

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B286088
(Super. Ct. No. J070636)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

V.P.,

Defendant and Appellant.

V.P. (Mother) appeals the juvenile court's order that terminated her parental rights. (Welf. & Inst. Code,¹ § 366.26.) She contends the court erred when it found: (1) clear and convincing evidence that her son, M.P., was adoptable, and (2)

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

that she did not qualify for the beneficial relationship exception. (§ 366.26, subds. (c)(1), (c)(1)(B)(i).) We affirm.

FACTUAL AND PROCEDURAL HISTORY

Late one night in August 2015, police arrested Mother for possession of drug paraphernalia and being under the influence. Authorities took 10-year-old M.P. into protective custody. The juvenile court took jurisdiction over M.P. based on Mother's history of drug use; drug use by B.P. (Father); domestic violence between Mother and Father; and Father's incarceration in state prison.²

Over the next seven months, Mother cooperated with the Ventura County Human Services Agency (HSA). HSA reported that she attended most of her scheduled appointments. She was out of jail and in compliance with the terms of her release. She had housing and was looking for work.

M.P. was doing well in his foster placement, but was frustrated he could not live with Mother. He got into fights at school. He attended therapy to cope with depression and anger.

At a March 2016 hearing, the court-appointed special advocate recommended that M.P. remain in foster care and continue supervised visits with Mother. M.P.'s foster parents were doing an "outstanding job" caring for him. The advocate said Mother's rehabilitation may take too long for successful reunification.

In August, HSA recommended terminating Mother's services and developing a permanent plan for M.P. Mother had fallen out of compliance with her case plan. She was cited again for being under the influence of a controlled substance. She tested positive for methamphetamine. She remained

² We dismissed Father's appeal by separate order.

unemployed. She had maintained weekly supervised visits with M.P., however.

Mother did not appear at the 12-month hearing in October. The juvenile court terminated services and selected long-term foster care as M.P.'s permanent plan. It reduced Mother's visits to once monthly.

The following month, HSA placed M.P. in a new foster home. Initially, he exhibited "all kinds" of behavioral problems. He took his anger and frustration out on others. He was physically violent to his foster siblings. His foster mother reported that he talked about suicide. M.P. said he was not suicidal, but frustrated at "the situation that was going on." He worked with a therapist to address his disrespectful and aggressive behavior.

M.P. had generally positive supervised visits with Mother over the next few months. They exchanged hugs and laughed with each other. They played games and worked on his homework together. They talked about how he was doing in school and at his foster placement. M.P. told Mother he loved her and wished he could see her more often. He would grow upset when the visits would end.

At a hearing in March 2017, M.P.'s foster parents told the juvenile court they wanted to become his legal guardians despite his sometimes "challenging" behaviors. They said they would be willing to pursue adoption if M.P. agreed. And M.P. told the social worker that he might want to be adopted by them in the future.

Mother was incarcerated at the time of the March hearing, but was expected to be released soon. She visited M.P. regularly until her incarceration, and HSA anticipated that visits

would resume upon her release. M.P.'s foster parents expressed concern about the appropriateness of some of Mother's visits.

Though he was becoming more integrated into his foster family, M.P. continued some of his physically and verbally aggressive behaviors into the spring. After he bit one of his foster brothers, he told his foster mother that Mother's drug dealer once did the same thing to him. He expressed mixed feelings about visiting Mother because it brought back painful memories.

In April, HSA changed its recommendation from guardianship to adoption after the social worker reported that M.P. and his foster parents wanted to pursue adoption. M.P.'s foster parents had adopted two other children, including a special needs child, and understood the potential challenges they would face with him.

M.P.'s visits with Mother transitioned to interactional evaluations and therapy sessions. M.P. did not like the transition and said he "merely wanted to visit with [Mother]." He later began to decline visits.

At a July hearing, M.P. was in good health and developmentally on target. His behavior continued to improve. Mother had visited him consistently, and while their interactions were generally positive, M.P.'s behaviors would deteriorate after visits. HSA deemed M.P. to have an "anxious attachment" to Mother and reported that adoption would be in his best interests. M.P. wished to maintain contact with her after his adoption. His foster parents said they were willing to facilitate such contact if they found it to be in his best interest.

At an October hearing, a social worker said that M.P. told her that he wanted to be adopted and wanted to add his foster parents' last name to his own. He also said he wanted to

be “a permanent part of [his foster] family and [did not] want to move anymore.” She explained to him that adoption meant Mother’s parental rights would be terminated, but that he could still see her if he chose and if it was not detrimental. She did not tell him that his adoptive parents could limit his contact with Mother, and did not ask him how he would feel if he never saw her again.

A clinical psychologist testified that abruptly ending contact with Mother would harm M.P., but that it would be less damaging than requiring him to continue visits. Mother had a “needy attachment” to M.P., but he “wanted to be with a new family” and did not want to “take care of [her].” The therapist believed M.P. should be weaned from his relationship with Mother.

Mother testified she had a close relationship with M.P. despite not being his caregiver for more than two years. She said she continued to ask for visits after he began to refuse them.

At the conclusion of the hearing, the juvenile court determined that M.P., then 12 years old, was adoptable. It found that the benefits of a permanent adoptive home outweighed his relationship with Mother. It terminated her parental rights.

