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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.S., A Person Coming Under
the Juvenile Court Law.

2d Juv. No. B288692
Super. Ct. No. 1435505)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

K.V.,

Defendant and Appellant.

K.V. (mother) appeals an order of the juvenile court terminating her parental rights to B.S., a child coming under the juvenile court law. (Welf. & Inst. Code, § 366.26.)¹ We conclude, among other things, that 1) the juvenile court did not err by rejecting mother's claim that the beneficial parental relationship

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

exception to the termination of her parental rights applied, and 2) mother has not shown that the significant sibling relationship exception applied. We affirm.

FACTS

On February 5, 2016, the Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition (§ 300, subds. (b) & (g)), alleging B.S., seven years old, his brother, 21 months old, and his sister, four months old, “were at substantial risk of suffering serious physical harm” as a result of mother’s failure to protect them and provide for them.

CWS alleged B.S. “is at high risk of being harmed sexually.” In 2012, he “was raped by a registered sex offender while in the care of his mother.” In 2016, CWS received a report that B.S. was “left unsupervised by his mother.” CWS said mother had a “developmental disability or mental illness,” which places this child at risk.

A relative told CWS that mother and father moved to a motel room that was “extremely cluttered with trash and dirty clothes, and dirty dishes on the floor,” and that “it was almost impossible to walk into the room.” The children had “layers of dirt on their bodies.” Mother told CWS she was “unable to provide regular care for her children.” Mother said the family had been denied entry to a homeless shelter because she “wouldn’t be able to pass a drug test.”

B.S. told CWS that the family “bounces from motel to motel.” The motel told the family to move out “due to motel regulations.” B.S. said he had been wearing the same clothes for “several days,” and “he doesn’t have any clean pajamas to put on.” A restaurant cook said B.S. “would regularly come to the restaurant and sit for hours unattended.” The principal of the school B.S. attended called CWS. He was concerned about the

child's well being. He had received a call from mother. She "sounded under the influence of a controlled substance over the phone."

The juvenile court ordered B.S. to be placed "into temporary protective custody" and removed from mother's custody. It found the parents' "environment poses an imminent threat to the child's health or safety."

In a detention report, CWS recommended that the three children "remain detained in out of home care." At the detention hearing, the juvenile court found B.S. "is a person described by [section] 300."

At a jurisdiction hearing on February 29, 2016, the juvenile court found the allegations of the petition were true.

In its March 14, 2016, disposition report, CWS recommended that the children remain in out-of-home care and mother receive family reunification services. In its findings and orders after dispositional hearing, the juvenile court found: 1) the care, custody and control of B.S. is to be "in the approved home of a nonrelative extended family member," 2) "[B.S.'s] out-of-home placement is necessary," and 3) mother is entitled to family reunification services. Mother's case plan included the requirement that she attend mental health counseling, parenting education and substance abuse services.

In a September 12, 2016, status review report, CWS said mother had missed 11 drug test appointments. It recommended that all three children "remain in out of home care." On November 7, 2016, the juvenile court adopted the CWS recommendation.

In a February 2017 status review report, CWS recommended that mother's family reunification services continue. It noted that mother had received a notice to vacate

her one-bedroom home. CWS said that because of lack of housing, it could not recommend that the children be returned to mother. The parents were receiving “weekend overnight visits” with the three children. CWS was concerned that mother had requested food for the family from a care provider. The court adopted the CWS recommendation.

In an August 2017 status review report, CWS recommended that mother’s family reunification services be terminated. CWS said mother was “not implementing” the skills she should have learned in her parenting classes. After visits with mother, the children were observed to be “dirty and hungry.” CWS received a report that B.S. “was starving when he came back from his visit with the mother.” Mother and father failed to communicate with a required SafeCare parenting program. CWS learned that mother and father have arguments in front of the children which are upsetting B.S. On September 12, 2017, the juvenile court terminated mother’s family reunification services.

On December 7, 2017, mother filed a request to change court order (JV-180), stating there were changed circumstances. She said that she had obtained 1) a restraining order against father and 2) a “housing voucher,” and that 3) she had taken “the steps necessary to protect her children.”

On January 9, 2018, CWS filed a “366.26 WIC Report.” It recommended the children remain dependents of the juvenile court “with Permanency Planning services and a permanent plan of adoption.” It said, “The circumstances as to why the children were removed . . . have not changed.” B.S.’s paternal grandparents are “committed to adopting” him. He deserves a “secure and stable home.”

The juvenile court denied mother’s JV-180 petition, finding: 1) “[t]here’s really no change in circumstances,” and 2) the

requirement that the change be in the best interests of the children has “not been demonstrated to a sufficient level.”

At the section 366.26 hearing, mother claimed the beneficial parental relationship exception to termination of parental rights applied and the “sibling bond exception” also applied.

The juvenile court admitted CWS’s case reports into evidence. Mother called Kirsten Cahoon, Kristine Kuder and Lindsey Day, witnesses affiliated with the Good Samaritan shelter. They testified they observed visits with mother and her children. Cahoon testified the children were “extremely excited” to see mother. Kuder testified the children were “very happy to see their mother.” Day testified mother supervised the children and they are “attached to” mother. The children’s maternal grandmother testified the children are “ecstatic” to see mother. She said mother provides food for them and washes their hair. Mother testified B.S. loves his younger sister and does “anything for her.”

