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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B259443

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK93950)

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

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

Kate M. Chandler, under appointment by the Court of Appeal for Appellant.

Tarkian & Associates and Arezoo Pichvai for Respondent.

Jacqueline M. (Mother) appeals an order terminating her parental rights as to her son, A.M., pursuant to Welfare and Institutions Code section 366.26.¹ Mother contends the juvenile dependency court erred by declining to apply the exception to termination based on the benefit that A.M. would derive from continuing the parent/child relationship. (See § 366.26, subd. (c)(1)(B)(i).) We affirm the order terminating parental rights.

FACTS

Mother is the parent of three children, each by a different father: A.L., born in December 2007; A.M., born in February 2011; and A.C., born in June 2012. A.M. is the only child involved in Mother's current appeal; none of the fathers are involved in to the appeal.

A.M. began living with his maternal grandparents when he was about 15 months old, about the time that A.C. was born. When A.C. was born in June 2012, both he and Mother tested positive for amphetamine, methamphetamine, and benzodiazepine. The hospital promptly made a referral to the Los Angeles County Department of Children and Family Services (DCFS). A DCFS case worker interviewed mother in the hospital; she admitted to taking an Adderall a few days before she gave birth and that she had been using methamphetamines a few times a week on and off for a year or two. She asserted that she did not realize drug use could hurt her baby, even though she received prenatal care since her sixth month of pregnancy. She denied using drugs in the presence of her older children.

In mid-June 2012, DCFS filed a juvenile dependency petition (§ 300) on behalf of then four-year-old A.L., then 15-month-old A.M., and the newborn A.C. DCFS's detention report indicated that A.L. lived with his father, and that A.M. lived with the maternal grandparents. The report described the events summarized above concerning Mother's drug use during her pregnancy with A.C. The dependency court ordered all of

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

the children detained, and placed A.L. with his father, and A.M. and A.C. with the maternal grandparents.

In July 2012, DCFS filed a first amended petition, along with its jurisdiction and disposition report. DCFS reported that A.M. and A.C. remained in the maternal grandmother's home, and that A.M. seemed alert and healthy. He was not a Regional Center client. According to the maternal grandmother, Mother visited with her two youngest sons for about two hours per day. A.L. visited with his brothers and Mother for about four hours on Sunday. In August 2012, DCFS reported that A.M.'s father had begun visiting daily for about 30 minutes per visit once he received test results confirming he was A.M.'s father.

In February 2013, DCFS submitted its six-month review report. DCFS reported that A.M. and A.C. remained in the maternal grandmother's home, who were interested in adopting both boys. A.M. was in good health and not a client of the Regional Center. A.L. visited his brothers at the maternal grandmother's home. Mother also visited A.M. and A.C. almost daily at the grandmother's home. Her visits went well. Mother had not been in contact with DCFS, and had failed to return calls from DCFS. She was not in compliance with her case plan as she had missed drug tests.

In interim reports in March and April 2013, DCFS reported that Mother had contacted the department to say that had completed some services, but had offered no proof. DCFS noted that Mother had "frequent visitation" with her children.

In October 2013, DCFS submitted its 12-month review report. DCFS reported that A.M. and A.C. continued to live in the home of their maternal grandmother. A.M. was healthy. Mother visited A.M. and A.C. almost daily. A.L. visited with his brothers and Mother weekly. The case worker characterized the quality of the family visits as "very good," and noted that A.L. wanted to live in the grandparents' home. Mother also wanted to live with the grandparents and care for her children. Mother stated that she had completed counseling, her drug program and drug testing. However, A.M.'s father was incarcerated again. DCFS recommended the children be returned to Mother's physical

custody and care, “on condition that [Mother] continue to reside in the home of [the maternal grandparents].”

In April 2014, DCFS submitted its 18-month review hearing report. DCFS reported that A.M. and A.C. remained in the home of their maternal grandparents. A.M. was happy, in good health, and enrolled in kindergarten. Planning assessment had begun, and the grandparents had expressed a desire to adopt if Mother did not reunify. Mother had completed a drug program and tested negative over a period of 24 weeks, but her drug counselor expressed concern that Mother’s attitude toward drugs had not changed. DCFS considered Mother to be in partial compliance with her case plan. Mother wanted custody of her sons. Mother was not living with the grandparents, but she continued to visit. However, she did spend the night at the grandparents’ home about twice per week. It was difficult for the children to limit their visits to one hour with Mother because they had difficulty separating at the end of visits. A.M. cried when Mother had to leave. A hair follicle given by Mother tested positive for amphetamine, methamphetamine, and marijuana, but, due to the time for hair growth, it could have evidenced drug use from a time several months earlier.

