Filed 8/25/15 In re T. F. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re T.F., a Person Coming Under the Juvenile Court Law.	B261762 (Los Angeles County Super. Ct. No. CK73920)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.W., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Valerie Skeba, Juvenile Court Referee. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jessica L. Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

L.W., the mother of four-year-old T.F. and five older children who were either removed from her care by the Los Angeles County Department of Children and Family Services (Department) or now live under the legal guardianship of a relative, appeals from the juvenile court's order terminating her parental rights to T.F., whose permanent plan contemplates her adoption by a maternal great aunt living in Indiana. L.W. contends the termination of her parental rights will substantially interfere with T.F.'s sibling relationships within the meaning of Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(5).[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2013 L.W. was riding in the front passenger seat of a car with T.F. on her lap when the car crashed into a tree. T.F. sustained cuts on her scalp and lacerations to her liver for which she was hospitalized. Because L.W. was also injured and was uncooperative with hospital staff, a referral alleging severe neglect and physical abuse was made to the Department.

L.W. was well known to the Department. In 2006 she tested positive for cocaine at the birth of her fourth child, H.B. The maternal grandmother, already the legal guardian of L.W.'s three older children, filed a petition for legal guardianship of H.B; and the Department closed the referral. In 2008, upon the birth of her fifth child, Alyssa K., both L.W. and Alyssa tested positive for cocaine and marijuana. After the Department detained Alyssa, L.W.'s parental rights were terminated; and Alyssa was placed for adoption with a maternal great aunt in Indiana. In 2012 the Department had received a referral alleging general neglect, as well as emotional and physical abuse of T.F. According to the referral, both of T.F.'s parents had used drugs in front of her and were verbally abusive with T.F. and each other. The referral was closed as inconclusive due to the worker's inability to contact the parents.

When the maternal grandmother declined to take T.F. following the June 2013 car accident because she could not care for an additional child, the Department detained T.F.

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[1] Statutory references are to this code unless otherwise indicated.

and placed her in shelter care. On June 28, 2013 the Department filed a section 300 petition alleging L.W. had a history of substance abuse and had failed to use a child safety seat to restrain T.F., resulting in injury to T.F. (§ 300, subd. (b).) Although T.F.'s father had been located, he did not appear to have a close relationship with T.F. The juvenile court found the Department had established a prima facie case T.F. was a person described by section 300, subdivision (b), and continued her detention in shelter care. The Department was ordered to investigate placement of T.F. with a relative.[2]

The jurisdiction/disposition report disclosed that T.F. had been living with a paternal cousin since February 2013 and that L.W. had taken her only on weekends. Before leaving T.F. with the paternal cousin, L.W. and T.F. had moved from shelter to shelter, as L.W. had no permanent home. L.W. and T.F.'s father asked the cousin to become T.F.'s legal guardian because they were not able to parent her. According to the cousin, L.W. had planned to enter a drug rehabilitation program the weekend of the accident. When interviewed at the hospital, L.W. admitted she had drunk alcohol and had fallen asleep in the car with T.F. on her lap. She agreed T.F. should be placed in a legal guardianship with the paternal cousin. The Department recommended L.W. not be provided with reunification services due to her prior history. In a supplemental report the Department stated the paternal cousin was willing to become T.F.'s legal guardian, that her home was appropriate and that she had agreed to maintain T.F.'s contact with her biological family. The Department recommended that the petition be sustained but jurisdiction terminated pursuant to section 360, subdivision (a).[3] As recommended, the

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[2] On July 19, 2013 the Department filed an amended petition alleging that Donald F., T.F.'s father, was a current abuser of marijuana and incapable of providing regular care for T.F. The father is not a party to this appeal.

[3] Section 360, subdivision (a), provides: "Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless

juvenile court sustained the petition on all counts and granted the Department discretion to release T.F. to the paternal cousin. T.F. was placed with the paternal cousin on September 17, 2013. Jurisdiction was not terminated.

