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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.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.M.,

Defendant and Appellant.

B279883

(Los Angeles County
Super. Ct. No. CK56447)

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

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father P.M. appeals the juvenile court's order denying his request for a contested Welfare and Institutions Code section 366.26 hearing as to his son, A.M.¹ This is father's second appeal concerning now five-year-old A.M., who has been a dependent of the court since his birth. (*In re A.M.* (Nov. 21, 2014, B254164) [nonpub. opn.].) In this appeal, father contends his due process rights were violated when the court denied his request to present evidence of the "beneficial parent-child relationship" exception to the termination of parental rights after hearing his offer of proof. (See § 366.26, subd. (c)(1)(B)(i).) Finding no merit in this contention, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND²

A.M. was detained in November 2011, when he was just six days old, after mother³ tested positive for methamphetamine during pregnancy. Allegations were sustained based on mother's substance abuse, and her failure to reunify with five other children. A.M. was placed in a foster home with two of his half siblings, who were in the process of being adopted by the foster family.

From the beginning of the case, father was ambivalent about accepting responsibility for parenting A.M. Father was initially reluctant to submit to paternity testing. He also was not interested in obtaining custody of A.M., suggesting that the Los

¹ Undesignated statutory citations are to the Welfare and Institutions Code.

² Some of the facts summarized here are taken from our opinion resolving father's previous appeal.

³ Mother, V.M., is not a party to this appeal.

Angeles County Department of Children and Family Services (Department) “give the baby” to his sister to adopt, or “to take care of . . . so he stays in the family.’” Father was also indecisive about whether he wanted to receive reunification services, stressing that “he had no way of caring for the baby” as he did not have a job, income, or transportation. He was, however, interested in visiting A.M.

Once father’s paternity was established, allegations based on father’s substance abuse were sustained, after mother reported that father was a heavy drug user, and used methamphetamine with mother while she was pregnant with A.M. On June 6, 2012, father was ordered to receive reunification services. He was ordered to complete a drug treatment program, random testing, and to participate in the Project Fatherhood parenting program. The court ordered monitored visitation between A.M. and father to occur twice a week, and the Department was vested with discretion to liberalize father’s visitation.

Between June and November 2012, father participated in reunification services, submitted negative drug tests, and regularly visited A.M. Father was affectionate and attentive during visits, but A.M. would often push father away and search for his foster mother.

Between December 2012 and June 2013, father participated in all available visits, every Monday and Friday. According to the foster mother, father was loving and attentive. However, A.M. would cry every time the foster mother dropped him off for visits, and A.M. did not want father to touch him.

Father first learned how to give “hands on care” to A.M. in February 2013, including how to give A.M. a bottle and how to

change his diaper. On February 28, 2013, the court ordered that father receive one hour of unmonitored visitation, to occur a maximum of twice per week. Father had his first unmonitored visit on March 25, 2013. According to father, the visit went well and A.M. had a good time.

Notwithstanding father's compliance with his case plan and visitation, there were concerns about his ability to reunify with A.M. Father had not obtained suitable housing, as he resided with a roommate with a "background." Father's roommate was a convicted sex offender. The attachment between A.M. and father also remained stagnant. A.M. would cry at the beginning of visits and would run to the foster mother at the end of visits. A.M. also returned from visits with diarrhea, "which may possibly be due to an emotional reaction to the visitation." Therefore, on June 6, 2013, the Department recommended that reunification services be terminated.

The 12-month review hearing was held on June 27, 2013. Father testified that when he visited with A.M., A.M. did not call him anything, but extended his arms. A.M. also laughed during visits with father. According to father, A.M. did not cry or avoid touching father at visits.

The juvenile court continued the review hearing to receive an Evidence Code section 730 bonding study from Dr. Alfredo Crespo. Based on his observation of a visit between father and A.M., Dr. Crespo opined that father and A.M. have "minimally established a visiting relationship." It did not appear that A.M. rejected father, but it was clear that he was primarily attached to his foster parents. Father also did not have a feasible plan to care for A.M. in the event they reunified, and father seemed "ambivalent" about reunification.

