Filed 2/4/26 In re K.P. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re K.P., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. J.P. et al., Defendants and Appellants.	G065764 (Super. Ct. No. 24DP1503) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Michael T. Mooney, Judge. Conditionally reversed and remanded with directions.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant J.P.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant S.S.

Leon J. Page, County Counsel, Debbie Torrez and Deborah B. Morse, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

Appellants J.P. (Father) and S.S. (Mother) challenge an order terminating their parental rights over their infant son, K.P. Appellants contend the juvenile court erred in: (1) denying their request for a continuance to allow a bonding study to be conducted, (2) failing to apply the parental-benefit exception to termination, and (3) finding there was a sufficient inquiry into K.P.'s Indian ancestry as required by the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.; Welf. & Inst. Code, § 224 et seq.)[1] We find appellants' first two claims unpersuasive. However, as respondent Orange County Social Services Agency (SSA) concedes, appellants' ICWA claim is well taken. We therefore conditionally reverse the order terminating appellants' parental rights and remand for ICWA compliance.

STATEMENT OF FACTS

Appellants have an extensive history of drug abuse and drug-related convictions, as well as prior involvement in the child welfare system.

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[1] We use the term "Indian" solely for the sake of consistency because ICWA and related California statutes use the same term. Unless noted otherwise, all further statutory references are to the Welfare and Institutions Code.

Although Mother reported she was not using drugs while pregnant with K.P., he had methamphetamine in his meconium when he was born on December 4, 2024. Due to that circumstance, K.P. was placed in protective custody two days later. The juvenile court granted appellants visitation rights, but because appellants did not successfully avail themselves of services in their prior child welfare cases, the court did not grant them reunification services in this case. (§ 361.5, subds. (b)(10), (11) & (13).) Instead, the court set a section 366.26 permanent placement hearing for July 2025.

Pending that hearing, on January 14, 2025, K.P. was placed in the home of his prospective adoptive parents, where he has thrived and achieved all his developmental milestones. The prospective adoptive parents have provided K.P. with a loving and stable home and are committed to meeting all his needs.

Appellants' relationship with K.P. developed in the context of their supervised visits, which began shortly after K.P. was taken into protective custody. The visits were scheduled to occur thrice a week, for two to three hours, for a total of eight hours per week.

Mother averaged only about six hours a week, but she visited K.P. on a regular basis and was affectionate and loving to him during the time they spent together. She held and rocked K.P., tended to all his needs, and sometimes brought him clothes and toys. She also played on the floor with K.P. and talked sweetly to him, which made him coo and smile. When the visits ended, Mother would kiss K.P. goodbye, tell him she loved him, and help get him buckled into his car seat. K.P., who has a quiet, easy disposition, was generally content upon leaving.

Due to his work schedule, Father attended only about a quarter of the scheduled visits. Although he was generally affectionate with K.P. and

sometimes brought him toys, he was not keen on holding or changing him. Father also left the visits periodically and spent a lot of time on his phone while he was in K.P.'s company.

Leading up to the permanent placement hearing, the social worker reported the prospective adoptive parents have strong parenting skills, have bonded with K.P., and are committed to adopting him. And K.P. was flourishing in their care and showed many signs of attachment to them. Based on all the circumstances presented, the social worker recommended the court terminate appellants' parental rights over K.P., freeing him for adoption.

Although the permanent placement hearing was scheduled to take place on July 2, 2025, it was continued one week at Mother's request to give her more time to consult with her attorney. Then on July 9, the hearing was continued another two days at the request of Father's attorney because he had to make an appearance in another case. And when the parties convened on July 11, the court found good cause to continue the matter four more days, based on the unavailability of certain unnamed "parties and lawyers."

On July 15, Mother's attorney asked the juvenile court to authorize a bonding study and to continue the permanent placement hearing until the study was conducted. Counsel admitted his request for the study was untimely, but he argued the study would shed valuable light on the nature of Mother's relationship with K.P. Father joined the requests, which were opposed by SSA and K.P.'s attorney. Ultimately, the court denied the request for a bonding study as untimely and denied the continuance request for lack of good cause. It then heard testimony from appellants as to why they believed their parental rights over K.P. should not be terminated.

Mother testified she has visited K.P. regularly, and when she arrives for a visit, K.P. smiles and lifts his arms for her to pick him up. She described their visits as affectionate and playful and said K.P. gets sad and fussy when they are over. Mother believed it would be detrimental to terminate her parental rights over K.P. because they love each other and she is his biological mother. She also said she has been trying to overcome her drug problem and become a better person.

Father testified he has been working hard to stay clean and support Mother. Although he has missed the bulk of the visits, Father said K.P. lights up when he and Mother arrive for a visit and is sad when they leave. Father testified he loves K.P. He expressed his view that it would be unfair to terminate his parental rights over K.P., but he did not explain why he thought so.

