circumstances as to why the children were removed from their parent have not changed. These children deserve a secure and stable home”

The juvenile court denied Mother’s JV-180 petition. It said that “the best interests [of the children] have not been demonstrated to a sufficient level here.”

The juvenile court held a contested section 366.26 hearing. Mother claimed the beneficial parental relationship exception to termination of parental rights applied.

Mother called Kirsten Cahoon, Kristine Kuder, and Lindsey Day, witnesses affiliated with the Good Samaritan shelter. They testified they observed visits with mother and the children. Cahoon said the children were “extremely excited” to

see Mother. Kuder said the children were “very happy to see their mother.” Day said Mother “constantly” supervised the children and the children were happy. The children’s maternal grandmother testified the children are “ecstatic” to see Mother. Mother washes the children’s hair and provides food for them. Mother testified that J.G. and J.G. have a bond with an older sibling.

The juvenile court found Mother did not meet her burden to show that the beneficial parental relationship exception to termination of parental rights applied.

DISCUSSION

The Beneficial Parental Relationship Exception

Mother contends the evidence does not support the juvenile court’s finding that the beneficial parental relationship exception to termination of her parental rights did not apply. We disagree.

There is an exception to termination of parental rights where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[1] [t]he parents have maintained regular visitation and contact with the child and [2] the child would benefit from continuing the relationship.” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)

“The parent has the burden to show that the statutory exception applies.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) He or she must prove the existence of both statutory prongs. “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*Ibid.*) “The parent must do more than demonstrate ‘frequent and loving contact[,]’ . . . an emotional bond with the child, or that parent and child find their visits pleasant.” (*Id.* at p. 827, citation omitted.) “Instead, the parent must show that he or she occupies a ‘parental role’ in the

child's life." (*Ibid.*) There must be a showing that the continuing relationship with the child "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 Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) "Rather, at this point 'the focus shifts to the needs of the child for permanency and stability.'" (*Ibid.*) "Because a section 366.26 hearing occurs only after the court *has repeatedly* found the parent unable to meet the child's needs, it is *only in an extraordinary case* that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, italics added.)

Mother claims there is evidence showing that she visited the children and they were excited to see her. The juvenile court found "the first prong has been met of maintaining regular contact and visitation consistent with the extent permitted by court orders."

But the juvenile court also found Mother did not meet her burden on the second prong. She did not show "that depriving the children of the substantial positive emotional attachment from the relationship . . . outweighs the benefit the law says exists from the adoption."

Mother contends her evidence supports a positive finding on the second prong. CWS responds that Mother relied on "testimony from shelter workers" who "observed positive interactions during limited visits."

Cahoon testified she had observed visits only “[s]ince August” of 2017 on an average of “20 to 30 minutes a week.” She did not know the behavior of the children before or after they left the shelter. She did not have “any kind of licensing [to be] able to opine about a child’s bond with a parent.” The juvenile court found she would not qualify as an expert. Kuder observed Mother’s visits with the children since September 2017. She did not have an educational background in “child psychology.” She spent between 10 to 30 minutes a week observing the visits. She said there were times she was occupied “doing other things” during the visits. Lindsey Day was a “parent advocate” who observed only two visits. Mother also called the children’s maternal grandmother to testify.

The weight given to the opinions and observations of these witnesses is a matter exclusively determined by the juvenile court. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

CWS contends that facts documented in CWS reports support the juvenile court’s finding. We agree.

In an August 8, 2017, status review report, CWS said Mother had taken parenting classes, but had not been able to implement “the learned skills.” A CWS worker had picked up the children after a visit in May 2017. The children were “dirty and hungry.” One child had a rash near his “upper leg in his diaper region.” One child complained “we do not always get breakfast.”

In its January 18, 2018, addendum report, CWS said, “[M]other was provided with eighteen months of reunification services, but she failed to comply with the goals and objectives of her case plan and *did not demonstrate that she would be able to keep these children safe over time.*” (Italics added.) Mother visited the children. But “visits continued to demonstrate the

mother's inability to appropriately *supervise* the children and provide for their safety." (Italics added.) In a June 2017 visit, one child was "in a playground by the shelter," and Mother was not present. In a November 2017 visit, Mother was inside "the shelter home," but the children were "left outside, unsupervised."

CWS made unannounced visits to Mother's room in a family transition shelter on November 6, November 15 and December 4 in 2017. On each visit her room was "messy," "cluttered with clothes and other belongings" scattered "throughout the room." CWS said that Mother's "developmental disability is a concern as this prevents her from making appropriate decisions that ensure the children's safety and protection." CWS recommended that the children "remain" in their current placement "with a permanent plan of adoption." It said they have a "need for permanence."

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Joseph T. Tavano, under appointment by the Court of
Appeal, for Defendant and Appellant.

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