The disposition hearing was held on September 20, 2013. Neither parent appeared at the hearing. The court approved the proposed disposition case plan, denied reunification services to L.W. but granted them to the father. The court set a review hearing for March 21, 2014.

On November 25, 2013, at the request of T.F.'s counsel, the court appointed a special advocate to report on T.F.'s best interests.

The status review report prepared for the March 21, 2014 hearing stated that neither parent had been in contact with the Department during the review period. A social worker had seen L.W. on one occasion while visiting the home of the paternal cousin but found L.W. under the influence of alcohol or drugs and reminded her she could not visit T.F. while impaired. L.W. had sporadic visits with T.F. during the review period, but T.F.'s father had not visited at all. T.F. appeared to be healthy and well-adapted to her placement with the paternal cousin.

The special advocate also prepared a report for the March 21, 2014 hearing. The paternal cousin had advised the special advocate that she was not interested in adopting T.F. Although T.F. appeared to be happy, the paternal cousin resisted the advocate's effort to spend time alone with T.F., claiming T.F. had difficulty forming healthy relationships with adults. The special advocate also spoke with L.W., who said she wanted to be reunited with T.F. but had been unable to gain admission to a treatment facility. The advocate also spoke with the maternal great aunt in Indiana who had adopted T.F.'s older sister Alyssa. The maternal great aunt had recently learned that T.F. had been detained and informed the court by letter of her desire to adopt T.F. The

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the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court."

advocate recommended investigation of T.F.'s adoption by the maternal great aunt as a permanent plan and indicated it would be in T.F.'s best interests, notwithstanding reservations about moving T.F. to another state.[4]

Based on these reports the court ordered the Department to initiate an assessment for adoption of T.F. by the maternal great aunt and her husband under the Interstate Compact for the Placement of Children (Fam. Code, § 7900 et seq.) (ICPC). The court also found the parents had made no progress toward reunification and terminated reunification services for the father. The court set a section 366.26 selection and implementation hearing for August 7, 2014.

According to the Department's section 366.26 report for the August 7, 2014 hearing, the paternal cousin had recommended T.F. be adopted by her Indiana aunt's family and reunited with Alyssa. Although the paternal cousin had contemplated adopting T.F., she rejected the idea because she believed L.W.'s continuing interference would not be in T.F.'s best interests. L.W. had visited with T.F. seven or eight times in the previous six months, sometimes while under the influence of drugs or alcohol and often in the company of her boyfriend, who was rude and aggressive toward the paternal cousin and threatened to take T.F. After the visits T.F. was an "emotional wreck." T.F. had met her Indiana relatives and was looking forward to living with her sister. The hearing was continued to allow completion of the ICPC initial assessment for placement with a relative, which was approved on September 11, 2014.

At an October 9, 2014 hearing the court approved T.F.'s placement in Indiana and continued the section 366.26 hearing until January 8, 2015. T.F. arrived in Indiana on October 23, 2014. On January 8, 2015 L.W. appeared and contested the Department's recommendation her parental rights be terminated. The hearing was reconvened on January 29, 2015. Two of L.W.'s older children testified on L.W.'s behalf in support of the sibling bond exception for termination of parental rights. They each testified they had

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[4] The special advocate subsequently requested to be relieved from her assignment after her efforts to meet with T.F. were rebuffed by the paternal cousin.

seen T.F. on holidays and some weekends during the first two years of T.F.'s life (before T.F.'s detention) but had not seen her within the last 10 months. They considered T.F. their sister and enjoyed playing with her. They had only spoken with T.F. once by telephone since she left for Indiana and had not seen Alyssa in four years. Because of T.F.'s move to Indiana, they feared they would lose contact with her. L.W. also testified.

T.F.'s counsel argued that adoption by the Indiana relatives was in T.F.'s best interests and L.W. had expressed no interest in the proceedings until the out-of-state adoption was proposed. She had made no effort to ensure visits between her older children and T.F. even when T.F. was living with the paternal cousin. Under these circumstances, counsel contended, the evidence did not support the sibling bond exception.

