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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B275345

(Los Angeles County
Super. Ct. No. CK95531)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIELLE S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Joshua D. Wayser, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Stephanie Jo Reagan, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The trial court terminated the parental rights of Danielle S. (mother), mother of Jasmine W., under Welfare and Institutions Code, section 366.26.¹ Mother argues that the trial court erred by holding that the parent and sibling exceptions in section 366.26, subdivision (c)(1)(B) did not apply. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initial detention

Jasmine was born in August 2010. On March 29, 2014, the Los Angeles Police Department received a call that mother punched Jasmine in the face and hit her with a plastic bat. Responding officers noted that Jasmine had a red mark on her back. Mother told the officers that she did not abuse Jasmine. She said that she and Jasmine had been playing with the bat, but stopped after mother playfully hit Jasmine on the back with the bat and Jasmine started whining.

A responding officer reported to a social worker that when officers arrived at the home and asked Jasmine what happened, she responded, “Mommy did it” and pointed to the bat. The officer also reported that as they took Jasmine to be photographed, mother told Jasmine they would not see each other again. Mother told the officer that she was planning to move to Georgia, and if they did not return Jasmine to her that same evening, mother would move to Georgia without her.

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

Officers contacted the Department of Children and Family Services (DCFS). A social worker later interviewed Jasmine, who said mother hit her with the bat. When asked if mother was playing, Jasmine said, “No, she was mad.” When asked about a mark on her foot, Jasmine said, “[S.] did it. [S.] burned me.”²

A social worker interviewed mother’s friend, Tiffany, who was in the home at the time of the incident. Tiffany said at the time of the incident, she heard mother say she was tired of being a parent, and then heard a whacking sound. Jasmine ran out of mother’s bedroom to Tiffany. Jasmine did not have a shirt on, and Tiffany saw the red mark on Jasmine’s back; Jasmine appeared to be scared. Tiffany also said she had heard mother say several times in the past that she was tired of being a parent. The detention report says, “[Tiffany] stated [mother] told her that she tried to give up her rights to Jasmine but DCFS would not take the child and this is when [mother] told her that she felt she had to abuse the child for her to be taken.”

When social workers spoke with mother, she confirmed that she told Jasmine they would not see each other again. According to the disposition report, mother said to the social worker, “Just tell me now, if you are going to take it [*sic*]. We can just get it over with. You if [*sic*] are going to take her then I can sign over my rights because I am not staying here for a case, I’m going to Georgia.’ Mother stated that she cannot lose her Section 8 voucher and that she was not going to jeopardize her voucher for ‘anybody,’ including her children.” Mother also said, “If you are going to take her away from me then you don’t even need to

² Jasmine’s older sister has an unusual name. For the sake of privacy, we will identify her herein as S. (See Cal. Rules of Court, rule 8.90(b).)

call me. I'm not going to court or anything. I don't even need your card.” Mother said she had been diagnosed with schizoaffective disorder and had been prescribed medication, but she could not name the medication and said she did not take it because “weed is my medication.”

The disposition report noted that mother had two other daughters, Crystal and S. Crystal, born in 1988, had been a dependent of the court before she was legally emancipated in 2007. S., born in 2001, became a dependent of the court in 2012, when the court sustained two counts against mother under section 300, subdivision (b), relating to S. accessing mother's marijuana and taking it to school, and mother's “numerous mental and emotional problems” due to bipolar disorder, major depressive disorder, and schizoaffective disorder. The disposition report stated that on March 24, 2014—five days before the call relating to Jasmine—mother “dropped [S.] off at the DCFS office and signed an affidavit stating that she wanted to give child up and did not want reunification services with child.”

The disposition report noted previous contact with DCFS on July 7, 2003 (relating to S., allegations inconclusive); April 17, 2006 (relating to S., allegations unfounded); May 23, 2007 (relating to S., allegations unfounded); May 9, 2010 (relating to S. and Jasmine, allegations unfounded); August 22, 2010 (relating to S. and Jasmine, allegations unfounded); May 4, 2012 (relating to S., allegations substantiated); May 9, 2012 (relating to S. and Jasmine, allegations substantiated); January 29, 2013 (relating to S. and Jasmine, allegations substantiated); November 4, 2013 (relating to S. and Jasmine, allegations unfounded); November 15, 2013 (relating to S., allegations partially substantiated).

