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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B257903
(Super. Ct. No. J069827)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Petitioner and Respondent,

v.

J. S., et al.

Defendants and Appellants.

Summer H. (mother) and Jacob S. (father) appeal a July 17, 2014 juvenile court order terminating parental rights to their daughter, Angel S., and freeing Angel for adoption. (Welf. & Inst. Code, § 366.26.)¹ Appellants contend that the beneficial parent-child and sibling relationship exceptions bar the child's adoption. (§ 366.26, subd. (c)(1)(B)(i) & (v).) We affirm.

Facts and Procedural History

Two-year old Angel was detained on January 23, 2014, when appellants were arrested during a drug raid at their home. After the police gained entry, they saw father flushing drugs down the toilet. More than a half a pound of methamphetamine was in the garage storage unit. Angel and three half-siblings were living in the house and at

¹ All statutory references are to the Welfare & Institutions Code.

risk. The police found methamphetamine, marijuana, and drug paraphernalia next to Angel's bed and in areas accessible to the children. Father was arrested for possession of methamphetamine with intent to sell. The police arrested mother for possession of methamphetamine and felony child endangerment, and on a warrant.

Ventura County Human Services Agency (HSA) treated Angel for head lice and acute eczema, and placed her with the paternal uncle and his wife (Aunt). Father was in jail and did not visit with Angel. Angel's visits with mother were difficult and upset Angel. After the first visit, Angel had a meltdown, cried and screamed, and wet her pants. During other the visits, Angel threw things at mother and was restless. Although the visits improved over time, Aunt had to reassure Angel that everything was all right. In conversations with Aunt, Angel referred to mother as "Bad Summer"

Angel's monthly visits with the paternal half-siblings (Anthony S. (age 12), Jesse S. (age 9), and Heavenly S. (age 8)) were also problematic. Anthony and Heavenly were upset and greeted Angel with tears in their eyes. Jesse did not come to visit. Confused, Angel did not know how to react but after a few minutes played with Anthony and Heavenly. Aunt reported that Angel had emotional problems after the visit and had to be held and told that she was loved.

HSA filed a dependency petition on January 17, 2014, for failure to protect (§ 300, subd. (b)), no provision for support (§ 300, subd. (g)), and abuse of a sibling (§ 300, subd. (j)) based on mother's drug use and father's criminal activity. Father's criminal record included 199 criminal violations included assault with a deadly weapon by means likely to produce great bodily injury, possession of a controlled substance, sale/transport of a controlled substance, drinking in public, possession of an open container, and driving under the influence of drugs or alcohol.

Mother reported that she first used methamphetamine at age 14 and was using while pregnant with Angel. Mother was incarcerated for drug related crimes early in the pregnancy and, upon her release, lived with father. After Angel was born, mother resumed using drugs and was incarcerated from December 2011 to January 2012.

Mother was released from jail and moved. Starting in August 2013, mother lived off and on with father, Angel, and the three half-siblings² until the January 23, 2014 drug raid.

After Angel was detained, the trial court ordered supervised visits, drug testing, and attendance at Narcotics Anonymous. At the February 25, 2014 jurisdiction/disposition hearing, the trial court removed Angel from appellants' custody, bypassed reunification services (§ 361.5, subd. (b)(1) & (b)(13)), and set the matter for a permanent placement hearing.

At the section 366.26 hearing, evidence was received that Angel was closely bonded to Aunt and thriving. The bonding was reciprocal. Aunt viewed Angel as her own child and was ready and willing to adopt. The trial court found that Angel was adoptable, that the parent-child and sibling relationship exceptions did not apply, and terminated parental rights.