During closing arguments, counsel for SSA and K.P.'s attorney contended it would be in K.P.'s best interests to terminate appellants' parental rights and free K.P. for adoption. Appellants' attorneys disagreed. They argued K.P. would benefit from leaving appellants' parental rights intact and selecting a permanent placement plan other than adoption.

After finding K.P. was likely to be adopted, the juvenile court determined the benefit exception to the termination of parental rights did not apply to Father because he has not maintained regular visitation and contact with K.P. Moreover, Father failed to prove K.P. would benefit from continuing their relationship or that terminating his parental rights would be detrimental to K.P.

The juvenile court found Mother had visited K.P. on a regular and consistent basis. But as with Father, the court determined Mother did not have a substantial positive emotional attachment to K.P. such that he

would benefit from continuing their relationship. Nor, in the court's view, would it be detrimental to K.P. to terminate Mother's parental rights over him. In so finding, the court found it significant that K.P. was only eight months old, has never lived with Mother, and has only interacted with her in the context of supervised visitation. The court did not believe it would be in K.P.'s best interest to keep appellants' parental rights intact. It therefore terminated their parental rights over K.P. and selected adoption as K.P.'s permanent placement plan.

DISCUSSION

I.

BONDING STUDY

Appellants do not challenge the juvenile court's decision not to grant them reunification services. However, they contend the court abused its discretion by denying their request for a bonding study and a continuance to allow such a study to be conducted. We disagree.

Because bonding studies can be helpful in determining the best interests of a dependent child, juvenile courts should seriously consider allowing them in appropriate cases. (*In re Caden C.* (2021) 11 Cal.5th 614, 633, fn. 4 (*Caden C.*).) However, the juvenile court is not required to order a bonding study before terminating parental rights, particularly if the request is untimely. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) Indeed, "the denial of a belated request for [a bonding] study is fully consistent with the scheme of the dependency statutes, and with due process," in that such studies may delay implementation of a permanent placement plan for the child. (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1197.) Accordingly, the juvenile court has broad discretion in deciding whether to authorize a bonding study or to grant a continuance to allow for preparation of such a

study. (*In re P.S.* (2024) 107 Cal.App.5th 541, 553; *Michael G. v. Superior Court of Orange County* (2023) 14 Cal.5th 609, 637.) We will not reverse a juvenile court's decision regarding those issues unless it was arbitrary, capricious, or patently absurd. (*In re P.S., supra,* at p. 553.)

The juvenile court's decisions in this case were none of those things. Because appellants were not eligible for reunification services, the case was fast-tracked and condensed as compared to other child welfare cases. At the disposition hearing in March 2025, the court set a section 366.26 permanent placement hearing for July. Yet, appellants did not request a bonding study at any time during that four-month stretch. Nor did they request a bonding study on July 2, 9, or 11, the first three dates the court convened to start the permanent placement hearing. Instead, they waited until July 15, the date on which the parties were finally ready to start the hearing.

By then, K.P. had been living with his prospective adoptive parents for six months, and the focus of the case was on his need for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Even Mother's own attorney admitted the request for a bonding study was untimely under the circumstances. Mother's counsel also acknowledged the social workers' reports contained information on the nature of Mother's bond with K.P. In fact, over 15 single-spaced pages of the permanent placement report are devoted to describing in detail how both appellants interacted with K.P. during their numerous visits with him over the course of the case. In light of these circumstances, and given that K.P. was thriving in the care of his prospective adoptive parents at the time, the juvenile court did not abuse its discretion in denying appellants' request for a bonding study or their

request to continue the permanent placement hearing—yet again—to secure such a study.

II.

PERMANENT PLACEMENT PLAN

Appellants also challenge the juvenile court's decision to terminate their parental rights over K.P. Invoking the parental-benefit exception to termination, they contend their relationship with K.P. is such that it would be in his best interest to maintain their parental rights and select a permanent plan other than adoption. We find no reason to disturb the juvenile court's decision to the contrary.

"[W]hen a court proceeds to select a permanent placement for a child who cannot be returned to a parent's care, the parent may avoid termination of parental rights in certain circumstances defined by statute. One of these is the parental-benefit exception." (*Caden C., supra*, 11 Cal.5th at p. 629.) Under that exception, a parent seeking to preserve his or her parental rights "must show, by a preponderance of the evidence, three things. The parent must show regular visitation and contact with the child, taking into account the extent of visitation permitted. Moreover, the parent must show that the child has a substantial, positive, emotional attachment to the parent—the kind of attachment implying that the child would benefit from continuing the relationship. And the parent must show that terminating that attachment would be detrimental to the child even when balanced against the countervailing benefit of a new, adoptive home. When the parent has met that burden, the parental-benefit exception applies such that it would not be in the best interest of the child to terminate parental rights, and the court should select a permanent plan other than adoption." (*Id.* at pp. 636–637.)