DCFS filed a juvenile dependency petition alleging that mother physically abused Jasmine by hitting her with a bat and placed Jasmine at risk of serious physical harm (counts a-1 and b-1, § 300, subds. (a) and (b)), mother was a marijuana abuser and was incapable of providing appropriate care for Jasmine (count b-2, § 300, subd. (b)), and mother has a history of mental and emotional problems including schizoaffective disorder and does not take prescribed medication, endangering Jasmine's health and safety (count b-3, § 300, subd. (b)).

At the detention hearing on April 2, 2014, the juvenile court found a prima facie case for detaining Jasmine as a person described in section 300, subdivisions (a) and (b). Jasmine was placed in foster care. The court ordered family reunification services, including twice-weekly monitored visits.

B. Reunification efforts

An April 23, 2014 jurisdiction/disposition report noted that mother was interviewed on April 16, 2014 and was planning to leave for Georgia that day. She said she did not hit Jasmine out of anger or for discipline, but that they were only playing. Mother said she smoked marijuana occasionally and showed the social worker her medical marijuana card. Mother also said she had never been diagnosed with any psychological afflictions, but she had been prescribed a daily dose of Zoloft, which she took occasionally. Mother asked for the case to be transferred to Georgia. Although the court ordered twice-weekly visits, Jasmine's caregiver noted that mother had only visited Jasmine once in twelve days, and mother ended that visit ten minutes early.

At the jurisdiction/disposition hearing on April 23, 2014, the court sustained the petition under section 300, subdivisions

(a) and (b). The court ordered continued monitored visitation, and ordered mother to participate in individual counseling, parenting classes, substance abuse counseling, and drug testing, and ordered mother to take her prescribed medications.

A status review report dated October 22, 2014 stated that from April 25, 2014 to June 16, 2014, mother had been living in Georgia and was “not participating in any of the court orders.” As of the time of the report, mother was living in California and was in partial compliance with the court’s orders—she had enrolled in parenting classes and was seeing a therapist once a month. The facility where mother enrolled in parenting classes reported that mother did not show up to the first three sessions, but she had completed the following two sessions. She was not being drug tested regularly and she had not enrolled in a substance abuse program because she “feels that she does not have a substance abuse history and is determined to find a substance abuse program that will only require her attendance once a week.” Mother said she used marijuana to address anxiety and depression, to help her sleep, and to increase her appetite. Mother felt she should not have to submit to drug testing because she had a medical marijuana card.

Jasmine was doing well in her foster placement and had started preschool. She received individual counseling to decrease tantrums and manage moods, and progressed well. The counselor reported, however, that “Jasmine has recently regressed due to symptoms of trauma being displayed following visits with mother. Sibling visits were brought up with Jasmine and since then, Jasmine has been experiencing night terrors, anxiety, flashbacks, and fear.” The report stated that the counselor’s “recommendation at this time is for the sibling visits

to be put on hold in order for her to assist Jasmine with developing coping mechanisms to prepare for further sibling visits.”

Mother had a visit with Jasmine on April 24, 2014, before she left for Georgia. “During her time in Georgia, mother made minimal contact with Jasmine via telephone.” After returning to California, mother was visiting Jasmine on Saturdays, but “mother often complains to Jasmine about not having money or her car being broken Caregiver stated that he tries to redirect mother but she often goes back to the same topics, which are not age appropriate.”

On June 1, 2014, Jasmine had a visit with her sister S. Although an hour had been allotted for the visit, S. ended the visit after 25 minutes. The status review report noted that scheduling visits with S. was difficult because S.’s group home therapist often did not return phone calls to schedule visits.

A status review report dated April 22, 2015 stated that Jasmine remained in her previous placement and was doing well. Jasmine’s foster family was not interested in adoption, and Jasmine had no family members willing or able to provide permanent placement for her.

Mother was still in partial compliance with court orders. She was seeing a therapist once every three weeks, but she did not show up for several appointments. A letter dated March 24, 2015 from mother’s therapist stated that mother had been diagnosed with generalized anxiety disorder, depressive disorder, and “Cannabis Dependence, currently in early full remission (one month) per her report.”³ The letter also states that the

³ Mother’s drug test on March 13, 2015, eleven days before the date of this letter, was positive for cannabinoids.

medications prescribed were “not considered absolutely necessary for treatment.” Mother stated that she decided not to take the medication. Mother had enrolled in a substance abuse program in March 2015, but continued to express that she felt it was unnecessary. From July 2014 to the time of the April 2015 report, all of mother’s drug tests were no-shows except four, which were positive for cannabinoids. Mother said of her marijuana use that she was “trying to slow down.” Mother did not see the point of testing because the test “is going to be dirty anyway and a missed test is considered a dirty test.” Mother had completed her parenting class.