DISCUSSION

Adoptability

The juvenile court did not err when it found that M.P. was adoptable. When the court terminates reunification services, “the focus shifts to the needs of the child for permanency and stability.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Adoption is the preferred plan to achieve that. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13

Cal.4th 882, 888.) A determination that a child is adoptable requires clear and convincing evidence that adoption will likely be realized within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) We review the court's determination for substantial evidence. (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

Mother first claims that M.P. was not adoptable because his emotional and behavioral issues remained unresolved. But she focuses on incidents that occurred in the first few months after his placement with his prospective adoptive family. And she admits that her visits often triggered M.P.'s misbehavior. She also acknowledges that M.P.'s behavior subsequently improved: He responded to services and therapy. He got along better with his foster family. He did well in school. And his foster parents wanted to adopt him despite his sometimes "challenging" behaviors. Their desire to adopt M.P. provides substantial evidence to support the juvenile court's adoptability determination. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292-1293.)

Mother alternatively claims the court erred when it found M.P. adoptable because he did not consent to the adoption. (See Fam. Code, § 8602 ["The consent of a child, if over the age of 12 years, is necessary to the child's adoption"].) But "there is no provision under section 366.26 adopting Family Code section 8602 for juvenile dependency court proceedings." (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333, fn. 3; see § 366.26, subd. (a) [specifying applicable Family Code sections].) Dependency proceedings "are special proceedings with their own set of rules, governed, in general, by the Welfare and Institutions Code." (*In re Chantal S.* (1996) 13 Cal.4th 196, 200.) Statutes

that apply to civil cases do not apply to dependency actions unless expressly made applicable. (*Christopher L.*, at p. 1333, fn. 3.) Because section 366.26 does not adopt Family Code section 8602, the court was not required to obtain M.P.'s consent before making its adoptability determination. (*Ibid.*) Rather, it had to consider whether M.P. objected to the termination of Mother's parental rights. (§ 366.26, subd. (c)(1)(B)(ii).) Nothing in the record suggests that he did.

In re Sarah M. (1994) 22 Cal.App.4th 1642 does not hold otherwise. There, the court noted that the "consent of a child over the age of 12 is necessary to the child's *adoption*." (*Id.* at p. 1650, italics added.) But the court did not hold that consent is required for the juvenile court to find the child *adoptable*. (*Ibid.*) Instead, it held that consent is relevant to the court's adoptability finding where that finding is "based solely on the existence of a prospective adoptive parent who is willing to adopt the [child]." (*Ibid.*)

Here, the juvenile court did not find M.P. adoptable based solely on his foster parents' willingness to adopt him. But even if it did, M.P. expressed his consent when he told one social worker he wanted his foster mother to adopt him in the future. He told another social worker he wanted to be adopted and wanted his foster parents' last name as his own. He said he wanted to be a permanent part of his foster family and did not want to continue moving. The juvenile court found, based on these statements, that M.P. wanted to be adopted. We will not disturb that finding on appeal. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 491.)

We disagree with Mother's conclusion that the social worker's statements to M.P. were misleading. The social worker

explained to M.P. that adoption meant Mother's "parental rights would be legally terminated, but he [would] still be allowed contact with his family members, if he [chose] and it's not detrimental." She also told him that visitation would be up to his adoptive parents. That she did not discuss with M.P. that his adoptive parents could discontinue visits or that he may not see Mother again if they did so does not show she misled M.P.; these possible outcomes were implied in her statement that visitation would be up to his adoptive parents.

Moreover, the adoptive parents said that they supported M.P.'s decision to continue to see Mother and that they "were willing to support appropriate contact." This supports the inference that M.P. was not misled when he was told that he would still be allowed contact with Mother after the adoption. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 13.)

Beneficial relationship

The juvenile court also did not err when it terminated Mother's parental rights because she did not show that termination would be detrimental to M.P.

If the court finds clear and convincing evidence that it is likely a child will be adopted, it must terminate parental rights unless 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 the parent shows that "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "A beneficial relationship is one 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.' [Citation.]" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) Whether a beneficial

relationship exists is determined by “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 parent and child, and the child’s particular needs.’ [Citation.]” (*Ibid.*) We review the court’s determination for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

Mother has not shown that the beneficial relationship exception applies here. M.P. is now 12 years old, and has spent nearly three years out of Mother’s custody. While he had many positive visits with Mother, they never progressed to unsupervised visits. M.P. often had behavioral problems after visits, and later began to refuse to meet with Mother. A psychologist deemed his relationship with Mother “disorganized,” “pathological,” and “very damaging,” and determined that adoption, though somewhat harmful to M.P., would be “the better choice.” Substantial evidence thus supports the determination that the beneficial relationship exception is inapplicable here. (See, e.g., *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 [exception inapplicable where children had behavioral problems after visits]; *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [exception inapplicable where children spent more than two years with current caregiver, despite mother’s maintenance of regular visits]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351-1352 [exception inapplicable where mother did not progress to unsupervised visits].)

Mother counters that her relationship with M.P. was “sufficiently valuable to be preserved” based on their positive interactions during visits from late 2016 through the summer of 2017. But the beneficial relationship exception does not apply simply because M.P. derived benefits from his visits with Mother.

(*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) “[P]leasant and cordial [mother]-son visits are, by themselves, insufficient to mandate a permanent plan other than adoption.” (*In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

Finally, we reject Mother’s claim that the juvenile court could not terminate her parental rights based on the adoptive parents’ unenforceable promise of future visitation. That rule is relevant only if a parent has shown the beneficial relationship exception applies. (See *In re C.B.* (2010) 190 Cal.App.4th 102, 128-129.) Here, the exception does not apply.

DISPOSITION

The 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

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo,
Assistant County Counsel, for Plaintiff and Respondent.