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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B238151
(Los Angeles County
Super. Ct. No. CK48020)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KAREN D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marilyn Mordetzky, Referee. Affirmed.

California Appellate Project, under appointment by the Court of Appeal, Jonathan B. Steiner, Executive Director, and Anne E. Fragasso for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Karen D. (Mother) appeals from the November 9, 2011 order of the juvenile court terminating her parental rights over minor A.S. pursuant to Welfare and Institutions Code section 366.26.¹ Lance S. (Father) is not a party to this appeal. Mother contends that the parent-child relationship exception to termination of parental rights applies. We disagree because Mother failed to show that A.S. would suffer detriment from the severance of the parent-child relationship such that it would outweigh the benefits she would receive from the stability and permanence of adoption by paternal grandparents. We conclude that adoption was the appropriate permanent plan for A.S. and affirm the order of the court.

BACKGROUND

On April 29, 2009, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivision (b) (failure to protect), section 300, subdivision (d) (sexual abuse), and section 300, subdivision (g) (no provision for support) on behalf of A.S., born in 2005. DCFS filed a first amended petition on June 17, 2009, and a second amended petition on August 12, 2009. On October 29, 2009, Mother submitted a waiver of rights, which was accepted by the juvenile court. Father also submitted on the termination of his parental rights.

As amended and sustained, the petition alleged that under section 300, subdivisions (b) and (d), Mother's male companion, Richard S., had sexually abused A.S. by fondling her vagina and causing A.S.'s vagina to bleed, and Mother "reasonably should have known of the sexual abuse . . . and failed to take action because she was unaware of the abuse"; section 300, subdivision (b), Mother has an unresolved history of substance abuse, including methamphetamine and marijuana, which periodically interferes with her ability to provide regular care and supervision of A.S., and A.S.'s two half siblings had received permanent placement services because of Mother's substance abuse; section 300, subdivision (b), Father has a history of substance abuse, including methamphetamine and marijuana, which renders him incapable of providing regular care

¹ Undesignated statutory references are to the Welfare and Institutions Code.

of A.S.; and section 300, subdivisions (b) and (g), Father had failed to provide A.S. with the necessities of life.

The events leading up to the filing of the petition were as follows. Mother's parental rights over A.S.'s half siblings were terminated in 2008 after section 300, subdivision (b) allegations were sustained based on Mother's assault on maternal grandmother; Mother's leaving the minors with relatives without making provision for their care; and Mother's history of drug abuse and positive toxicology screens. Father was in the custody of immigration services in New Mexico and was deported to the Philippines during the course of the dependency proceedings.

On April 15, 2009, DCFS received a referral of allegations of general neglect of A.S. by Mother due to Mother's ongoing substance abuse problem. On April 22, 2009, DCFS interviewed paternal grandparents (including paternal stepgrandfather), who had taken A.S. home from the hospital when she was born and had cared for her thereafter. Paternal grandparents stated that A.S. had lived continuously with them from birth except for visits with Mother, which lasted no more than a week or two. Every time but once, A.S. had been sick when she was returned to paternal grandparents by Mother. Paternal grandmother believed Mother had an ongoing drug problem and was not an "appropriate caregiver." Although Mother received welfare aid for A.S., she had not provided for A.S. Instead, paternal grandparents had provided for the financial needs as well as the emotional needs of A.S. A.S. had told paternal grandmother that Richard S. had touched her vagina and that Mother had wiped off the blood and told her not to say anything. After A.S. told paternal grandmother of the abuse, paternal grandmother took A.S. to the hospital to be examined by a "special team that specializes in sexual abuse victims" (SART). Recently, Mother threatened to take A.S. away from paternal grandparents.

Paternal aunt told DCFS that she had used drugs with Father and Mother six years previously and believed Mother currently was using drugs. Paternal aunt also stated that A.S. told her that Richard S. had touched her vagina and made it bleed, and that Mother had wiped off the blood.

A.S. informed law enforcement authorities and a SART member that Richard S. had touched her in her private area and that Mother was aware of it and had done nothing. A.S. lifted her legs into the air and grabbed between her legs to demonstrate where Richard S. touched her. She told authorities that Richard S. put his hand down the front of her pants and touched her “‘really fast’ for about five minutes with an open hand.” When she told Mother that her vagina was hurting, Mother wiped blood from it.