Mother had been mostly consistent in her weekly visits with Jasmine. Jasmine’s caregiver reported that mother did not complain as much as she used to. Jasmine reported that she visits mother at restaurants: “We just eat at the restaurant. I talk with my mom. I play. I’m so happy at restaurants.”

C. Termination of reunification services and termination of parental rights

At a contested hearing on June 30, 2015, approximately fifteen months after Jasmine was detained, the juvenile court ordered reunification services terminated. The court found that Jasmine could not be returned to mother’s physical custody, and there existed no substantial probability that Jasmine would be returned within six months. Mother was served with notice of a hearing under section 366.26.

A section 366.26 report dated October 27, 2015 stated that Jasmine had been placed with prospective adoptive parents, Mr. D. and Mr. N. (adoptive parents), in September 2015. The social worker noted that Jasmine “feels very comfortable in their care. She is happy the couple is maintaining contact with her previous

caregivers, who are supportive of the adoption.” Jasmine told the social worker that she wanted to be adopted by the adoptive parents.

Before Jasmine moved in with adoptive parents, mother missed the last six or seven scheduled visits with Jasmine. Adoptive parents reported that mother and Jasmine had two visits since Jasmine had been in their care, and they had no major concerns about either visit. Jasmine’s sister S. was living in Florida with a relative.

The section 366.26 hearing was delayed several times after Jasmine’s father, Brandon W. (father), appeared in the case. The court eventually denied father’s request for reunification services because the evidence showed no substantial relationship between Jasmine and father.

A status review report dated January 5, 2016 stated that Jasmine continued to do well with adoptive parents. Jasmine’s therapy had ended because she had met all of her treatment goals. Mother’s visits with Jasmine had declined in frequency, and she had only visited Jasmine twice in the previous two months. Adoptive parents initiated a visit with mother in December, because mother had not called to schedule one. Mother had trouble engaging with Jasmine during the visits.

In a last-minute report dated March 15, 2016, adoptive parents reported that mother had not visited Jasmine since December 22, 2015, and the visit before that was on October 25, 2015. At the contested section 366.26 hearing on March 15, 2016, counsel represented that S., who was 14 years old and living in Florida, wanted to assert a sibling bond exception to the termination of parental rights and adoption of Jasmine. The court granted a continuance.

S. wrote a letter to the court stating, “I feel Jasmine is in the system only because our old family friend (Tiffany []) told our neighbors she was going to get revenge on my mom by putting Jasmine in the system like me.” S. said she felt it would be the “best option” for her and Jasmine to live with mother again. S. stated that she had misbehaved when she was living with mother, and “I was not innocent at home like everybody assumed. . . . My single-parent mom was a hard working woman. She wanted best [*sic*] for her children and for us to grow up successful. If anything my mom’s the victim not me.” She talked about learning from her past mistakes, and concluded, “Everyone has had their good and bad moments in life. But I ask of you Your Honor and this court to not hold any body’s [*sic*] past against them. Put your kid in my shoes. Put every parent in my mom’s shoes. If my mom was a bad parent why would I want to go back home that doesn’t make sense. She’s not a bad parent. So I ask of you to consider and please give me and my family another chance and opportunity to make it right. If I can’t go home at least let Jasmine. Thank you.”

At the section 366.26 hearing, the court admitted as evidence reports from the following dates: October 27, 2015, November 5, 2015, January 5, 2016, February 4, 2016, and March 15, 2016. Mother testified at the hearing. When asked about visitation, mother said, “I had stopped seeing her for a brief second over depression over the case.” Mother said she and Jasmine had a visit the previous week. Mother also testified that she calls Jasmine once or twice a week to see how she is doing. Mother said that Jasmine and S. had not had any visits because S. lives in Florida. On cross-examination, mother said that before December, she visited Jasmine once a week. Mother also

said that when she calls, she often does not reach Jasmine or adoptive parents, so she leaves messages. The court reviewed the letter from S. and a letter from mother's friend about mother's character. No additional evidence was presented.

Mother's counsel argued that mother's visits with Jasmine warranted the exception under section 366.26, subdivision (c)(1)(B)(i). That statute states that when it is likely that a child will be adopted, "the court shall terminate parental rights and order the child placed for adoption" unless termination of parental rights would be detrimental to the child because the "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).) Counsel for S. asked that parental rights not be terminated based on section 366.26, subdivision (c)(1)(B)(v), which states that the court shall terminate parental rights and order the child placed for adoption unless termination of parental rights would be detrimental to the child because "[t]here would be substantial interference with a child's sibling relationship." According to S.'s counsel, S. was "getting discharged from her placement in Florida and will be returning to California and is looking forward to further contact with her sister." Counsel for Jasmine and DCFS argued that the case had been going on for a long time, and mother's rights should be terminated to provide consistency and stability for Jasmine.