"A hybrid standard governs our review. [Citation.] The first two elements involve factual determinations to which the substantial evidence standard of review applies. [Citation.] The final step, determining whether termination of parental rights would be detrimental to the child, is reviewed for abuse of discretion." (*In re G.H.* (2022) 84 Cal.App.5th 15, 26.) In most cases, however, "the practical difference between the standards is not likely to be very pronounced." (*Caden C., supra*, 11 Cal.5th at p. 641.) "At its core, the hybrid standard . . . simply embodies the principle that '[t]he statutory scheme does not authorize a reviewing court to substitute its own judgment as to what is in the child's best interests for the trial court's determination in that regard, reached pursuant to the statutory scheme's comprehensive and controlling provisions.'" (*Ibid.*)

With respect to Mother, the record contains substantial evidence to support the juvenile court's finding she visited K.P. on a regular and consistent basis. Although she missed a few visits and was either late to or left early from others, her overall attendance level was high during the seven-month period she was permitted to visit K.P.

However, the record also contains substantial evidence to support the juvenile court's finding that K.P.'s attachment to Mother was not such that he would benefit from continuing their relationship. As the court pointed out, K.P. has never lived with Mother, and Mother has only visited him for short periods at a time in a supervised setting. Mother was loving and caring toward K.P. during the visits. However, in contrast to appellants' testimony at the permanent placement hearing, the social worker's detailed description of the visits did not indicate K.P. exhibited sadness or distress when appellants left him when the visits were over. Rather, except on one or two

occasions when K.P. was fussy, it appears he reacted to appellants' departure as he would any other friendly visitor who gave him kind attention.

In that regard, we must remember, "Interaction between natural parent and child will always confer some incidental benefit to the child." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) But to satisfy the second prong of the parental-benefit exception, there must be proof of a "significant, positive, emotional attachment" between the parent and the child. (*Ibid.*) The parent must occupy more than a "pleasant place" in the child's life (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324), and the parent-child relationship must be characterized by something more than "frequent and loving contact." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953.) Based on the record before us, we have no reason to question the juvenile court's finding that the benefit K.P. derived from Mother's visits was incidental in nature, rather than significant or substantial.

Moreover, weighing that benefit against the benefit K.P. is likely to derive from being placed in a permanent adoptive home, it is clear the juvenile court did not abuse its discretion in finding Mother failed to satisfy the third requirement of the parental-benefit exception. According to the social worker's reports, K.P. has thrived in every respect since he was placed in the home of his prospective adoptive parents. And his prospective adoptive parents have a strong understanding of K.P.'s needs, they are deeply committed to the responsibilities of parenting, and they have the skill and capabilities to provide a secure and nurturing environment for K.P. The juvenile court could reasonably conclude these benefits outweigh the benefits K.P. would likely receive by keeping Mother's parental rights intact.

For all these reasons, the juvenile court did not err in finding the parental-benefit exception inapplicable to Mother. Moreover, because Father

visited K.P. far less often than Mother and was considerably less involved with K.P. than Mother during his visits, we find no error in the court's decision to terminate his parental rights over K.P. Although it is clear Mother and Father both love K.P., it is equally clear adoption is the most suitable permanent placement plan for K.P. There is no reason to disturb the juvenile court's ruling in that regard.

III.

ICWA

Lastly, appellants contend SSA failed to comply with its inquiry obligations under ICWA, which is designed to prevent the breakup of Indian families. (25 U.S.C. § 1912(d).) SSA agrees, and so do we. Although the record shows SSA made some inquiry into K.P.'s Indian ancestry, it did not ensure that some of K.P.'s readily available relatives—such as his paternal aunt, half-sister, and grandmother—were questioned regarding K.P.'s potential Indian ancestry. Therefore, we will conditionally reverse the juvenile court's termination order and remand for further proceedings to permit SSA to fully comply with the notice and inquiry requirements of ICWA. (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1136.)

DISPOSITION

The juvenile court's order terminating appellants' parental rights is conditionally reversed, and the matter is remanded to the juvenile court for SSA to comply with the inquiry and notice provisions of ICWA. If, after proper notice, no tribe claims K.P. is an Indian child, the orders terminating appellants' parental rights shall be reinstated. If any tribe claims K.P. is an Indian child, the court shall proceed in accordance with the provisions of ICWA and applicable state law.

GOODING, J.

WE CONCUR:

MOTOIKE, ACTING P. J.

SANCHEZ, J.