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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B295911  
(Super. Ct. No. J071720)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

S.G. (Mother) appeals orders by the juvenile court denying her modification petition, declaring that her minor child A.A. is adoptable, and terminating her parental rights. (Welf. & Inst. Code, §§ 388, 366.26, subd. (c)(1).)<sup>1</sup> Among other things, we

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

conclude that the court properly determined that the beneficial parental relationship exception to adoption does not apply. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

### *FACTUAL AND PROCEDURAL HISTORY*

Mother and M.A. (Father) are parents of infant A.A. At A.A.'s birth, the infant and Mother had positive toxicology screens for methamphetamine. Mother received infrequent prenatal care and admitted that she used methamphetamine throughout her pregnancy. Father also abused methamphetamine and alcohol.

On January 23, 2018, the Ventura County Human Services Agency (HSA) filed a juvenile dependency petition alleging that Mother and Father failed to protect A.A. (§ 300, subd. (b).) The petition alleged that Mother admitted abusing methamphetamine throughout her pregnancy and that she suffers from untreated mental health problems. In addition, Father abused methamphetamine and knew of Mother's substance abuse but did not protect the unborn infant.

The juvenile court ordered that A.A. be detained and placed his custody and care with HSA. The court also ordered Mother and Father to commence specified family reunification services. On January 31, 2018, the HSA social worker met with Mother, reviewed the "court timeline process," and "reminded [Mother] to begin services as quickly as possible to work towards reunification."

On February 21, 2018, the juvenile court sustained the allegations of the dependency petition, and ordered HSA to provide family reunification services to Mother and Father. The reunification services plan included individual counseling, parent

education, substance abuse treatment, and random substance abuse testing, among other goals.

On September 5, 2018, the juvenile court held a contested six-month review hearing. The HSA report prepared for the hearing stated that Mother was dismissed from two drug treatment programs due to her failure to participate. She also missed 10 random drug testing appointments and tested positive for alcohol and methamphetamine on two tests. Father similarly failed to participate in services and missed most random drug testing appointments. He admitted to the social worker that he continued to use methamphetamine.

At the conclusion of the six-month review hearing, the juvenile court terminated family reunification services to Mother and Father. The court also set a permanent plan hearing for A.A.

Approximately one month prior to the scheduled permanent plan hearing, Mother and Father filed modification petitions alleging that their circumstances had changed and that reinstatement of reunification services and liberalized visitation would serve A.A.'s best interests. Mother stated that she enrolled in and completed drug treatment, successfully drug tested, obtained employment, and participated in parent education and individual counseling. She stated that she "has remained clean and sober since [the six-month review hearing]."

*Combined Permanent Plan and Modification Petition Hearing*

On February 21, 2019, HSA filed a permanent plan report pursuant to section 366.26. HSA recommended that A.A. be referred for adoption and that Mother's and Father's parental rights be terminated. HSA stated that A.A. had been living with the pre-adoptive parents (paternal aunt and her husband) since

he was approximately two months old and that he had never lived with Mother or Father.

On February 21, 2019, the juvenile court held a combined permanent plan and modification petition hearing. The paternal aunt, Mother, and the HSA social worker testified and the court received evidence of HSA reports and memoranda.

The paternal aunt opined that additional reunification services would be unfair to A.A. and would confuse him regarding his family. She also stated that Mother visited A.A. consistently and had not missed any visits during the prior six months.

Mother testified that without HSA support, she attended and completed drug and alcohol treatment and had negative drug test results. She stated that she has been drug-free for six months. Mother testified that she was participating in individual counseling, parent education classes, and 12-step meetings. She had lost her job over scheduling conflicts, but was seeking employment. Mother explained that she suffered depression due to her brother's violent death and thus was unable to participate in services earlier.

Mother had six hours of supervised visitation with A.A. each week at the home of his paternal aunt. Mother had loving and nurturing visits with A.A. but he separated easily when she left.

Mother testified that she played with and read to A.A. during visits. She also attended his speech and physical therapy visits as well as his medical appointments.

Following the presentation of evidence and the parties' arguments, the juvenile court decided that Mother did not establish that it was in A.A.'s best interests to resume reunification services and delay permanent planning. The

juvenile court judge stated: “I don’t have any evidence specific to this case that would suggest [A.A.] would benefit by having permanency delayed.” The court also found that Father did not establish changed circumstances. The court then denied the modification petitions.