The court terminated mother's parental rights and ordered a permanent plan of adoption. The court noted that mother had not been consistent in her visits with Jasmine, and S. had a very limited relationship with Jasmine because S. lived in Florida. The court found that it would be detrimental to Jasmine to be

returned to mother, and no exception to adoption applied. Mother timely appealed.

STANDARD OF REVIEW

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child’s sibling relationship. . . .’ (§ 366.26, subd. (c)(1)(B).) ‘[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.’ [Citation].” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*))

“Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination.” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) Under section 366.26, subdivision (c)(1)(B), the court must also find that the existence of that relationship constitutes a compelling reason for determining that termination would be detrimental. In reviewing that determination, we apply the abuse of discretion standard. (*Id.* at p. 1315.)

DISCUSSION

Mother argues that the juvenile court erred when it found no exception under section 366.26, subdivision (c)(1)(B)(i).

According to mother, because Jasmine lived with mother for almost three years and mother visited Jasmine thereafter, the court should have found that the exception applied.

“[T]o terminate parental rights under section 366.26, the court ‘need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated.’ [Citation.] Under these circumstances, ‘the court shall terminate parental rights’ unless certain exceptions apply. (§ 366.26, subd. (c)(1).)” (*In re Logan B.* (2016) 3 Cal.App.5th 1000, 1010.) The exception under section 366.26, subdivision (c)(1)(B)(i) “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.) Rather, “to establish the exception a parent must prove that the benefit of continuing a parental relationship outweighs the child’s interest in the stability and permanence of adoption.” (*In re Logan B., supra*, 3 Cal.App.5th at p. 1012.)

Section 366.26 allows for a parental bond exception where “[t]he parents have maintained regular visitation and contact with the child.” (§ 366.26, subd. (c)(1)(B)(i).) Here, the undisputed evidence showed that mother’s visitation with Jasmine was not regular. Shortly after Jasmine was detained, mother moved to another state and did not visit Jasmine. After mother returned to California, her visits with Jasmine were sporadic. In March 2016, adoptive parents noted that mother had not visited Jasmine since December 2015, and before that mother’s last visit was in October 2015. Even mother admitted

at the hearing that she had not been visiting Jasmine regularly. Substantial evidence therefore supports the court's decision that the relationship between mother and Jasmine did not meet the requirements of section 366.26, subdivision (c)(1)(B)(i).

Mother also did not establish that termination would be detrimental to Jasmine, and that a continuing parental relationship with mother would be beneficial. (§ 366.26, subd. (c)(1)(B)(i).) "A beneficial relationship is one that '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.' [Citation.]" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) Mother presented no evidence that an ongoing relationship between Jasmine and mother would be beneficial to Jasmine. The trial court therefore did not err in holding that the exception in section 366.26, subdivision (c)(1)(B)(i) did not apply.

Mother also argues that the court erred by finding that the sibling bond exception in section 366.26, subdivision (c)(1)(B)(v) did not apply. The sibling bond exception applies when termination of parental rights would be detrimental to the child because "[t]here would be substantial interference with a child's sibling relationship." (§ 366.26, subd. (c)(1)(B)(v).) "To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. . . . If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) "The sibling bond exception is evaluated from the perspective of the child who is being considered for adoption, not the

perspective of that child’s siblings.” (*In re D.O.* (2016) 247 Cal.App.4th 166, 174.)

Here, the evidence did not support a finding that Jasmine and S. had a substantial sibling relationship. There is an eight-year age difference between the children. At the time Jasmine was detained, S. was not living with mother and Jasmine. During the only visit with S. mentioned in the record—in June 2014, more than two years before the 366.26 hearing—S. cut the visit short. When sibling visits were suggested to Jasmine another time, she began experiencing night terrors, anxiety, flashbacks, and fear. While the case was pending, S. moved to Florida and did not visit Jasmine. Nothing in the record suggests that S. and Jasmine continued a relationship by phone or video calls. In short, the evidence showed that no significant sibling relationship existed between Jasmine and S. The court’s finding that the sibling bond exception did not apply is supported by substantial evidence.

DISPOSITION

The court’s order is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.