On April 14, 2014, the dependency court terminated family reunification services for Mother.

In a July 2014 interim report, DCFS reported that Mother visited A.M. and A.C. at the maternal grandparents’ home two times a week for two hours each visit, and would play with the children, cook for them, feed them, and give them baths as time allowed. Mother interacted appropriately with the children, and the maternal grandparents reported that the children enjoyed the visits with the Mother. A.M. was attached to Mother and cried every time the visits were over. A.L. had overnight visits with A.M. and A.C. every other weekend at the maternal grandparents’ home. The maternal grandmother reported that she would continue to have the visits in her home every other weekend as long as A.L.’s father would allow him to come. The maternal grandparents’ adoption home study had been approved in June 2014. A.M. had adjusted well to the home and was attached to the maternal grandparents. The maternal grandparents were committed to

providing him with a permanent home through adoption and agreed to allow him to have ongoing contact with his siblings and extended family members.

In late August 2014, during a social worker's visit in the maternal grandparents' home, Mother said that she wished to have custody of her children. Mother stated that she had completed all of her programs and did not understand why the children had not been returned to her. When the social worker asked Mother for her contact information, Mother stated that she lived with a friend but did not want to provide the social worker with her address. Further, Mother did not have a telephone and told the social worker that if she wanted to contact Mother, she could leave a message for her with the maternal grandmother.

In late September 2014, the maternal grandmother informed the social worker that Mother had not seen the children in about two weeks because she was in the process of moving. The maternal grandmother reported that prior to the last two weeks, Mother visited the children on a weekly basis. The maternal grandmother did not know the mother's address or telephone number.

On October 1, 2014, the court held the section 366.26 hearing to select and implement a permanent plan for A.M. Mother testified on her own behalf at the hearing. Mother testified that she visited the children every day from approximately 12:00 p.m. to approximately 9:00 p.m. since August 12, 2014. Before August 12, 2014, Mother visited the children twice a week. During visits, Mother would play with the children, cook for them, feed them, give them a bath, and put them to sleep. Mother attended A.M.'s doctor's appointments, and she worked with him on learning the alphabet. A.M. called her "mom," and the maternal grandmother, "Grandma." Mother wanted A.M. back in her custody.

Following Mother's testimony, the parties argued to the court. Counsel for A.M. and DCFS submitted on DCFS's recommendation that the court terminate parental rights over the child. The court noted that A.M. came into the dependency system when he was 16 months old. In the 24 months that the family has been before the court, the maternal grandparents raised the children and the mother had approximately two visits a week for

two hours each visit. The court concluded: “And although . . . [Mother] had a parental role, was even cooking for the child and feeding the child, it does not appear that that outweighs the benefits of permanence and adoption.” The court found by clear and convincing evidence that A.M. was likely to be adopted and terminated parental rights.

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the dependency court erred by not applying the exception to termination based on “[A.M.’s] benefit from continuing the [parent/child] relationship.” (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

At the selection and implementation hearing, the dependency court must select one of a number of statutorily-identified alternative permanent plans for a dependent child. The statutory scheme identifies adoption as the preferred permanent plan. If the minor is found to be adoptable, the court must terminate parental rights absent a showing of a statutorily-identified exception. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) The parent has the burden of proving by a preponderance of the evidence that a statutory exception to adoption applies. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 998.)

To prove the beneficial parental relationship exception applies, a parent must show that he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) Also, the burden is on the parent to prove that termination of parental rights would be detrimental to the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) It is not enough for a parent to show “some benefit” to the child from a continued relationship with the parent; there must be a significant, positive emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) Because the section 366.26 hearing occurs only after the dependency court has found the parent unable to comply with a case plan to meet the child’s needs, “it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

On appeal, a court's decision not to apply the beneficial relationship exception to the preferred permanent plan of termination of parental rights and adoption is reviewed under an amalgam of the similar substantial evidence test and the abuse of discretion standard of review. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) The existence of a beneficial parent/child relationship is largely a factual issue to which the substantial evidence test applies; the determination that the quality of the relationship is such that termination would be detrimental to the child is largely a discretionary call, and the abuse of discretion standard applies. (*Ibid.*) Ultimately, the appealing parent has the burden on appeal of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

In *In re Autumn H.* (1994) 27 Cal.App.4th 567, the court explained that the benefit from continuing a parent/child relationship means "the 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 nature of the parent/child relationship in a tenuous placement against the security and sense of belonging to a new family would confer [¶] Interaction between natural parent and child will always confer some incidental benefit to the child [¶] The exception applies only where the court finds . . . a significant, positive, emotional attachment from child to parent." (*Id.* at p. 575.)

