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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re F.T. et al., Persons Coming
Under the Juvenile Court Law.

B279809
(Los Angeles County
Super. Ct. No. DK13424)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

* * * * *

We affirm the order terminating mother Y.R.'s parental rights over her children F.T. and L.T. Mother challenges the juvenile court's order, arguing that her parental rights should not have been terminated because she had a beneficial relationship with the children that outweighed the permanency of adoption.¹ No evidence supports her argument, and it therefore lacks merit.

BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on September 17, 2015, identifying mother's two children F.T. (then seven years old) and L.T. (then seven months old). In November 2015, DCFS filed an amended petition, which as later sustained, indicated that mother has a history of illicit drug use and currently abused marijuana and methamphetamine rendering her unable to care for the children. The amended petition further indicated that father had a history of substance abuse, a long criminal history, and continued to abuse

¹ Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) provides: if the children are adoptable, the court shall terminate parental rights unless the "parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

All further statutory citations are to the Welfare and Institutions Code.

methamphetamine and marijuana. Father, who is not a party to this appeal, had a lengthy criminal history and was incarcerated during portions of the dependency period.

Mother moved to California from Utah, where authorities investigated mother for L.T.'s fetal drug exposure. In September 2015, after dependency proceedings had started in California, mother tested positive for methamphetamine and amphetamine. Maternal aunt reported that mother had a long-standing drug problem and regularly left the children in Utah while mother stayed in California.

When interviewed by a social worker, mother acknowledged that she began using marijuana and crystal methamphetamine in high school. She indicated that "she used methamphetamine with father when they would visit California." She would leave the children in Utah with their maternal grandmother when she travelled to California to use drugs.

In September 2015, the juvenile court removed the children from mother's custody. Mother was given family reunification services and ordered to complete a drug and alcohol program with aftercare and weekly random testing, a 12-step program, a parenting class, and individual counseling.

When F.T. was removed from mother's custody, he was observed as "sad and emotional" when mother called. A social worker further observed that F.T. struggled "with the separation from his parents." F.T. indicated that he wanted to return to Utah with his parents and added that he wanted to be with his extended family members.

In December 2015, maternal grandmother's home in Utah was approved for placement, and the children moved there. In June 2016, maternal grandmother reported that the children had

adjusted to living in her home. The social worker reported that the children were “in a stable and secure environment where all of their needs are being met.”

On March 15, 2016, mother tested positive for amphetamines and she missed six other tests in March.

In June 2016, DCFS reported that mother moved back to Utah and was living with maternal great-grandmother. Mother began an outpatient drug rehabilitation program in February 2016 but within a week had unexcused absences. Mother’s therapist was concerned that mother may have a gambling addiction.

Mother had court-ordered monitored visits twice a week for one hour. Maternal grandmother reported that “the visits are good and mother is appropriate.” But mother’s visits lapsed in April 2016, when she returned to California. Mother did not see the children for five weeks.

In June 2016, the court terminated mother’s reunification services.

In September 2016, DCFS reported that maternal grandmother wanted to adopt the children. DCFS reported that maternal grandmother “seems very committed to the permanent plan of adoption. She wants to provide her grandchildren with a permanent and stable home.” Mother told the social worker that she visited the children one hour twice a week and did not want them to be adopted. The social worker concluded that mother did not “assume[] a parental role.”

Prior to the section 366.26 hearing on whether to terminate mother’s parental rights, through counsel mother indicated that she had a beneficial relationship with the children precluding the termination of her parental rights. She indicated that she would

testify regarding her relationship with her children. Mother did not appear either in person or by telephone at the hearing.

No evidence was presented of any relationship between mother and F.T. or mother and L.T. Mother's counsel argued that there was a significant bond between mother and her children and that mother visited the children regularly. The children's counsel indicated that mother did not visit consistently because she left Utah and returned to California during the reunification period. The children's counsel also argued that although F.T. wanted to live with mother, the evidence indicated that mother's parental rights should be terminated.

The court terminated mother's parental rights. This appeal followed.

DISCUSSION

1. Legal Principles

At a section 366.26 hearing, the juvenile court is required to select a permanent plan for a child who does not reunify with his or her parents. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the preferred permanent plan. (*Ibid.*) The juvenile court may select a plan different from adoption only if there is a compelling reason for determining that severing parental rights would be detrimental to the child. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.) The only exception relevant here is the exception that precludes adoption when severing a parent's parental rights would be detrimental to the child because the parent maintained regular visitation and the children would benefit from continuing the relationship with her. (§ 366.26, subd. (c)(1)(B)(i).)