Father failed to appear at the continued review hearing, and the trial court terminated reunification services and set a selection and implementation hearing. On November 26, 2013, father filed a section 388 petition asking the court to change its order terminating reunification services and setting the case for a section 366.26 hearing, arguing that he had received incorrect notice of the hearing from his counsel. The juvenile court denied the petition without hearing, finding that the requested order would not be in A.M.'s best interest. We affirmed this order in our unpublished opinion, *In re A.M.*, *supra*, B254164.

The section 366.26 hearing was continued a number of times to complete due diligence as to mother, who could not be located. According to the Department's January 9, July 8 and July 10, 2014 reports, A.M. continued to be placed with his foster parents, who were committed to adopting him. They had already adopted A.M.'s siblings, and a home study specific to A.M. was approved on November 5, 2013.

Father maintained regular visitation with A.M., seeing him two hours each week, one of which was unmonitored. The foster mother reported that visits were "appropriate," yet it appeared that father and A.M. had not formed a bond, as A.M. often did not want to leave the foster mother's side during visits. Moreover, father had started to bring a female friend to the visits, to whom A.M. had a strong negative reaction. The Department confirmed that A.M. did not appear attached to father, and at times did not want his foster mother to leave his side when visiting with father.

Beginning in June 2014, the Department was unable to reach father because his mobile phone was disconnected.

Father's roommate reported that father was "in between apartments" and was moving to a new place.

In July 2014, problems with A.M.'s foster placement came to light. Therefore, the court ordered the Department to evaluate father's home for placement of A.M.

Father filed a section 388 petition seeking reinstatement of reunification services. At the September 18, 2014 hearing on the petition, father testified that A.M. would greet him at visits with laughter, and would run to him with open arms. Father also testified that A.M. was sometimes reluctant to end the visits and return to the foster mother. Father testified that if A.M. were returned him, they would live with his sister in El Centro, California. The court denied the section 388 petition, but ordered that father receive two hours of unmonitored visitation per week, and gave the Department discretion to liberalize father's visitation.

According to the Department's May 2015 report, father was having weekly two-hour unmonitored visits with A.M., but had missed several visits. The foster mother reported that when she dropped off A.M. for visits, he often refused to get out of the car. Father had to convince A.M. by promising a ride on the metro or by showing him father's phone. At the end of visits, neither A.M. nor father expressed their love for each other.

The Department rescinded the foster family's approved home study, based on a substantiated referral for conduct occurring several years earlier, unrelated to A.M. The Department was looking for another home for A.M.

On May 14, 2015, father filed another section 388 petition seeking to have A.M. placed in his care, or reinstatement of reunification services and unmonitored overnight visits. The

petition alleged that father had obtained stable housing with a roommate who had already submitted to a LiveScan, and that he had maintained consistent visitation with A.M.

The Department evaluated father's new home on June 9, 2015. The apartment had one bedroom, and one bathroom, and was clean and well stocked with food. There were, however, cleaning supplies stored under the kitchen sink without a safety lock. Father resided in the bedroom and his female roommate resided in the living room. Father's roommate indicated that she was able to assist father with childcare during his working hours.

Father maintained consistent unmonitored visitation with A.M. Therefore, the Department recommended that reunification services be reinstated and that father's visitation be liberalized to include unmonitored overnight visits after providing six consecutive clean drug tests.

On August 4, 2015, the trial court granted the section 388 petition and reinstated reunification services for a term of six months consistent with the Department's recommendation, and father was ordered to participate in counseling and AA/NA meetings.

The Department's February 2016 status review report reflected that A.M. was placed in a new foster home on September 18, 2015, and that his foster parents were committed to adopting him. The placement was with a nonrelative extended family member (the niece of his foster mother), and his original foster mother continued to babysit him.

The Department was unable to confirm whether father was participating in AA or counseling, as social workers were unable to reach him beginning in November 2015. Father did not attend scheduled meetings with the social worker, and did not respond

to the Department's correspondence. Father did, however, participate in random drug testing, returning two negative tests in August, two in September, and six consecutive negative tests in October 2015 through January 2016. One October test was diluted.

