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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re URIELLE A., et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

ELIZABETH N.,

Defendant and Appellant.

B296744

(Los Angeles County
Super. Ct. No. DK19551A-D)

APPEAL from orders of the Superior Court of Los Angeles
County. Danette J. Gomez, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendants and Appellants.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel for Plaintiff and Respondent.

Appellant Elizabeth N. (mother) appeals from the juvenile court's December 11, 2018 orders terminating her parental rights over Urielle (born 2013), Raziel (born 2015), True (born 2016), and Justice (born 2017), and denying a request by the children's maternal grandmother (grandmother) to have the children placed with her pursuant to Welfare and Institutions Code section 361.3.¹ We affirm the juvenile court's orders.

BACKGROUND

Prior appeal

The children were removed from their parents' custody in June 2017 after the juvenile court found the children were at risk of harm and sustained allegations that True had been hospitalized for a skull fracture and multiple rib fractures that would not ordinarily occur except as a result of unreasonable and neglectful acts by the parents. In February 2018, the juvenile court found that returning the children to parental custody would be detrimental to the children, terminated reunification services, and set a section 366.26 hearing.

This court affirmed the juvenile court's orders establishing dependency jurisdiction over the children and removing them from parental custody. (*In re Urielle A.* (May 1, 2019, B293172, mod. May 15, 2019) [nonpub. opn.].) We also affirmed the juvenile court's October 4, 2018 order denying mother's section 388 petition seeking to reinstate family reunification services and to vacate the permanency planning hearing. (*Ibid.*)

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

Facts relevant to this appeal

Mother's statements about grandmother

Mother told the social worker at the outset of the case that she shared a strong bond with grandmother. She initially denied any childhood abuse or neglect.

In March 2017, mother told the dependency investigator that conflicts with grandmother arose after she and the children's father married. Grandmother had father arrested on one occasion and subsequently threatened to kill him. Mother and father sought refuge with father's relatives in Wisconsin.

During an Evidence Code section 730 evaluation in April 2017, mother told the court appointed psychologist that grandmother "whooped" her many times throughout her childhood with either a belt or extension cord, often leaving marks. Mother said she believed the physical punishments were unnecessary and were merely a way for grandmother to "take out her frustrations." Mother claimed the abuse she endured as a child caused her to have "very low self-esteem."

In September 2017, mother told the Department's social worker that she wished to return to Chicago where she had family support to help care for the children. In December 2017 mother reported that she and grandmother were estranged.

In June 2018, mother recanted her previous allegations that she had suffered childhood abuse by grandmother. Mother explained that father had convinced her that she had been abused; however, mother now understood that grandmother's physical discipline of her was a "generational thing." Mother stated that because she loved grandmother she did not consider the past physical discipline to be abuse.

Grandmother's requests for placement

Grandmother filed a section 388 petition on August 23, 2017 asking the juvenile court to order a home study pursuant to the Interstate Compact on the Placement of Children (ICPC) and upon completion of the home study, to place the children with her in Illinois.² In its response to grandmother's petition, the Department reported on a September 2017 telephone interview with grandmother, who told the social worker that she lived with her partner in a one-bedroom condominium in Chicago but was looking for a larger home to accommodate the children. Grandmother said she believed True's injuries resulted from parental neglect, and not physical abuse. Grandmother denied mother's claims that she had been physically abused as a child. Grandmother denied using extension cords to discipline mother and said she had used a belt to discipline mother "very infrequently."

The Department recommended that the juvenile court deny the section 388 petition, noting that grandmother did not have a home that could accommodate the children and that she had not provided the information necessary to conduct a background check on her partner, who also lived in the home. The Department expressed concerns about grandmother's lack of understanding concerning the nature and extent of True's injuries, and her admission that she had used inappropriate physical discipline while raising mother. Finally, the Department noted that placing the children with grandmother in

² Grandmother also filed JV-285 Relative Information forms on November 7, 2017, November 29, 2017, and January 24, 2018 requesting placement of the children with her.

Illinois would create a significant barrier to reunification and visitation for the parents, who were in California.

