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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.V.,

Defendant and Appellant.

B241623

(Los Angeles County
Super. Ct. No. CK79654)

APPEAL from an order of the Superior Court of Los Angeles County,
Sherri Sobel, Juvenile Court Referee.* Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant, L.V.

Office of the County Counsel, John F. Krattli, County Counsel,
James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Deputy County
Counsel, for Plaintiff and Respondent.

* Pursuant to Cal. Const., art. VI, § 21

Appellant mother seeks to reverse the trial court's order terminating her parental rights with respect to her son. She contends that the trial court's finding that the "beneficial parent-child relationship" exception did not apply was not supported by the evidence. Thus, she argues, the order based on such finding was erroneous. We disagree and hold that the mother failed to produce evidence sufficient to show that the child would benefit from continuing a relationship with her or that termination of her parental rights would be detrimental to her son.

FACTUAL AND PROCEDURAL BACKGROUND¹

L.V. (mother) is the mother of Michael A. (Michael)² who was born in October of 2007. During the pendency of the proceedings involving Michael, mother gave birth to Jayden S. (Jayden)³ in September of 2010.

The Department of Children and Family Services (DCFS) received a referral in October of 2009 alleging that Michael was being neglected and that mother was homeless and abusing methamphetamine. The caller informed DCFS that mother had left Michael with his maternal grandmother for the past nine months (since January of 2009) with no provision for his care. Upon investigating, DCFS found maternal

¹ The factual and procedural background was taken from the record which consists of a three-volume Clerk's Transcript and a three-volume Reporter's Transcript.

² Michael's father is Mario A. Mario is not a party to this appeal and we omit any factual details regarding his involvement in the case to the extent they are not relevant to mother's appeal.

³ Jayden's father is Domingo S. Domingo is not a party to this appeal and we omit any factual details regarding his involvement in the case to the extent they are not relevant to mother's appeal.

grandmother's home was infested with cockroaches, overcrowded due to maternal grandmother's three adult sons (Eddy, A., and Carlos) living with her, and packed full of objects that made walking through the place difficult. The maternal grandmother stated that mother occasionally visited Michael but that she was essentially homeless and spent her time with gang members and drug abusers. Maternal grandmother reported that mother had gotten into a physical altercation with mother's brother Eddy that same day. Maternal grandmother also stated that mother used any money she (mother) received from welfare to support her (mother's) methamphetamine addiction. Maternal grandmother's sons (mother's brothers) confirmed this. DCFS observations of Michael included that he was two years old but not yet potty trained.

DCFS interviewed mother and found that she had a history of being a domestic violence victim and of marijuana and methamphetamine abuse. Mother admitted to socializing with gang members and did not necessarily believe this was a bad thing. Mother also had a criminal history including battery, taking a vehicle without the owner's consent, and burglary.

The petition was filed on November 4, 2009, when Michael was only two years old. It alleged, as amended, that Michael was at risk of suffering serious physical harm or illness based on mother's substance abuse, her leaving him without a plan for his ongoing care, her violent altercation with Eddy, and Mario's failure to provide the necessities of life. The trial court found a prima facie case for detention was made and ordered Michael detained. It also ordered monitored visits for mother. On November 17, 2009, Michael's foster mother reported that mother did not attend her scheduled

monitored visit. Mother confirmed the visit by phone but then failed to show up or to call and cancel.

On December 4, 2009, the trial court sustained the petition finding that Michael was subject to the court's jurisdiction under section 300, subdivision (b). The court again ordered monitored visits for mother at least twice per week among other things. Michael's foster mother informed DCFS in February of 2010 that maternal grandmother was the only family member who consistently visited Michael and that mother's visits were sporadic. The foster mother also reported that mother was angry and jealous towards maternal grandmother when Michael sought attention from her rather than from mother. Mother was also sporadic in her attendance at meetings with the DCFS social worker. Mother was arrested on April 17, 2010, convicted of a felony drug charge and incarcerated. After her release, mother had a monitored visit with Michael on May 21, 2010. Although she hugged and kissed him, mother focused on requesting that DCFS return Michael to his former foster mother. During this visit, mother informed DCFS that she was pregnant with Jayden.

At the six-month review hearing on June 18, 2010, mother testified that she visited Michael every Friday. DCFS sought a termination of her reunification services based on her failure to fully comply with the case plan. The trial court found mother to be in partial compliance, however, and ordered six additional months of reunification services. Michael was placed with his prospective adoptive parents on June 25, 2010. When Jayden was born a few months later, he was also placed in the same home. Another petition was filed on his behalf. Jayden is not the subject of this appeal as

mother's parental rights with respect to him had not yet been terminated when this appeal was filed.

Leading up to the 12-month review hearing held on December 1, 2010, DCFS reported that Michael was bonding with his adoptive family, calling them "mommy" and "daddy." The DCFS social worker reported that mother was appropriate with both children during her visits on November 2 and 4, 2010. The court found that Michael's return to mother would still be detrimental at this point but found that mother had regular and consistent contact with Michael and had made significant progress. It ordered additional reunification services for her as a result.

DCFS reported that during the period that followed, mother continued to visit Michael weekly for five to six hours. She was employed, sober and maintained residence at a sober living facility. However, at the section 366.22 hearing held on June 30, 2011 and continued to July 25, 2011, the trial court determined that, despite mother's compliance with her case plan, Michael would not yet be safe in her care full-time. It then terminated her reunification services and set a section 366.26 hearing.