The juvenile court also found by clear and convincing evidence that A.A. is adoptable and that the beneficial parental relationship exception to adoption did not apply. The court then terminated parental rights.

Mother appeals and contends that the juvenile court erred by: 1) denying her modification petition, and 2) not applying the beneficial parental relationship exception to adoption. (§§ 388, 366.26, subd. (c)(1)(B)(i).) Father does not appeal.

## *DISCUSSION*

### *I.*

Mother argues that the juvenile court abused its discretion by denying her modification petition requesting reinstatement of family reunification services and liberalized visitation.

Section 388, subdivision (a) provides that any interested person may petition for modification of an order in a dependency proceeding upon a showing of changed circumstances. Subdivision (d) of that section requires the court to order a hearing “[i]f it appears that the best interests of the child . . . may be promoted by the proposed change of order . . . .” “The standard for evaluating the merits of a section 388 petition is the best interests of the child.” (*In re J.P.* (2017) 15 Cal.App.5th 789, 800.)

A parent seeking modification of an order bears the burden of making a prima facie showing that the proposed modification will be in the child’s best interest. (*In re J.P.*, *supra*, 15

Cal.App.5th 789, 800.) ““There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the [child].” ( *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.) We review decisions regarding petitions to modify a juvenile court order for an abuse of discretion. ( *In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.)

The juvenile court did not abuse its discretion by denying Mother’s modification petition. A.A. has a stable home with caregivers who have cared for him since shortly after birth and who intend to adopt him. A.A. has never lived with Mother or Father; he is now thriving in a stable prospective adoptive home. Although Mother’s consistent visits with A.A. (during the previous six months) were loving and nurturing, Mother did not disprove that A.A.’s bond with the paternal aunt was the more significant and parental relationship. When asked why it was in A.A.’s best interests to delay permanency planning, Mother testified that she loved him and wanted to be his mother. The court reasonably concluded that reinstatement of family reunification services and postponement of permanency planning would not be in A.A.’s best interests. Mother has not established that the court’s decision was unreasonable. ( *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 [discussing standard of review].)

## II.

Mother asserts that the beneficial parental relationship exception to adoption precludes termination of her parental rights. (§ 366.26, subd. (c)(1)(B)(i).) She points out that she consistently visited with A.A., the visits were affectionate and appropriate, and she displayed parental skills in his care. ( *In re*

*S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a “ ‘primary attachment’ ” to parent for beneficial parental relationship]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1535 [regular visitation and contact satisfied by consistent visitation].) Mother argues that the detriment to A.A. by terminating parental rights outweighs any benefits of adoption.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” due to an enumerated statutory exception. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of “regular visitation and contact” and “benefit” to the child from “continuing the relationship.” (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child’s well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota H.*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].)

Only in the “extraordinary case” can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child’s

needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Adoption remains the norm; only in exceptional circumstances may the court choose an option other than adoption. (*In re E.T.* (2018) 31 Cal.App.5th 68, 76 [discussion of general rule].)

The exception requires proof of “a *parental* relationship,” not merely a relationship that is “beneficial to some degree but does not meet the child’s need for a parent.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child’s life spent in parental custody, the quality of interaction between parent and child, and the child’s particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 612-613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship existed where children in mother’s care most of their lives].) “The application of the beneficial parent relationship exception requires a robust individualized inquiry given that ‘[p]arent-child relationships do not necessarily conform to a particular pattern,’ and no single factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive.” (*Grace P.*, at p. 613.) The exception must be examined on a case-by-case basis, considering the many variables affecting a parent/child bond. (*In re E.T.*, *supra*, 31 Cal.App.5th 68, 76.) Where a parent has not had custody of the child or has not advanced beyond supervised visitation, the burden of establishing a parental role “will be difficult to make.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Mother did not meet her evidentiary burden to establish that her relationship with A.A. was sufficiently compelling to outweigh the legal preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit



exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].) Although Mother and A.A. enjoyed loving and appropriate visits, an adoptive home would provide him with permanence, security, and stability. A.A.'s paternal aunt has cared for him nearly all of his young life; he has never lived with Mother or Father. Moreover, despite Mother's positive visits with A.A., Mother never progressed beyond supervised visits.

Here Mother did not meet her evidentiary burden of establishing extraordinary circumstances warranting application of this narrow exception to the legislative preference for adoption. The decision of the juvenile court rests upon sufficient reasonable and credible evidence. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1351.)

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

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Roni Keller, under appointment by the Court of Appeal, for  
Defendant and Appellant.

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