A.S. told DCFS that she wanted to live with paternal grandparents, whom she called “‘Mama’” and “‘Papa,’” because Richard S. “‘is very mean’” to her and hurt her thumb. She also stated, “‘[S]ome one hurt my pekpek’ (Tagalog word for vagina).” Later, A.S. told DCFS that Richard S. had touched her in her private area. She pointed to her crotch to show where Richard S. had touched her, and demonstrated what he had done by putting her entire hand inside her pants. A.S. said that then she got blood on her pekpek, which Mother had wiped off. A.S. said that Richard S. had hurt her pekpek “‘[a] lot of times,’” that he had used his open hand, that Mother “‘was home,’” and that she slept between Mother and Richard S. at Mother’s home. Richard S. told A.S. not to tell anyone. A.S. also stated that she loved paternal grandmother more than Mother, whom she called “‘mommy.’” A safety plan was put in place.

On April 23, 2009, Mother told DCFS that she was “‘not comfortable with the safety plan’” because A.S. is “‘always with’” paternal grandfather. Mother could not identify specific concerns. But an arrangement was made for A.S. to stay temporarily with maternal aunt.

Later it was discovered that Mother and Richard S. resided with maternal aunt. On April 29, 2009, A.S. was ordered detained and placed with paternal grandparents. Mother was ordered to have monitored visitation a minimum of three hours per week; ordered to submit to a drug test that day and random weekly testing thereafter; and referred to drug rehabilitation programs, parent education programs, and individual counseling. Richard S. was ordered to have no contact with A.S.

Mother denied that A.S. had been sexually molested; denied that A.S. had ever told her someone had touched her vagina and made it bleed; and denied ever wiping

blood off A.S.'s vagina. She told DCFS that she believed paternal grandparents had coached A.S. to make sexual molestation allegations "because they never liked me." Mother said Richard S. had denied ever touching A.S. inappropriately. Mother claimed that A.S. visited her every other weekend. Mother, who was born in 1983, stated that she started using methamphetamine when she was 22 years old and stopped when she was 25 years old. She stated she last used marijuana a year previously.

Richard S. denied ever touching A.S. inappropriately and stated he was never left alone with A.S. and had never bathed her.

Father told DCFS that paternal grandparents have been the main providers for A.S.; A.S. has lived with paternal grandparents from the time of her birth; he had used methamphetamine and marijuana with Mother; while Mother was in his car he had been arrested for possession of drugs that did not belong to him; and he did not know if Mother currently abused drugs. Father wanted A.S. to remain with paternal grandparents, where he believed she would be safe. He was "okay" with them adopting her. Father stated he had a low potassium issue that can render him paralyzed.

Mother tested for drugs three times, with negative results, in May and June 2009. A June 1, 2009 forensic evaluation of A.S. revealed a normal anal and genital exam. Weekly visits between Mother and A.S. went well. Mother's drug tests were all negative except for one no show on October 2, 2009, which DCFS counted as a "dirty" test.

Meanwhile, Richard S. failed a polygraph test in connection with a molestation charge against him. Mother told Richard S. that she would relinquish her parental rights to stay in a relationship with him. No charges were filed against Richard S. because of A.S.'s age and the absence of corroborating evidence.

On October 29, 2009, Mother submitted a waiver of rights, which was accepted by the juvenile court. The court sustained the petition as amended.

Subsequently, Mother participated in parenting education classes and drug and life skills programs. Mother's drug tests had been clean from the time she began the programs in June 2009. Mother had monitored weekly visits with A.S., during which

Mother and A.S. interacted appropriately. Mother paid attention to A.S. and brought nutritious food for her. No concerns were reported.

At the contested disposition hearing on December 10, 2009, the juvenile court ordered Mother to attend drug rehabilitation with random testing, parent education, individual counseling to address sexual abuse awareness and protection issues, substance abuse, relapse prevention, and case issues; weekly NA or AA meetings; and random and on-demand drug testing. Visits remained monitored, with a minimum of three hours per week for Mother, with discretion to liberalize. The court ordered no contact between Richard S. and A.S.

In December 2009, DCFS liberalized Mother's visits by allowing them to be unmonitored and permitting A.S. to visit Mother and half siblings overnight at the maternal grandparents' home. On March 17, 2010, when DCFS told Mother that A.S. had reported Richard S. was present at maternal grandparents' home "when she visits," Mother became very upset. Mother denied that Richard S. had molested A.S. She stated that she was not in a relationship with him and that she had not seen him for a year. She believed A.S. had been brainwashed by paternal grandparents to say that Richard S. had sexually molested her. Mother told DCFS that she had a job as an in-home care provider for maternal grandmother and that she was planning to share an apartment with a male roommate, Abin E.