Following a September 18, 2017 hearing, the juvenile court denied grandmother's section 388 petition.

On February 15, 2018, grandmother filed a section 388 petition seeking an extended visit with the children in Illinois. In its response to the petition, the Department reported on a March 2018 telephone interview with grandmother, who said she was requesting an extended visit with the children to spend more time with them and to introduce the children to family members who lived in Illinois. Grandmother explained that because her home could not accommodate the children, they would stay in one or more of her sister's residences during the visit. The Department recommended denying grandmother's petition, noting that the children were receiving therapy and developmental services for their various special needs and that an extended visit in Illinois would not be in their best interests. Following a March 26, 2018 hearing, the juvenile court denied grandmother's section 388 petition without prejudice, on the ground that grandmother did not have a home that could be assessed pursuant to the ICPC.

On June 14, 2018, grandmother filed another section 388 petition asking the juvenile court to initiate the ICPC process to have the children placed with her in Illinois. In her petition, grandmother stated that she had moved into a new home that could accommodate all the children. The Department confirmed that grandmother had purchased a three-bedroom home with a backyard and recommended that the juvenile court grant her request for an ICPC assessment. On June 21, 2018, the juvenile court granted grandmother's unopposed section 388 petition and

ordered the Department to initiate an ICPC home study for grandmother.

On August 13, 2018, grandmother submitted a JV-285 Relative Information form informing the court that she had moved into her new home and was still awaiting the ICPC assessment.

On October 23, 2018, grandmother filed supplemental information that included a “family stabilization plan” to provide the children with services and programs to meet their various needs. Also included were letters from relatives and friends supporting grandmother’s request for custody of the children.

In a last-minute information for the court filed on October 23, 2018, the Department reported that it had unsuccessfully attempted to contact an ICPC worker in Illinois for an update on grandmother’s status. The Department further reported that the children were bonded with their respective caregivers and recommended that the court grant an application for de facto parent status by the caregivers for Raziel, True, and Justice.

On October 23, 2018, the juvenile court ordered the Department to prepare a supplemental section 366.26 report with an update on grandmother’s ICPC assessment.

On November 5, 2018, grandmother filed JV-285 Relative Information forms requesting placement of the children with her. The requests noted that Urielle was beginning to notice that she was the only “brown” person in her caregivers’ home. On November 16, 2018, grandmother filed section 388 petitions seeking transfer of the children to her custody.

In a last-minute information for the court filed on November 29, 2018, the Department reported that it had received an ICPC home study recommending grandmother and her

partner, Ms. S, as a placement resource for the children. The Department noted, however, that the home study revealed that Ms. S., and not grandmother, would be the children's primary caregiver, because grandmother was now employed. The Department expressed concerns about this development because Ms. S. had not met the children or participated in any visits with them. The Department further noted that Ms. S. was on leave from her job because of a hand injury, which could interfere with her ability to care for four young children with special needs.

The Department also expressed concern about how the stress of caring for four young children might affect grandmother's emotional health. Grandmother had been in and out of therapy since 2012, had psychiatric hospitalizations in 2014 and 2016, and had left her previous employment for emotional health reasons. The Department reiterated its concern about grandmother's denials that the children were victims of abuse and mother's recently recanted claims of childhood abuse by grandmother.

Permanency planning and review proceedings

In June 2018, the Department reported that father had been arrested in January for domestic violence against mother. Mother was uncooperative with law enforcement and declined to press charges; however, she subsequently terminated her relationship with father. The Department further reported that the children were thriving in the care of their respective caregivers and recommended adoption as the permanent plan.

At an August 23, 2018 hearing, the juvenile court identified adoption as the permanent placement goal for the children.

In November 2018, the Department reported that Urielle was thriving in her caregivers' home, was receiving speech

therapy at school, and was participating in individual therapy. Urielle's caregivers had an approved adoptive home study, were willing to adopt Urielle, and said they would ensure Urielle remained connected with her siblings.

Raziel, True, and Justice were also thriving under the care of their foster parents, who were committed to adopting them. True was receiving services for developmental delays, Raziel was receiving speech therapy, and Justice required daily inhaler treatment for asthma. Raziel, True, and Justice were all participating in play therapy.