“Overcoming the statutory preference for adoption and avoiding the termination of parental rights requires the parent to

show both that he or she has maintained regular visitation with the child and that the child would benefit from continuing the relationship. [Citation.] ‘Sporadic visitation is insufficient to satisfy the first prong . . .’ of the exception. [Citation.] Satisfying the second prong requires the parent to prove that ‘severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’ [Citation.] Evidence that a parent has maintained ‘“frequent and loving contact” is not sufficient to establish the existence of a beneficial parental relationship.’” (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.)

It is well established that a “child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forego adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) “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.” (*Ibid.*)

2. Analysis

This appeal borders on the frivolous.² No evidence supported mother's claim that her relationship with the children precluded severing her parental rights. Maternal grandmother wanted to adopt the children, and the juvenile court properly terminated mother's parental rights.

First, mother's argument that an exception applies lacks merit because she did not maintain regular visitation. As the children's counsel emphasized, mother left Utah to go to California and did not visit the children for five weeks. While no

² Mother's entire argument that the statutory exception to adoption should apply to this case is premised on unsupported factual assertions. Mother's statement that ". . . F.T. . . . had a strong positive and significant emotional attachment with mother" is not followed by any citation to the record and is not supported by any evidence in the record. Mother's statement that "mother continued her parent-child relationship with the children despite the lack of day-to-day contact" is not followed by any citation to the record and is not supported by any evidence in the record. Mother's statement that "[e]ven after their removal from mother for over a year, the children still had a strong bond with her" is not followed by any citation to the record and is not supported by any evidence in the record. Mother's assertion that she had positive visits with the children is followed by a citation but the evidence cited indicated that the monitor for mother's visits was concerned that mother had been using drugs prior to the visit and was emanating an odor from her drug use. This evidence does not support the statement that mother had positive visits with the children. Mother's statement that the children enjoyed their visits with mother is not supported by any evidence in the record. Mother's statement that "[t]he evidence in this case showed mother had an emotionally significant and positive relationship with her children, especially F.T." is not supported by an citation to the record or by any evidence in the record.

explanation was provided for mother's decision to leave on that particular occasion, mother had acknowledged that she regularly travelled to California to use drugs.

Second, while there was evidence that mother's visits in Utah were "appropriate," there was no evidence that she maintained a beneficial relationship with either F.T. or L.T. Indeed, there was no evidence mother had *any* relationship with L.T., who was detained when she was seven months old. There was no evidence that mother was aware of what was happening in the children's lives or undertook any responsibilities of a parent. There was no evidence that either F.T. or L.T. was emotionally attached to mother. There was no evidence of loving contact between mother and the children. Moreover, even frequent and loving contact—which did not exist in this case—is insufficient without more to overcome the presumption in favor of adoption. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Evidence that at the beginning of the dependency proceedings F.T. wanted to return to Utah to live with mother and father and his extended family does not support the conclusion that when the juvenile court terminated parental rights, F.T. preferred to live with mother instead of his maternal grandmother who regularly cared for him. No evidence supported that conclusion.

Mother's citation to F.T.'s counsel's statement that F.T. wanted to live with mother is not helpful because statements of counsel do not constitute evidence. (*In re Heather H.* (1988) 200 Cal.App.3d 91, 95 [unsworn testimony does not constitute evidence].) The record provides no evidence that F.T. preferred to live with mother over his maternal grandmother. At most the evidence showed that when he was first removed from mother's

care, F.T. had difficulty adjusting and indicated he wanted to live with her. However, subsequently, maternal grandmother reported that F.T. had adjusted to her home.

But even if there were evidence that F.T. (who was then eight) wanted to live with mother rather than his maternal grandmother, there was no evidence that his relationship with mother promoted his well-being to such a degree as to outweigh the permanency he would achieve through adoption. (See *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 [exception to adoption did not apply because “evidence fell short of establishing that mother’s relationship with her children promoted their well-being to such an extent that it outweighed the well-being the children would gain in a permanent home with adoptive parents”].) All of the evidence showed just the opposite. Mother never progressed past monitored visitation. Mother did not parent F.T., oversee his care, or even regularly visit him. Instead, she left Utah for an unexplained five-week trip to California. Mother could not provide either F.T. or L.T. the stability maternal grandmother provided or the loving home that maternal grandmother provided. And, as noted, there was no evidence mother had any relationship with L.T. or that L.T. knew her as her mother.

DISPOSITION

The order terminating mother’s parental rights is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.