The juvenile court agreed, finding T.F.'s contact with her Los Angeles siblings was limited and did not outweigh her need for permanence. The court terminated the parental rights of both parents and selected adoption by the Indiana relatives as T.F.'s permanent plan.

DISCUSSION

1. *The Sibling Relationship Exception to Termination of Parental Rights*

Section 366.26 directs the juvenile court in selecting and implementing a permanent placement plan for a dependent child. The express purpose of a section 366.26 hearing is "to provide stable, permanent homes" for dependent children. (§ 366.26, subd. (b).) If the court has decided to end parent-child reunification services, the legislative preference is for adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 ["if the child is adoptable . . . adoption is the norm"]; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [once reunification efforts have been found unsuccessful, the state has a "compelling" interest in "providing stable, permanent homes for children who have been removed from parental custody"; and the court then must "concentrate its efforts . . . on the child's placement and well-being, rather than on a parent's challenge to a custody order"].) When the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one

of six enumerated exceptions applies. (§ 366.26, subd. (c)(1)(B); see *Celine R.,* at p. 53 ["court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child"]; *In re Matthew C.* (1993) 6 Cal.4th 386, 392 [when child adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is relatively automatic].)

The purpose of the sibling exception is to preserve longstanding sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) "To show a substantial interference with a sibling relationship the parent [or sibling granted standing] must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.) The court should consider "the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption." (*Ibid.*; accord, *In re Celine R., supra*, 31 Cal.4th at p. 61; see § 366.26, subd. (c)(1)(B)(v).) "[T]he concern is the best interests of the child being considered for adoption, not the interests of that child's siblings." (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822; see *Celine R.,* at pp. 49-50.) "The court must balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer." (*L.Y.L.*, at p. 951; accord, *In re D.M.* (2012) 205 Cal.App.4th 283, 293.)

The parent has the burden of proving the statutory exception applies. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The court's decision a parent has not satisfied this burden may be based on either or both of two component determinations—whether a beneficial sibling relationship exists and whether the existence of that relationship constitutes "a compelling reason for determining that termination would be detrimental to the child . . . ." (§ 366.26, subd. (c)(1)(B); see *In re K.P.* (2012) 203 Cal.App.4th 614, 622; *Bailey J.*, at p. 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1528.) When the juvenile court concludes the benefit to the child derived from preserving the sibling relationship is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (See *K.P.*, at pp. 621-622; *Bailey J.*, at pp. 1314-1315.)

2. *The Juvenile Court's Conclusion the Sibling Relationship Exception Did Not Apply Was Well Within Its Discretion*

Even assuming a beneficial sibling relationship exists in this case, the juvenile court reasonably concluded T.F.'s limited relationship with her older sister and brother did not outweigh the benefits of the stable adoptive home offered by her maternal great aunt in Indiana, who had already adopted her next oldest sibling. (See *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 ["the application of [the sibling] exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount"].) T.F., of course, was too young to testify. Her counsel, however, and the paternal cousin with whom she had lived for nearly two years believed adoption was in T.F.'s best interest. The testimony of T.F.'s older siblings, who clearly love T.F. and sincerely want to remain connected with her, did not establish that T.F.'s own best interests would be better served by her remaining with the paternal cousin so they could visit on holidays and weekends. T.F. had never shared

a home with these siblings, and the family lacked few common experiences other than those occasional visits. Indeed, the older siblings had not even seen T.F. in the previous 10 months, a truly significant period in the life of four-year-old T.F. (See *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293 ["although the [child] clearly enjoyed the time she spent with her half siblings, there was no evidence that the detriment she might suffer if visits ceased presented a sufficiently compelling reason to forgo the stability and permanence of adoption by caretakers to whom she was closely bonded"].) The juvenile court properly exercised its discretion in concluding the evidence here was insufficient to warrant application of the sibling bond exception.

DISPOSITION

The order of the juvenile court is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

STROBEL, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.