

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 K.P., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B288345
(Super. Ct. No. 16JD-00075)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

D.Q.,

Defendant and Appellant.

D.Q. (Father) appeals an order of the juvenile court declaring that his minor child K.P. is adoptable, and terminating his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

We conclude that the court properly determined that the beneficial parental relationship exception to adoption does not apply and affirm. (*Id.*, subd. (c)(1)(B)(i).)

*FACTUAL AND PROCEDURAL HISTORY*²

Father and A.B. (Mother) are the parents of now 12-year-old K.P. On March 14, 2016, Father was arrested at gunpoint as he was burglarizing the home of his former girlfriend. At the time, K.P. was sitting inside Father's vehicle parked near the home. Three days later, Father assaulted K.P.'s maternal grandmother (Grandmother) while K.P. was in the home. Grandmother suffered a cut lip and a broken hand and later obtained a protective order against Father.

Mother suffers from substance abuse and was not successful in reunifying with K.P. during a 2007 dependency. She is not involved as a parent to K.P.

On March 18, 2016, the San Luis Obispo County Department of Social Services (DSS) removed K.P. from Father's care. On March 22, 2016, DSS filed a dependency petition describing the burglary incident and the assault on Grandmother. DSS also alleged that Father was homeless and abused alcohol and methamphetamine. (§ 300, subds. (b) [failure to protect], (c) [serious emotional damage].) DSS alleged that Mother has not maintained a relationship with K.P. and her

² We take judicial notice of the appellate record prepared in the writ petition filed in this matter. (*D.Q. v. Super. Ct.* (B283596).) We also grant DSS's request for judicial notice of the initial dependency petition and the detention report in this matter. (Evid. Code, §§ 452, subd. (d), 459.)

whereabouts were then unknown. (§ 300, subd. (g) [failure to support].)³

The juvenile court ordered that K.P. be detained and it placed her custody and care with DSS. Following her detention, K.P. has resided with Grandmother.

On April 28, 2016, D.Q. was arrested and charged with stalking and violating a restraining order. D.Q. also later admitted to the DSS social worker that he had recently used methamphetamine.

In an uncontested hearing, the juvenile court sustained the allegations of the dependency petition, and ordered DSS to provide family reunification services to Father. Father's reunification services plan included domestic violence counseling, parent education, substance abuse treatment, and random substance abuse testing.

On May 27, 2016, Father was arrested and charged with driving while intoxicated. Following criminal proceedings, he was sentenced to a two-year prison term. Throughout Father's incarceration, K.P. visited him once or twice a month in supervised visitation. Father also frequently wrote K.P.

During the dependency period, Father minimally participated in his reunification services plan. He completed some assignments while incarcerated, but not others. Accordingly, at the 12-month review hearing, DSS recommended that the juvenile court terminate reunification services to Father. On June 23, 2017, the court did so, and set the matter for a permanent plan hearing.

³ Mother is not a party to this appeal.

On February 23, 2018, the juvenile court held a contested section 366.26 hearing. The court received evidence of DSS reports and memoranda and testimony from Father. Counsel for DSS and K.P. agreed that it was in K.P.'s best interest to be adopted by Grandmother. Following argument by the parties, the court found by clear and convincing evidence that K.P. is adoptable and that the beneficial parental relationship exception to adoption did not apply. The court then terminated parental rights.

Father appeals and contends that the juvenile court erred by not applying the beneficial parental relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).)

DISCUSSION

Father asserts that the beneficial parental relationship exception to adoption precludes termination of his parental rights. (§ 366.26, subd. (c)(1)(B)(i).) He points out that he consistently visited with K.P. and that the visits were appropriate and loving. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a primary attachment to parent for beneficial parental relationship]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1535 [regular visitation and contact satisfied by consistent visitation].) Father adds that a legal guardianship would have been in the best interests of K.P. Father argues that the detriment to K.P. in terminating his parental rights outweighs any benefits of adoption.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that

termination would be detrimental to the child" due to an enumerated statutory exception. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota H.*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship existed where children in mother's care

the majority of their lives].) “The application of the beneficial parent relationship exception requires a robust individualized inquiry given that '[p]arent-child relationships do not necessarily conform to a particular pattern,' and no single factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive.” (*Grace P.*, at p. 613.)

Father did not meet his evidentiary burden to establish that his relationship with K.P. was sufficiently compelling to outweigh the legal preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].) Although Father and K.P. enjoyed loving visits, an adoptive home with Grandmother would provide her with permanence, security, and stability. Twice, in 2007 and 2016, DSS was involved with D.Q.’s family for reasons of Father's domestic violence and substance abuse. Grandmother has cared for K.P. since 2014 and at other times prior to the recent dependency; K.P. refers to Grandmother as “Mom.” Where a parent has not advanced beyond supervised visitation, the burden of establishing a parental role “will be difficult to make.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

In re Brandon C., *supra*, 71 Cal.App.4th 1530, does not compel a different result. There the uncontradicted evidence established that the mother’s bond with the children was close and that they would benefit from continuing the relationship. (*Id.* at p. 1537.) Also, the children’s grandmother preferred adoption, but was “fine” with guardianship. (*Ibid.*) Here Father did not meet his evidentiary burden of establishing extraordinary

circumstances warranting application of the exception to the legislative preference for adoption.

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Michael L. Duffy, Judge*

Superior Court County of San Luis Obispo

D.Q., in pro. per., for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy
County Counsel, Chelsea K. Kuhns, Certified Law Student, for
Plaintiff and Respondent.

* Retired Judge of the San Luis Obispo Sup. Ct. assigned by the
Chief Justice pursuant to art. VI, § 6 of the Cal. Const.