Urielle and her siblings visited with each other on Sundays. Mother had monitored visits with the children every other week. She was becoming more engaged during visits and would dance and play with the children and read to them. Mother also had regular contact with Urielle through Face Time.

The Department noted that mother had participated sporadically in services throughout the case and had not made progress in addressing case issues. Mother attributed her lack of compliance and motivation to her relationship with the children's father. She said that since terminating that relationship, she had actively participated in services to address domestic violence. Mother further stated that she was actively working on repairing her relationship with grandmother.

In December 2018, the Department reported that Raziel, True, and Justice were adoptable and were likely to be adopted by their current caregivers. The Department also reported that the children's therapist had stated, based on her observations during therapy and consultations with teachers and caregivers, that the children exhibited aggression and clinginess during the weeks that they visited with mother. Urielle, Raziel, and True

had not mentioned grandmother during their therapy sessions; however, Urielle had asked, referring to mother, father, and her caregivers, “Can’t we all live together?”

Hearing on grandmother’s request for placement

At a December 6, 2018 hearing, counsel for the children asked the juvenile court to place the children with grandmother pursuant to section 361.3. Mother’s counsel joined in that request, and the Department opposed it. The juvenile court took the matter under submission and continued the hearing to the following day.

At the continued hearing, grandmother made a statement to the juvenile court in which she denied abusing or neglecting mother. Grandmother stated that she had done everything she could to have the children placed with her, including purchasing a larger home. She said mother was her only child, the children were her only grandchildren, and that losing the children would be devastating to her.

Raziel’s, True’s, and Justice’s caregiver, Luis R., then testified under oath. When the juvenile court asked him about the caregivers’ position on allowing grandmother to have a relationship with the children, Luis R. stated that he and his partner would be happy to allow mother and grandmother as much contact as the children wanted. When asked about sibling visits, Luis R. responded that Raziel, True, and Justice visited with Urielle at least once a week and that the two foster families tried to arrange sibling visits as often as possible.

Urielle’s caregiver confirmed Luis R.’s statements concerning sibling visits. Urielle’s caregiver further stated that she would “[m]ost definitely” allow mother and grandmother to remain in contact with Urielle if the child remained in her care.

Mother then testified that she had been under father's control when she claimed to have been abused by grandmother, and that she now regretted making those claims. Mother stated that if the children were placed with grandmother, she would abide by all court orders and would not jeopardize that placement.

The juvenile court took the matter under submission and continued the hearing to the following week.

At the continued hearing on December 11, 2018, the juvenile court addressed grandmother's request for placement by reviewing in detail the chronology of the case and grandmother's involvement. The court stated that it had denied grandmother's early requests to place the children with her in Illinois because doing so would have impeded parental reunification and visitation.

The juvenile court then applied the factors set forth in section 361.3, subdivision (a), to evaluate grandmother's request for placement. The court noted that the children had multiple special needs (Urielle had speech and language delays; Raziel had speech delays, vision problems, and hearing loss from chronic ear infections; True suffered from eczema and mild developmental delays; and Justice had gross motor delays and wore a cranial helmet to reshape his head), and that the foster parents had cared for the children since 2017 and had consistently met those needs.

The juvenile court observed that the children's respective caregivers had made efforts throughout the case to facilitate frequent visits between Urielle and her siblings, and that the caregivers had testified under oath that they were willing to continue sibling visits and to allow mother and grandmother to

have contact with the children. The court noted that the children's therapist had stated that the children exhibited behavioral issues such as aggression and clinginess during the weeks that they visited with mother.

The juvenile court expressed concerns about mother's allegations that she had been abused as a child by grandmother. The court was troubled by the fact that grandmother had minimized True's injuries, characterizing them as accidental rather than the result of abuse. The juvenile court also expressed concerns as to whether grandmother's mental and emotional health issues might impede her ability to care for the children.

The juvenile court then noted that grandmother had not met the children until their removal from parental custody in October 2016, and that while she visited with the children throughout the case, she did not visit for a six-month period from February 2018 to June 2018. Finally, the court expressed concern that grandmother's partner, who had never met the children, would be the children's primary caregiver.