Later, DCFS received a report that on March 13, 2010, Mother and Richard S. had arrived together at a birthday party and left together. A picture of the two together at the party was given to DCFS. When Mother was confronted with the picture and reminded that she had stated she had not had any contact with Richard S. for a year, Mother "froze." Mother then said she ran into him at the party and happened to be seated at the same table when the picture was taken, and that she had forgotten about that event when she had previously spoken to DCFS. Maternal grandmother told DCFS that paternal family was making false allegations against Mother and that Richard S. has never had any contact with A.S. at her home. She said she would seek custody of A.S., "as she has her siblings."

At an interview of A.S. on April 9, 2010, DCFS concluded that A.S. had been coached to deny seeing Richard S. at maternal grandparents' house, because when shown his picture, she seemed very guarded, "froze and started speaking really fast 'I did not see him at my grandma's house only my grandpa and my brother.'" After this interview, DCFS changed Mother's visits from unmonitored to monitored; terminated visits in the maternal grandmother's home; and terminated maternal grandmother as a monitor.

Paternal aunt reported to DCFS in June 2010 that Richard S. was living with Mother. No one answered the door at Mother's apartment when DCFS made unannounced visits.

At a review hearing on July 13, 2010, Mother testified that she had completed individual counseling to address sexual abuse awareness and protection, substance abuse, relapse prevention, and case issues at the Tarzana Treatment Center. Mother testified that she had not had any contact with Richard S., other than at the birthday party they both had attended in March 2010. Mother testified that she knew A.S. was afraid of Richard S., and therefore she would never permit him to be around her. DCFS stated that the Tarzana Treatment Center informed it that sexual abuse awareness counseling was not part of the curriculum in Mother's programs. DCFS stated that paternal aunt reported that she had seen Mother and Richard S. together at a gas station sometime after the birthday party.

The juvenile court found that DCFS had provided reasonable services and that Mother was in partial compliance with the case plan. The court ordered suitable placement and reunification services to continue and set the section 366.21, subdivision (f) hearing on January 11, 2011.

Mother completed a child sexual abuse program in December 2010. On December 14, 2010, DCFS liberalized Mother's visits to unmonitored and allowed overnight visits at the home of maternal grandmother. On December 17, 2010, Mother executed an affidavit stating that she would not allow A.S. to be around Richard S. during her unmonitored visits.

On December 27, 2010, DCFS visited Mother's home unannounced and was told by Abin E. that Mother and Richard S. had moved out of the apartment in August 2010 and he did not know their new address.

On January 11, 2011, Mother provided the court with a notice of a change of address and explained that she left the apartment to live with another boyfriend, who was not Richard S. The court set the matter for a contested hearing on February 22, 2011, and ordered a supplemental report to include the results of a re-interview of Abin E. The court also made an immediate referral for A.S. to be put in individual counseling to address the fears she had of returning to Mother.

Abin E. identified photos of Richard S. and executed an affidavit on December 28, 2010, that stated he had shared the apartment with Mother and Richard S. and that Mother and Richard S. had moved out of the apartment in August 2010. On January 15, 2011, paternal grandparents reported to DCFS that A.S. had told them she was afraid to live with Mother. That same day, A.S. told DCFS that she was not afraid of Mother, but when asked if she was afraid of anyone in Mother's home, she started "shaking and closed her eyes and cowered on the corner." Upon being asked to open her eyes, A.S. said she was afraid of "Richard" S. and started "shaking again and rocking."

At the contested hearing on February 22, 2011, Mother testified that Richard S. had not lived in the apartment she had shared with Abin E. and that he had never been present at any visits with A.S. She testified that the last time she saw Richard S. was at a birthday party "a year and a half ago." Mother testified that even after taking the sexual abuse class, she did not believe Richard S. had sexually abused A.S.

The juvenile court terminated reunification services as to both parents and set the matter for a hearing pursuant to section 366.26 on June 14, 2011. The visitation order remained in full force and effect.

In April 2011, after Mother continued to have contact with Richard S. and was seen "in the community" with him, DCFS changed her visits back to monitored. Mother brought A.S.'s half siblings to her weekly monitored visits with A.S. The visits were appropriate. The adoption home study of the paternal grandparents was approved on

November 3, 2010. Paternal grandparents provided love, compassion, care and all the services A.S. needed, and A.S. was reported to be very attached to them.

On September 6, 2011, the juvenile court conducted a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 and denied Mother's request for new counsel. The matter was then continued to September 26, 2011, with a contested hearing date of October 7, 2011.