Mother filed a section 388 petition on November 21, 2011 seeking to modify the order terminating her reunification services. DCFS reported that Michael was very close with his foster family and that mother continued her weekly visits with him. DCFS also reported that mother was doing very well during her visits and her visits were liberalized from monitored to unmonitored. However, the visits were returned to monitored when DCFS discovered that mother was allowing contact between Eddy and Michael despite their history of violent altercations. DCFS also reported that mother

had no childcare plans for Michael in the event she was able to reunify with him.

Mother was no longer residing at the sober living facility and was now living with her brother, Wilfredo, where she slept on his couch. The court denied mother's section 388 petition on January 23, 2012. Mother has not appealed that order.

The contested section 366.26 hearing was held on May 14, 2012. Mother testified that Michael was very affectionate with her and was happy to see her when she visited. The social worker testified that mother failed to visit Michael during the first six months of the case then was arrested in April of 2010. She also testified that Michael referred to mother as "visiting mom." The social worker also testified that mother failed to understand the reasons Michael came under the jurisdiction of the court, struggled with accepting responsibility for her actions, and did not respond appropriately regarding the risk to Michael resulting from her conduct. She also stated that mother did not have a childcare plan in place. The social worker also testified that mother parented Michael, who was nearly five years old, for only his first year of life. The trial court found Michael to be adoptable and terminated mother's parental rights with respect to him. Mother filed a notice of appeal on May 22, 2012.

CONTENTIONS

Mother contends that the trial court erred by (1) refusing to find that the "beneficial parent-child relationship exception," found in section 366.26, subdivision (c)(1)(B)(i), applies because she maintained regular visitation and contact with Michael and he would benefit from continuing the relationship; and (2) terminating her parental rights as a result of its failure to apply such exception.

DISCUSSION

1. The Standard of Review

We review a trial court's findings that no exceptional circumstances exist for sufficiency of the evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment." (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.) In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment, if possible. When a judgment is attacked as being unsupported, our power begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. And when two or more inferences can be reasonably deduced from the facts, we are without power to substitute our deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

2. The Trial Court Did Not Err by Concluding That the Exception in Section 366.26, Subdivision (c)(1)(B)(i) Did Not Apply

Mother contends that the trial court erred by refusing to find that the beneficial parent-child relationship exception found in section 366.26, subdivision (c)(1)(B)(i) applied. We disagree.

Section 366.26 provides that if a trial court finds, “by a clear and convincing standard, that it is likely [a child subject to dependency jurisdiction] will be adopted, the court *shall* terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1); italics added.) However, parental rights need not be terminated if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to . . . [¶] . . . [the parent’s having] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i)) “After [a] parent has failed to reunify [with his or her child] and the court has found the child likely to be adopted, it is the parent’s burden to show exceptional circumstances exist. [Citation.]” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.)

The beneficial parent-child relationship exception requires two things to be shown. As a threshold matter, the parent must show that he or she maintained regular visitation and contact with the child. At the 12-month review hearing held on December 1, 2010, the trial court found that mother had consistently and regularly contacted and visited with Michael. However, the trial court’s finding that the exception did not apply was not in error as mother failed to show that she satisfied the second requirement.

To satisfy the second requirement, “the parent has the burden of showing either that (1) continuation of the parent-child relationship will promote 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] or (2) termination of the parental

relationship would be detrimental to the child. . . . [Citation.] [¶] To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show 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.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

“The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs. [Citation.]” (*In re Angel B., supra*, 97 Cal.App.4th at p. 467.)

The circumstances in this appeal are similar to those in *In re Angel B.*, which also involved a mother seeking to reverse the termination of her parental rights under the beneficial parent-child relationship exception.⁴ Like the child in *In re Angel B.*, Michael

⁴ The court in *In re Angel B.* addressed the beneficial parent-child relationship exception as it was found in section 366.26, subdivision (c)(1)(A), before the 2007 amendments which renumbered the exception as section 366.26,

is so young that it is unlikely he understands the concept of biological parentage and he referred to mother only as “visiting mommy.” Mother left Michael with maternal grandmother after caring for him for only one year and he was detained by DCFS when he was two. From that time until now, Michael spent nearly a year in foster care until he was placed with the family who now wishes to adopt him and who have cared for him over the last two years. Michael has spent the longest period of his short life with his adoptive family versus relatively little time with mother through mostly monitored visitation, which began in May of 2010 after her release from prison. Although the record indicates that mother’s visits with Michael were pleasant and mother fed, hugged and kissed him, there is no indication that mother was prepared to meet his needs as a parent. The record indicates that she struggled in understanding the reasons behind the court’s jurisdiction, she had no childcare plan in place and had yet to obtain stable housing. Although mother may have shown that Michael derives some benefit from their relationship, she has not shown, that continuation of this parent-child relationship would promote Michael’s well-being to such a degree as to outweigh the well-being and stability he needs and would gain in a permanent home with his adoptive parents.

Additionally, there is no evidence in the record showing that termination of mother’s parental relationship with Michael would be detrimental to the child. Mother argued in her brief that Michael would be harmed if he was deprived of his “substantial emotional attachment” to mother. However, she provided no evidence supporting this

subdivision (c)(1)(B)(i). The language remains the same and the analysis found in *In re Angel B.* continues to apply.

statement. Based on the foregoing, the record supports the trial court's finding that the exception to the termination of parental rights found in section 366.26, subdivision (c)(1)(B)(i), did not apply under these circumstances.

3. *The Trial Court Did Not Err in Terminating Mother's Parental Rights*

As explained above, under section 366.26, a court is required to terminate parental rights if it finds, by clear and convincing evidence, that a child is likely to be adopted unless an exception applies. Here, such finding was made and the beneficial parent-child relationship exception did not apply. Therefore, the trial court did not err in terminating mother's parental rights with respect to Michael.

DISPOSITION

The order is affirmed.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.