The juvenile court found, “[T]here is clear and convincing evidence that the child will be adopted. . . . The child is referred to the Department for adoption services. I find that placement is necessary and appropriate.” In so ruling, the court rejected mother’s claim that the beneficial parental relationship and significant sibling relationship exceptions 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 “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 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. . . . Instead, the parent must show that he or she occupies a ‘parental role’ in the child’s life.” (*Id.* at p. 827, citations omitted.) 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 cites to favorable portions of the record. But the issue is not confined to whether some evidence supports her. Mother claims the testimony of Cahoon, Kuder and Day supports her claim that the beneficial relationship exception should apply. CWS responds that these witnesses had only a limited opportunity to observe mother's interactions with the children during short visits she had with them at a shelter. Cahoon only started observing the visits since August 2017. She had no knowledge about the interaction between mother and the children before or after these visits. The juvenile court found she was not an expert in developmental psychology. Kuder had observed visits only since September 2017. She said she spent between 10 to 30 minutes "observing the mother in total per week." Day testified about visits between mother and B.S.'s younger brother and sister.

Mother also relies on the testimony of the maternal grandmother and herself. But the credibility of the opinions and observations of all of mother's witnesses was 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 decision not to apply a beneficial relationship exception. We agree.

In its addendum report, CWS said B.S. was initially removed because of mother's "neglect and failure to supervise [him]." B.S. was sexually abused by mother's roommate. In a 2016 status review report, CWS reported that mother had missed 11 drug tests and three group therapy sessions. In 2017, B.S. questioned mother's ability to take care of her children and said, "[W]e do not always get breakfast because my mom does not have enough money." In May 2017, a Child Welfare worker picked up

the children who had visited mother. The worker noted the children had “an unclean, urine smell to them.” They were hungry. A care provider gave the children a bath and had to “empty the tub three times due to the dirt and sand that kept coming off the children.” B.S.’s younger brother had a rash near “his upper leg in his diaper region.” In a 2017 interim review report, CWS said B.S. and his two younger siblings could not be returned home to mother and father because they have not shown “stability with housing and the financial ability to meet their needs.”

In June 2017, CWS canceled overnight visits with the children because of “concerns regarding [the] parents’ ability to meet the children[’s] needs.” CWS referred mother and father to “family therapy” because of concerns about the parents “arguing and yelling in front of the children.” Ana Bueno from the SafeCare parenting program told CWS that the parents had not been communicating with the program. B.S.’s therapist said “seeing the parents fight . . . makes [B.S.] very upset.” CWS received a report from a person at the Good Samaritan shelter that B.S. “was throwing a tantrum” and mother “was unable to console [him].” The reporting party questioned mother’s ability to parent and said that “there was no engagement from the mother.” B.S.’s therapist told CWS that B.S. said that he “only gets dinner during the visits with the parents.” A Family Care Network representative told CWS that B.S. “was starving when he came back from his visit with the mother.”

CWS said mother’s reunification services were terminated because she did not “meet the goals and objectives of [her case plan].” It noted that “[d]espite . . . completing many parenting classes, the mother is not implementing the learned skills and behaviors.” During 18 months of reunification services, mother

did not show the ability to keep “the children safe over time.” During visits, CWS noticed mother’s “inability to appropriately supervise” the children and “provide for their safety.” Mother did not show she had the “ability to provide a safe environment” for the children. During unannounced visits to mother’s room at her family transitional shelter, CWS saw that her room was “messy” and “cluttered” with “clothes and belongings scattered throughout the room.” CWS said, “[M]other’s developmental disability is a concern as this prevents her from making appropriate decisions” about child safety. As to B.S. and his two younger siblings, CWS said that “the children’s need for permanence, at this time, outweighs the bond or relationship they have with their mother.” B.S. “has grown and has been able to thrive” in his current placement. CWS recommended a permanent plan of adoption for stability and permanence for this child. Mother has not shown the juvenile court abused its discretion.

Significant Sibling Relationship

Mother contends the juvenile court erred in terminating parental rights when the evidence showed there would be a substantial interference with B.S.’s relationship with his siblings. We disagree.

There is a sibling relationship exception to adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 54.) The juvenile court may decide adoption is not appropriate where “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration [1] the nature and extent of the relationship, including, but not limited to, [2] whether the child was raised with a sibling in the same home, [3] whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and [4] whether ongoing contact is in the

child's best interest, including [5] the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (*Ibid.*)

It is the parent's burden to “show the existence of a significant sibling relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) “If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*Ibid.*) “[E]ven if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide.” (*Id.* at pp. 952-953.)

Mother relies on the testimony of the maternal grandmother who said B.S. had a bond with his younger sister. The grandmother said he “play[ed] dolls with her.” Mother testified B.S. “loves her and does anything for her.” But the credibility of this testimony was exclusively decided by the trial court. (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 251.)

CWS contends the trial court could reasonably infer that there was no significant sibling bond. At the time CWS filed its dependency petition, B.S. was seven years old, his brother was 21 months old, and his sister was only four months old. CWS notes that, “[s]ince their removal, the [c]hildren have not been placed in the same household, and are set to be adopted by different parents.”

In CWS's “366.26 WIC Report,” it recommended “a permanent plan of adoption” for the children. But its report suggests that adoption would not lead to a substantial interference with a sibling relationship. It said, “Both prospective adoptive parents are committed to maintaining the

sibling relationship.” In its addendum report, CWS said B.S.’s grandparents want to provide “a permanent home” for him. It said the permanent plan of adoption is in his “best interest as it will provide [him] with the security and stability that he needs.”

The juvenile court found B.S. “will be adopted” and placement for adoption is “necessary and appropriate.” In 2012, B.S. “was sexually abused by his mother’s roommate.” The court said that “continued custody of the child by the parent is likely to result in serious emotional and physical damage to the child.” Mother has not shown error.

DISPOSITION

The judgment is affirmed.

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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.

Michael C. Ghizzoni, County Counsel, Christopher E.
Dawood, Deputy Counsel, for Plaintiff and Respondent.