After weighing these factors, the juvenile court found that the children's special physical, psychological, medical, and emotional needs would be best served in their current placements. The court denied grandmother's request for placement and ordered that the children remain with their respective caregivers.

The juvenile court granted a request by the caregivers for Raziel, True, and Justice for de facto parent status and then proceeded with the section 366.26 hearing.

Section 366.26 hearing

The juvenile court found by clear and convincing evidence that the children were adoptable and that returning them to

parental custody would be detrimental to the children. The court terminated parental rights, ordered the children freed for adoption, and designated the children’s respective caregivers as the prospective adoptive parents.

This appeal followed.

DISCUSSION

I. Relative placement preference

A. *Applicable law and standard of review*

Section 361.3, subdivision (a) provides that “[i]n any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” The preference accorded by section 361.3 is not “an evidentiary presumption that placement with a relative is in the child’s best interest”; rather, the statute requires the juvenile court to determine whether such a placement is appropriate, applying the factors set forth in subdivision (a)³ of the statute. (*In re R.T.* (2015) 232 Cal.App.4th

³ The factors to be considered under section 361.3, subdivision (a) are as follows: “(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and child, if appropriate. [¶] (3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement. [¶] (4) Placement of siblings and half siblings in the same home, unless that placement is found to be contrary to the safety and well-being of any of the siblings, as provided in Section 16002. [¶] (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the

1284, 1295 (*R.T.*.) “First and foremost” among those factors is “[t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs.’ [Citations.]” (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 592 (*Maria Q.*.)

We review the juvenile court’s determination regarding placement of the children under section 361.3 for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. [¶] (6) The nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful. [¶] (7) The ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents. [¶] (E) Facilitate court-ordered reunification efforts with the parents. [¶] (F) Facilitate visitation with the child’s other relatives. [¶] (G) Facilitate implementation of all elements of the case plan. [¶] (H)(i) Provide legal permanence for the child if reunification fails. [¶] (ii) However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative. [¶] (I) Arrange for appropriate and safe child care, as necessary. [¶] (8)(A) The safety of the relative’s home. . . .”

B. Applicability of section 361.3

The mandate imposed by section 361.3 to assess and consider a relative's request for placement "applies throughout a child's dependency proceedings but is governed by different standards depending on whether the issue arises during the reunification period, in the interim between termination of reunification services and a section 366.26 hearing, or after a permanency plan has been selected for a child." (*Maria Q.*, *supra*, 28 Cal.App.5th at p. 591.) "At the outset of the case and during the reunification period, the agency and juvenile court are required to give 'preferential consideration' to a relative's request for placement, which means 'the relative seeking placement shall be the first placement to be considered and investigated.' [Citations.]" (*Id.* at p. 591, quoting § 361.3, subd. (c)(1).) Appellate courts "have consistently held that the relative placement preference applies at least through the family reunification period. [Citations.] During the reunification period, the preference applies regardless of whether a new placement is required or is otherwise being considered by the dependency court. [Citation.]" (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 795.)

Appellate courts are divided, however, as to whether the section 361.3 relative placement preference applies once reunification services are terminated but before a permanent plan is selected. (Compare *In re Isabella G.* (2016) 246 Cal.App.4th 708, 723 [court must apply relative preference placement under section 361.3 after termination of reunification services, but before selection of a permanent plan] with *In re K.L.* (2016) 248 Cal.App.4th 52, 66 and *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854-855 [section 361.3 relative placement

preference does not apply when agency is seeking an adoptive placement for a dependent child for whom the court has identified adoption as the permanent placement goal].) At least one appellate court has concluded that “[n]otwithstanding the inapplicability of the relative placement preference at a permanency plan hearing, the juvenile court, in assessing a relative’s request to provide permanent care for a child, must consider the factors listed in section 361.3, subdivision (a)(1)-(8) at any permanency plan hearing.” (*Maria Q.*, *supra*, 28 Cal.App.5th at p. 596.)