Father participated in every available visit with A.M., starting six-hour unmonitored visits on Sundays in October 2015. The visits went well, and father was described by A.M.'s babysitter as being "caring and attentive" to A.M. during visits. A.M. was sometimes happy to visit father and sometimes did not want to participate in visits. A.M. told the social worker that he did not like to visit with father.

Father's visits had not been further liberalized because of the diluted drug test, and because he had not made himself available to the Department. The Department recommended that family reunification services be terminated for father.

At the February 2, 2016 permanency review hearing, the court ordered the Department to again evaluate father's home for placement of A.M.

The Department's April 5, 2016 report indicated that A.M.'s foster placement continued to be appropriate and nurturing, and that he was doing well. A.M.'s foster parents were committed to adopting him, and an adoptive home study had been commenced. The Department asked for a four-month continuance of the section 366.26 hearing so that the study could be completed.

In February 2016, father's visits with A.M. were increased to seven and a half hours of unmonitored time on Sundays. Father was described by the babysitter to be caring and attentive. However, overnight visits had not started because father had not yet installed safety latches, or safely stored liquor

and medications. The social worker told father to contact her when he had remedied these problems so that his home could be reassessed. The social worker was unable to reach father to follow up with him, and father did not contact the Department to schedule his home assessment.

A.M. had been referred to the Regional Center for assessment. In November 2015, the Regional Center informed the Department that if the parent/educational rights holder did not intend to attend the assessment, they needed to sign a consent form. The Department was unable to reach father until February 2016 concerning the assessment. Finally, father signed the consent form on February 12, 2016, and A.M.'s assessment with the Regional Center was scheduled for March 2016.

An assessment of father's home was scheduled for February 26, 2016. However, when the social worker arrived, father was not home. He called the Department on March 1, 2016, and apologized, claiming there was a family emergency. The assessment was rescheduled for March 8, 2016. The social worker found the one bedroom apartment to be clean and tidy, however, father still had not installed safety locks on the cabinets, and cleaning supplies, open bottles of liquor, and medications were accessible.

On March 10, father called the social worker to see when his home would be reevaluated. He still had not addressed the safety concerns identified during the previous assessments. The social worker told father to follow up once safety locks had been installed.

At the April 8, 2016 continued permanency review hearing, the court ordered a bonding study to be completed to assess A.M.'s relationship with both his father and his foster parents.

Dr. Gerardo Canul's May 2016 report opined, based on the interactions between father and A.M., that there was a "moderately positive emotional interdependence" between father and A.M., but that there was "a minimal likelihood that ongoing contact between [A.M.] and the father will provide a consistently positive and nurturing reciprocal relationship" Dr. Canul also opined that placing A.M. with father "would likely jeopardize [A.M.'s] psychological, developmental, and emotional growth."

Concerning the relationship between A.M. and his foster parents, Dr. Canul noted that they had known A.M. since birth, as the foster mother was the niece of the first foster mother. Dr. Canul concluded there was a "mostly positive emotional interdependence" between A.M. and his foster parents. He found a "strong likelihood that on-going contact between [A.M.] and the foster parents will provide a consistent positive and nurturing reciprocal relationship"

The Department's June 15, 2016 status review report noted that A.M. continued to do well in his foster placement, and his foster parents remained committed to adopting him. The Department attempted to schedule another home assessment for father, but he never followed up with the Department to schedule the assessment.

A June 15, 2016 last minute information for the court reflected that father was a "no show" for drug tests on May 23 and June 6, 2016. Father had also not followed up with the Department to schedule a further assessment of his home. The Department had attempted to contact father with no success; father did not return the Department's calls.

Also, A.M.'s IEP could not be completed because father did not show up for two scheduled IEP meetings, or respond to the

school district's correspondence. The school district reported that immediate appointment of an educational rights holder was necessary to timely begin the IEP process due to father's lack of cooperation, or else A.M.'s case would be deactivated. The Human Services agency had made over 10 attempts to call father concerning A.M.'s IEP, but his phone was not receiving calls. Father did answer one call, but hung up on the case worker. The Department sought an ex parte order for appointment of A.M.'s foster mother as the educational rights holder. The application was granted on June 28, 2016.