On September 20, 2011, Mother filed a petition pursuant to section 388, requesting return of A.S. to Mother, or, alternatively, further reunification services and unmonitored visits. The petition stated that Mother supported A.S. regarding the allegations she had made against Richard and that Mother had not had contact with Richard S. in over two years. The petition stated that the changes she requested would be better for A.S. because A.S. consistently visited Mother and half siblings; A.S. enjoyed those visits; A.S. missed Mother and her family; and A.S. asked Mother "when she can come home." The petition also stated that Mother believed the paternal grandparents intended to take A.S. to the Philippines and away from the maternal family.

On October 7, 2011, the court denied Mother's request for a hearing pursuant to section 388 on the basis that Mother had failed to state new evidence or a change of circumstances.

The juvenile court held the contested section 366.26 hearing on November 3, 2011. DCFS reported that A.S. stated she loved living with paternal grandparents and did not want to live with Mother because she did not want to see Richard S. Mother continued to have regular visits with A.S., who was always happy to see Mother and greeted her with big hugs. Mother was always appropriate during the weekly monitored visits that took place in a variety of places, including the library, movies and restaurants. Mother occasionally brought A.S.'s two half siblings to the visits.

At the hearing, social worker Nkem Anene testified that Mother never attended A.S.'s medical appointments or telephoned A.S., even though Anene had encouraged her at the group decision-making meeting to be involved in A.S.'s life by telephoning A.S. and asking her about school and other issues, and by communicating with paternal

grandparents about A.S.'s appointments and attending medical appointments. At the group decision-making meeting, paternal grandparents gave Mother their cell phone numbers and told her to call them at any time. Mother did not follow up on Anene's suggestions to call paternal grandparents and arrange to attend A.S.'s appointments, although she called them to cancel visits. Anene stated that she had seen Mother and Richard S. together at a grocery store on March 11, 2011. When Anene approached, Mother ran away. Thereafter, DCFS changed Mother's visits to monitored. A.S. told Anene she loved Mother but did not want to live with her because Richard S., who had hurt A.S., lived with Mother.

Social worker Shereda Usher testified that earlier that day A.S. had told Usher that she did not want to live with Mother because she did not want to see Richard S. A.S. said she loved her half siblings and wanted to continue to have a relationship with them.

At the continued hearing on November 9, 2011, Mother described the activities that she and A.S. participated in during her weekly two and one-half hour visits, such as coloring, reading, visiting the library, visiting the mall, baking, playing games, and visiting to the park. Although Mother talked to A.S. about school, she did not help her with homework during the visits. Mother testified that she did not know the name of A.S.'s school and never attended any activities at her school. She stated that she was never told she could participate in A.S.'s school activities, medical appointments, or dental appointments and denied attending a meeting where Anene encouraged her to become more involved in A.S.'s life. She said the paternal grandparents never asked her if she would like to attend A.S.'s dentist or medical appointments. She denied knowing why her visits were changed from unmonitored to monitored. She denied seeing Anene in the grocery store and stated that the last time she had contact with Richard S. was two years previously, and she did not believe that Richard S. sexually abused A.S.

The juvenile court terminated parental rights after finding A.S. was adoptable and that Mother had not proven any statutory exception to the termination of her parental rights. The court observed that Mother must show more than frequent and loving contact or pleasant visits: She must show that she occupies a parental role in A.S.'s life, resulting

in a significant, positive emotional attachment between A.S. and Mother. The court concluded that although A.S. was not afraid of Mother and enjoyed visiting her, Mother's denial of her relationship with Richard S. and his abuse of A.S. did not promote A.S.'s well-being. The court determined that A.S. does not trust Mother to safeguard her and that it would be detrimental to return her to the care and custody of Mother.

Mother appealed from the order terminating parental rights.

DISCUSSION

Mother did not show that the parent-child relationship exception to termination of parental rights applied

Mother contends that the parental relationship exception to termination of parental rights applied because Mother maintained regular visitation and contact with A.S. and A.S. would benefit from continuing the relationship with Mother. We disagree.