Mother argues the dependency court erred when it terminated her parental rights because she had maintained regular visits with A.M., and their relationship, in Mother's words, is "worthy of preservation." The record supports Mother's assertion that she had regular visits with A.M., and that her conduct was appropriate during visits. The issue for us to determine is whether the dependency court abused its discretion in concluding that their relationship failed to rise to the level that would outweigh the benefit that A.M. would gain by being adopted by the maternal grandparents. This is a close case, but we do not find an abuse of discretion.

The record shows positive visitation between Mother and A.M., but only within the setting of the maternal grandparents' home. The maternal grandparents expressed concerns to the social worker about the children being returned to Mother's care and custody because Mother did not seem to have "parental concern" for her children. The record supports the dependency court's determination that the qualitative level of the parent/child relationship did not outweigh the stability of an adoption permanent plan.

At the section 366.26 hearing in September 2014, Mother testified that she had visited the children every day since August 2014, from about 12:00 p.m. to 9:00 p.m. Before August 2014, Mother visited the children twice a week. During the visits, the mother would play with the children, cook for them, feed them, give them a bath, and put them to sleep. Mother attended A.M.'s medical appointments, and she helped him to learn the alphabet. A.M. called her "mom," and he called the maternal grandmother "grandma." We agree with Mother that there is evidence showing that she has a parental role with A.M., but cannot say that the lower court abused its discretion in finding that it did not outweigh benefit that adoption by the maternal grandparents will provide. A.M. has lived with the maternal grandparents all of his life. Although it was drug abuse issues which brought Mother and her children into the dependency court system, and although there is evidence to support a conclusion that Mother completed drug programs, we take note of the evidence in the record showing that Mother, likely due to her drug abuse, was "always" leaving the children with the maternal grandparents and would not come back "until she felt like it." During the dependency proceedings, there were times when the maternal grandparents would not hear from Mother for several days, and other times when the maternal grandparents would not know where Mother was staying, her telephone number, or how to reach her. Even as the 366.26 hearing was approaching, Mother could not muster for a visit for two weeks because she was "moving." The dependency court reasonably could find that the stability of the grandparents' home outweighed Mother's interest in the children.

Mother argues her case is similar to that of the mother in *In re Brandon C.* (1999) 71 Cal.App.4th 1530. In *Brandon C.*, the social services agency appealed from an order for guardianship based on the beneficial parental relationship exception. (*Id.* at p. 1533.) The Court of Appeal concluded that substantial evidence supported the juvenile court's finding that the beneficial parental relationship exception applied. (*Id.* at pp. 1534-1538.) For the reasons explained above, we find that substantial evidence in Mother's current case supports the contrary ruling by the dependency court. In short, the outcomes in both *Brandon C.* and in Mother's current case are largely guided by the standard of review. Mother has not persuaded us that the *only* permissible, reasonable, discretionary ruling in her case would be not to terminate parental rights.

Neither are we persuaded to come to a different conclusion based on Mother's arguments pursuant to *In re S.B.* (2008) 164 Cal.App.4th 289. In *S.B.*, the Court of Appeal found that the beneficial relationship exception applied and, accordingly, reversed an order terminating parental rights. (*Id.* at p. 303.) In *S.B.*, the appealing party, a child's father, was the child's primary caretaker for three years. He fully complied with his case plan and demonstrated a "constant" devotion to his daughter. The daughter loved the father, wanted their relationship to continue, and derived benefit from their visits. In addition, an expert witness testified there was a potential for harm to the child if her relationship with her father was severed. (*Id.* at pp. 296-301.) The rules of law and the standard of review are the same in *S.B.* and in Mother's current case, but the facts in Mother's current case do not rise to the same level as in *S.B.* Here, A.M. essentially lived with his maternal grandparents all of his life, and there is no expert evidence that A.M. would potentially suffer harm if the parent/child relationship is ended.²

² In *In re Amber M.* (2002) 103 Cal.App.4th 681, also relied upon by Mother, there was also expert psychological evidence of a risk of harm from terminating the parent/child relationship.

In the end, Mother has not persuaded us that the dependency court abused its discretion in not applying the benefit from a continuing relationship exception. The dependency court reasonably concluded that the benefit to A.M. of being in an adoptive home outweighed the detriment, if any, that he would suffer if parental rights were terminated. “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forego adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

DISPOSITION

The juvenile dependency court’s order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.