Father was a no show for drug tests on May 6, May 23, June 6, July 11, and July 29, 2016. As of September 29, 2016, A.M.'s adoptive home study was in the final stages of approval. Father missed three consecutive visits with A.M. on September 4, 11, and 18, 2016. He did not call to cancel or reschedule the visits. He did visit with A.M. on September 25 and October 2.

The adoptive home study was approved on October 12, 2016.

The selection and implementation hearing was held on December 14, 2016. The hearing had been calendared as a contested hearing. Father appeared at the hearing, but asked for a continuance so that he could go to the hospital. The court denied the request, noting that it had observed father, and believed the request was a delay tactic. The court requested an offer of proof concerning father's testimony. Counsel said father would testify to a strong bond with A.M., that he had maintained regular contact, and that the benefit of the "parent/child relationship outweighs the benefit that he would get from adoption." The court found that based on the record, the offer of

proof was insufficient. The court found that no exception to adoption existed and terminated father's parental rights.

Father timely appealed.

DISCUSSION

Father contends the court violated his due process rights and abused its discretion when it denied his request to present evidence of the beneficial parent-child relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) Section 366.26, subdivision (c)(1) states, in pertinent part: "If the court determines . . . , by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption . . . unless . . . : [¶] . . . [¶] (B) . . . [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . ." Father maintains that he would have been able to prove the applicable exception had the court granted a contested hearing and allowed him to testify. We disagree.

"[A] parent has a right to 'due process' at the hearing under section 366.26 which results in the actual termination of parental rights." (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816-817.) "[D]ue process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest." (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) The court may request an offer of proof to identify those issues that are contested so it can "determine whether a parent's representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) "The offer of proof must be

specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Id.* at p. 1124.) The juvenile court’s ruling on whether to grant a contested hearing is reviewed for abuse of discretion. (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 759.)

Here, counsel offered father’s testimony that he had a strong bond with A.M., he had maintained regular contact, and the benefits of the parent/child relationship outweighed the benefits of adoption. Father’s offer of proof was insufficient; it did not identify any specific facts or evidence which would be presented, and did not dispute any facts contained in the social worker’s reports. (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124.) The reports demonstrated that father had maintained regular visitation, except for visits missed in the early months of 2015 and in September 2016. The social worker opined there was not a strong bond between father and A.M. Father did not specify what additional evidence of a bond he could offer to dispute the social worker’s reports or the opinions in the two bonding studies to the effect that there had never been a strong bond between father and A.M.

The undisputed facts demonstrate that father repeatedly failed to take simple steps to secure overnight visitation with A.M.; that father obstructed A.M.’s regional center assessment and IEP; that father was often difficult to reach and failed to cooperate with the Department; and that his drug testing had become erratic. In light of these uncontested facts, no miscarriage of justice resulted from the court’s conclusion that father’s offer of proof was insufficient to hold a contested section 366.26 hearing. (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124.)

And, father's offer of proof was insufficient because father did not offer to prove that termination of parental rights would be detrimental to A.M. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) "To meet the burden of proof for the section 366.26, subdivision (c)(1)[(B)(i)] exception, the parent must show more than frequent and loving contact or pleasant visits. . . . The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954, citations omitted.) The relationship between the parent and child must be sufficiently significant that the child would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) The court must balance the strength and quality of the parent-child relationship against the security and sense of belonging that a stable family would confer on a child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

As the bonding studies, earlier testimony, and social workers' reports make clear, father was merely a friendly visitor who did not occupy a parental role in A.M.'s life. A parent-child relationship " 'characteristically aris[es] from day-to-day interaction, companionship and shared experiences.' . . . [Citation.]" (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) A.M. was never in father's custody. He was removed from his parents immediately after his birth, and spent more than five years in foster care. Father never achieved overnight visitation to demonstrate he could provide for all of A.M.'s needs, despite repeated opportunities to do so. On this record, we can discern no prejudice. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1387.)

DISPOSITION

The order is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.