Once the juvenile court has determined by clear and convincing evidence "that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).) "Adoption, where possible, is the permanent plan preferred by the Legislature. [Citations.] 'Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child's best interests are other, less permanent plans, such as guardianship or long-term foster care considered.' [Citation.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573–574.) If the court finds a compelling reason for determining that termination would be detrimental to the minor, the court shall not terminate parental rights but shall order legal guardianship or long-term foster care for the minor. (§ 366.26, subd. (c)(4)(A).) Section 366.26, subdivision (c)(1)(B) sets forth six circumstances where the court may forgo adoption and retain parental rights. One of the reasons is if "[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 parental relationship must be more than "frequent and loving contact." (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424.) "[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security

and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. 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 are some of the variables which logically affect a parent/child bond." (*Id.* at pp. 575–576 [substantial evidence supported the juvenile court's order terminating parental rights where relationship was one of friendship, and termination of relationship would not be detrimental to the minor, who "had been a dependent for three-quarters of her young life and needed a stable, permanent home"].)

We review the juvenile court's determination of whether the parent-child exception to termination of parental rights exists under the sufficiency of the evidence standard. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) "When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]" [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

As we explain, we conclude Mother fails to show that the benefit to A.S. from continuing the relationship with Mother outweighed the benefits she would receive from the permanence of being adopted. While Mother had a loving relationship with A.S., she did not occupy a parental role in her life. It is disturbing that Mother consistently denied

that Richard S. could have sexually abused A.S. and continued to maintain contact with him and expose A.S. to him during unmonitored visits, even though A.S. expressed fear of Richard S. and Mother was ordered to not allow contact between Richard S. and A.S. And Mother denied a continuing relationship with Richard S., even though A.S. told DCFS and parental grandparents that Richard S. lived with Mother; Abin E. executed an affidavit stating that Richard S. and Mother shared his apartment until August 2010; Mother was photographed with Richard S. at a birthday party; DCFS encountered Mother and Richard S. together at a grocery store; and paternal aunt reported Richard S. was living with Mother.

Further, at the time parental rights were terminated A.S. had been detained from Mother's care for two and a half years and was thriving with paternal grandparents, who had taken her home from the hospital when she was born and with whom she had lived her entire life. The evidence showed that grandparents and A.S. were closely bonded and paternal grandparents had demonstrated that they were able to care for A.S. and to meet all of her medical, developmental, and emotional needs. A.S. consistently stated that she loved parental grandmother more than Mother. Throughout the dependency proceedings, she told DCFS that she wanted to live with parental grandparents because she was afraid of Richard S., who lived with Mother and had sexually abused her.

Nevertheless, on appeal Mother minimizes the effect of her denial of Richard S.'s sexual abuse of A.S., preferring to focus on the pleasant visits she had with A.S. Mother urges that an exception to the termination of parental rights exists because her "inability to reunify was based on her reluctance to accept Richard's sexual abuse of [A.S.]," not because she had failed to complete her case plan or because she had not demonstrated a parental relationship with A.S. Mother argues that she had visited A.S. regularly from the time she was detained, her visits were appropriate, and she had achieved unmonitored visitation for a period in excess of six months. She argues that she assumed a parental role in A.S.'s life by providing her with games, crafts, food; taking A.S. on outings; and allowing A.S. to visit her half siblings. She also argues that she would have been

involved in medical appointments and school activities had she known she could have been, citing *In re Brandon C.* (1999) 71 Cal.App.4th 1530.

In re Brandon C. does not assist Mother. In that case, the appellate court concluded that the juvenile court's order of legal guardianship was supported by substantial evidence where the mother had completed her drug rehabilitation program, her random drug tests had been negative, her housing and employment had been stable for many months, the mother visited the boys consistently to the extent permitted by the juvenile court's orders, and the juvenile court "obviously credited the testimony from both mother and grandmother that there was a close bond between mother and the boys, and that a continuation of contact would be beneficial to the children." (*In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1537.) There, DCFS had the burden to show that substantial evidence did not support the juvenile court's ruling. Here, on the other hand, the burden is on Mother to show that an exception to termination of parental rights applies. She fails to do so. Mother cannot show more than frequent and loving contact with A.S. Even though Mother was encouraged to telephone A.S. and arrange to attend appointments and school activities with her, Mother did not know the name of A.S.'s school, did not arrange to attend A.S.'s school activities or medical appointments, did not call her, and did not provide financial support for her. A.S. consistently indicated a preference for paternal grandparents. And as much as Mother would like to avoid discussion of her relationship with Richard S., Mother continued to deny that Richard S. had sexually abused A.S., lied that she had stopped seeing him, and exposed A.S. to Richard S. during unmonitored visits in contravention of court order. Mother simply did not act in a parental role toward A.S.

We conclude that Mother failed to show that termination of parental rights would result in a detriment that would outweigh A.S.'s need for a permanent, stable home.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.
NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.