Standard of Review

We review for substantial evidence and determine whether the trial court abused its discretion in finding that the parent-child and sibling exceptions were not significant enough to compel a permanent plan other than adoption. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will chose a permanent plan other than adoption. [Citation.]" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

² The half-siblings (Anthony S., Jesse S., and Heavenly S.) have a different mother and were declared dependents of the court in 2008 based on father's substance abuse, incarceration, and neglect. In 2009, the children's natural mother (Stephanie B.) assumed custody but it was short-lived due to drug use and her inability to care for the children.

Angel has three other paternal half-siblings (Jacob S., Jasmine S., and Janessa S.) who are much older and were declared dependents of the court in 2002. Jacob S. and Jasmine S. are adults. Janessa S. is 15 years old and lives with her paternal grandfather.

Beneficial Parent-Child Relationship

Mother argues that severing the parent-child relationship would be detrimental to Angel. To establish the parent-child exception, mother must show that she maintained regular contact and visitation and that Angel would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) 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 the interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) The parent must show "more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Mother maintained regular contact but failed to show that Angel would benefit from continuing the relationship. Before Angel was removed, mother used drugs, neglected Angel, and came and went. The parent-child relationship did not improve after the drug raid. Angel suffered anxiety problems before and after visits and referred to mother as "Bad Summer." Angel told Aunt that she did not want to go to supervised visits and had severe tantrums after the visits.

Although the visits improved over time, mother's contacts with Angel bore no resemblance to the sort of consistent, daily nurturing that marks a parental relationship. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) Mother failed to progress beyond supervised visits and Angel continues to struggle to make sense of her relationship with mother. Angel calls Aunt "mommy," is bonded to Aunt and her family, and looks to Aunt for comfort and guidance. There is no evidence that severing "the natural parent-child relationship would deprive [Angel] of a *substantial* positive emotional attachment such that the child would be *greatly* harmed. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Sibling Relationship Exception

Appellants contend that the trial court erred in finding that the sibling relationship exception to adoption does not apply. To establish the exception, appellants

must show a significant sibling relationship and that termination of the relationship would be detrimental to Angel. (*In re Celine R.* (2003) 31 Cal.4th 45, 54.) The trial court considers the nature and extent of the sibling relationship, including whether the child and sibling were raised in the same home, shared significant common experiences, and have existing and close bonds. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) "[E]ven if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide." (*Id.*, at pp. 952-953.)

Appellants argue that Angel relates well to her half-siblings, has attended family functions with them, and emotionally struggled after visits. Although these are important factors, they do not outweigh the benefits of an adoptive home that Angel so badly needs. The trial court was aware of the sibling relationship and reasonably concluded that adoption was in Angel's best interests. "Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended." (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

Appellants argue that the half-siblings' emotional resistance against Angel's adoption should be considered, but that is not the test. The question is whether adoption would be detrimental to Angel, not someone else. (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 54-55.) The sibling relationship exception " 'only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citation.]" (*Id.*, at p. 61.)

In *In re Naomi P.* (2005) 132 Cal.App.4th 808 the sibling relationship exception applied because three-year old Naomi had weekly visits and overnight visits with three siblings throughout the dependency proceedings, and there was a significant relationship among the children. (*Id.*, at pp. 812-814, 824.) Unlike *In re Naomi P.*, there is no suitable way for the half-siblings to live with Angel and their contacts with Angel

have been mired by the drug activities of their father and natural mother. HSS reported that Angel is bonded to Aunt and does not ask about or express an interest in seeing the half-siblings.

Based on Angel's age and needs, the trial court reasonably concluded that Angel's long-term emotional interests would be better served by the permanency of adoption. (See e.g., *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1013.) It was "a 'quintessentially' discretionary decision" but not a close call. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) Adoption is the preferred permanent plan and is clearly in Angel's best interests. It is not our function to retry the case. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

The judgment (order terminating parental rights) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Bruce A. Young, Judge
Superior Court County of Ventura

David A. Hamilton, under appointment by the Court of Appeal, for Jacob S., Appellant.

Christina Gabrielidis, under appointment by the Court of Appeal, for Summer H., Appellant.

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