In this case, grandmother first requested placement in August 2017, before reunification services were terminated. She reiterated that request several times before the August 23, 2018 hearing at which the juvenile court identified adoption as the permanent placement goal for the children. For various reasons, an ICPC assessment of grandmother as a placement option for the children was not completed until shortly before the December 2018 section 366.26 selection and implementation hearing. Given these circumstances, the juvenile court did not err by assessing and considering grandmother’s request under the criteria set forth in section 361.3, subdivision (a). (See *In re Maria Q.*, *supra*, 28 Cal.App.5th at p. 596.)

The record discloses no error by the juvenile court in its application of section 361.3. The court applied each of the factors set forth in section 361.3, subdivision (a) and balanced them against the children’s placements with foster parents who were bonded with the children, who consistently met the children’s special physical, medical, and emotional needs, and who were willing to adopt them. The juvenile court did not abuse its discretion by denying grandmother’s request for placement.

II. Termination of parental rights

A. General legal principles and standard of review

Section 366.26, subdivision (c)(1) provides for the termination of parental rights if family reunification services have been terminated and the juvenile court finds by clear and convincing evidence that the child is likely to be adopted. Once reunification services have been terminated, “[f]amily preservation ceases to be of overriding concern . . . the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citation.]’ [Citation.]” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) “Adoption, where possible, is the permanent plan preferred by the Legislature. [Citations.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)).

Although the statutory preference is in favor of adoption, section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

The juvenile court’s ruling on whether an exception applies to terminating parental rights pursuant to section 366.26 is reviewed under the substantial evidence standard. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425.) Under this standard, an appellate court must affirm the juvenile court’s order if there is evidence that is reasonable, credible, and of solid value to support the order (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080), and the evidence must be considered “in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support

of the order. [Citations.]” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Mother contends the parental and sibling exceptions to terminating parental rights set forth in section 366.26, subdivisions (c)(1)(B)(i) and (v), respectively, apply.

B. Parental exception

The exception to terminating parental rights set forth in section 366.26(c)(1)(B)(i) provides as follows: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Mother bears the burden of proving that this exception applies. “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

For the exception to apply, the parent must have maintained regular visitation with the child, and the juvenile court must determine that the parent/child relationship “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 other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging a new family would confer.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent must establish more than merely some benefit to the child by continuing the parent/child relationship. That relationship must be “a substantial, positive emotional attachment such that the child would be greatly harmed” if the relationship were severed.

(*Ibid.*) To overcome the benefits associated with a stable, adoptive family, the parent seeking to continue a relationship with the child must prove that severing the relationship will cause not merely some harm, but *great harm* to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Factors that the juvenile court should consider when determining the applicability of the exception include “[t]he 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.” (*Autumn H.*, at p. 576.)

Substantial evidence supports the juvenile court’s determination that the parental exception to terminating parental rights did not apply. Although mother maintained regular and consistent visitation with the children, she never progressed beyond monitored visits, and often required assistance from Department staff to contain, manage, and redirect the children. The children’s therapist expressed concerns about visits and asked that they continue to be monitored at the Department’s offices. The therapist also observed that the children regressed after visits, exhibiting aggressive and clingy behavior during the weeks that they had visitation.

At the time of the section 366.26 hearing, the children had been living with their respective caregivers for more than two years and were thriving under their care. They were bonded with their caregivers, who had consistently met the children’s various special needs and were willing to adopt and care for them. Substantial evidence supports the juvenile court’s determination that the children’s need for stability outweighed any benefit they

would derive from continuing a parent/child relationship with mother.

C. Sibling exception

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to terminating parental rights when “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

The record does not support mother’s argument that Urielle’s adoption would jeopardize her relationship with Raziel, True, and Justice. Urielle and her siblings visited regularly with each other (at least once a week throughout the case), and both sets of prospective adoptive parents said they would continue to ensure regular contact between Urielle and her siblings.

Substantial evidence supports the juvenile court’s determination that the sibling exception to terminating parental rights did not apply.

DISPOSITION

The juvenile court's orders denying grandmother's request for placement and terminating mother's parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT