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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re R.J. et al., Persons Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

B.J. et al.,

Defendants and Appellants.

A134636

(Alameda County
Super. Ct. Nos. OJ10015130,
OJ10015131)

Defendant B.J. (Mother) is the mother of four children. All were detained by the Alameda County Social Services Agency (Agency) and eventually removed from her care. When Mother failed to reunify, the juvenile court scheduled a permanency planning hearing for the two youngest children, R.J. and M.J. At the hearing, Mother and the two older children, De.J. and Di.J., sought to prevent the termination of Mother's parental rights under the "sibling relationship" exception of Welfare and Institutions Code¹ section 366.26, subdivision (c)(1)(B)(v), arguing termination would interfere with the significant sibling relationships between De.J. and Di.J. and the younger children. The juvenile court found the exception inapplicable, terminated Mother's parental rights, and selected a permanent plan of adoption. We affirm.

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

I. BACKGROUND

Mother's four children were the subject of dependency petitions under section 300, subdivision (b), filed June 30, 2010. At the time of filing, daughters De.J. and Di.J, were, respectively, 13 and 6 years old. Infant daughter M.J. was eight months old, while son R.J. was two years old.² The name and address of each father was listed as "Unknown."

Mother is developmentally delayed, suffers from debilitating illnesses, and abuses alcohol. She had accumulated a substantial history with child welfare authorities as a result of her inability to maintain a clean and safe home. The petitions alleged she was unable to provide for the educational and medical needs of De.J. and had physically harmed her, and had placed Di.J., M.J., and R.J. at "high risk of neglect." The juvenile court sustained the jurisdictional allegations and found the children to be dependents of the court, but it allowed them to remain at home with Mother.

Mother proved unable to care for the children. Three months after entry of the jurisdictional and dispositional orders, the Agency filed a successful petition under section 387 to have the children removed from Mother's care. On January 31, 2011, the siblings were removed and separated. R.J. and M.J. were placed in a foster home, and the two older girls eventually went to live with their maternal grandmother. At the time of removal, R.J. was nearly 3 years old, while M.J. was 15 months. After her children were removed, Mother ceased cooperating with the Agency and failed to complete reunification.

The report prepared by the Agency for the permanency planning hearing for M.J. and R.J., filed December 5, 2011, recommended their adoption by their foster parents. M.J., just over two years old, was described as developmentally normal. R.J. is autistic. At the time nearly four years old, he was essentially nonverbal, although he could follow simple commands and was making progress in a preschool special education program.

² Only the termination of Mother's parental rights relating to R.J. and M.J. are under review in this appeal.

Despite the impairment, R.J. was described as “an engaging social child who enjoys playing” and “a joy to have in [the] classroom.”

The Agency reported that R.J. and M.J. “appeared happy, content and comfortable with their proposed adoptive parents.” The foster mother “very much wants to adopt them” and “wants them to always be part of her family. Her adult children have expressed similar feelings and have developed close relationships with both children.” R.J. and M.J. “respond to her as to a primary parent.” In turn, “[t]he caregiver has shown herself to be resourceful and patient while strongly advocating for both children. . . . The caregiver’s feelings of love and commitment for these two children are clear.”

De.J. and Di.J. filed a section 388 petition seeking recognition of their sibling relationship with R.J. and M.J. A handwritten declaration by De.J., submitted in support of the petition, stated that De.J. had lived with R.J. and M.J. since their birth. After they were born, De.J. “used to hug them and kiss them so much and they look up to me as a big sister.” De.J. said she was “very emotional and sad” at the prospect of separation from the younger siblings and believed “these children should be with their family.” Prior to commencement of the permanency planning hearing on December 19, 2011, the juvenile court granted the section 388 petition on the stipulation of the parties that the “requisite sibling relationship” existed.

First to testify at the hearing was De.J, then 14 years old. Since the separation, De.J. had seen the younger siblings about once a month. Prior to that, she had seen them every day. R.J. and M.J. were affectionate with her and enjoyed being with her, as she did with them. Although De.J. had often played with R.J. prior to the separation, when she visited him now things were “kind of different” because he becomes upset when too many people are present. M.J. was not yet walking at the time of the separation, but she and De.J. “kind of bond” during visits.

Mother testified that the two older siblings were upset at the prospect of being permanently separated from the younger children. She believed her mother and sister would be willing to care for all four children, with R.J. adopted by her sister and M.J. by her mother.

The children's maternal grandmother asked that all four children be placed with her and affirmed that she was willing to adopt all of them. The two older children largely grew up in her home, and R.J. lived there when first born. The grandmother testified De.J. danced with R.J. and held him when he was young. Now, M.J. wants De.J. to hold her "all the time." Both younger children are "very close" to De.J. Di.J. plays with M.J. and R.J. for as long as they will let her. De.J. and Di.J. are "grieving as a family because they no longer have that family or have that bond." De.J. has begun "striking out," and Di.J. has reverted to bedwetting.

Although finding the situation "incredibly difficult," the juvenile court terminated Mother's parental rights and set adoption of R.J. and M.J. by the foster parent as the permanent plan. The court noted the two younger children are "thriving and fortunately they are with a woman that seems to value the sibling relationship and their relationship with the entire family." The court was "helped" in making its decision by the existence of an agreement that had been reached in mediation between the prospective adoptive parent and the family that would allow continued visits between the younger and older siblings. As the court explained, "it is obvious that a relationship with [De.J. and Di.J.] would benefit everybody because they are exceptional young ladies, and I am encouraged that the caregiver wants to do what she can do to maintain the relationship." Relying on the permanency planning report prepared by the Agency, the court found clear and convincing evidence that it was likely the younger children would be adopted and that adoption would be in their best interests.

II. DISCUSSION

Mother, De.J., and Di.J. contend the juvenile court erred in declining to apply the sibling relationship exception of section 366.26, subdivision (c)(1)(B)(v), which would have precluded termination of Mother's parental rights.

“ “Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.” [Citation.] “A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.” [Citation.] It is designed to protect children's “compelling rights . . . to have a

placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.” . . .’ [Citation.] [¶] Adoption is the Legislature’s preferred permanent plan. [Citation.] ‘ “Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child’s best interests are other, less permanent plans, such as guardianship or long-term foster care considered.” [Citation.] Adoption, of course, requires terminating the natural parents’ legal rights to the child; guardianship and long-term foster care leave parental rights intact. After the parent has failed to reunify and the court has found the child likely to be adopted, it is the parent’s burden to show exceptional circumstances exist.’ [Citation.] [¶] At a section 366.26 hearing, the court must terminate parental rights and free the child for adoption if it determines by clear and convincing evidence the child is adoptable within a reasonable time, and the parents have not shown that termination of parental rights would be detrimental to the child under any of the statutory exceptions to adoption found in section 366.26, subdivision (c)(1)(B)(i) through [(v)].” (*In re D.M.* (2012) 205 Cal.App.4th 283, 289–290.)

In determining whether to decline to terminate parental rights under the sibling relationship exception of section 366.26, subdivision (c)(1)(B)(v), the juvenile court applies a two-part test. First, the court must determine whether 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.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) “ ‘To show a substantial interference with a sibling relationship the parent [or sibling granted standing] must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.’ ” (*In re D.M.*, *supra*, 205 Cal.App.4th at p. 290.) In determining whether a “significant sibling relationship” exists, the court should consider “the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same

home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest” (§ 366.26, subd. (c)(1)(B)(v).) In applying the exception, the juvenile court may consider only possible detriment to the child to be adopted, not detriment to any nonadoptive siblings. (*In re D.M.*, at p. 291.)

If the juvenile court concludes adoption would interfere with a significant sibling relationship, it must proceed to the second part of the test by balancing the value of the relationship against the value of adoption. “[E]ven if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

The minor’s parent bears the “ ‘heavy burden’ ” of demonstrating the applicability of the sibling relationship exception. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017, disapproved on other grounds in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5.) We review the juvenile court’s ruling for abuse of discretion.³ (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1038.)

We find no abuse of discretion here. It is generally recognized that very young children are unlikely to have formed “significant” sibling relationships for purposes of section 366.26, subdivision (c)(1)(B)(v) because they are emotionally immature and have spent a comparatively short time with their older siblings. (See, e.g., *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1318.) When these siblings were separated in January 2011, R.J. was not yet 3 years old, and M.J. was 15 months old. For most of their time spent in the same home with the older girls, the two were infants. As such, they were too young to have “shared significant common experiences” and too

³ We recognize there is a long-running dispute between cases advocating use of the abuse of discretion and substantial evidence standards. While we conclude abuse of discretion is the more appropriate test for this type of decision, there is little practical difference. A court abuses its discretion if it renders a decision not supported by substantial evidence. (*Garamendi v. Golden Eagle Ins. Co.* (2005) 128 Cal.App.4th 452, 466.)

emotionally immature to have formed “close and strong bonds” with De.J. and Di.J. (§ 366.26, subd. (c)(1)(B)(v).) Since the separation, R.J. and M.J. have seen their older siblings only on occasional visits that were insufficiently frequent to have fostered the development of stronger bonds.

The testimony at the permanency planning hearing provided no evidence of more substantial relationships than would be expected from the ages of the younger siblings. While the testimony of De.J., Mother, and the children’s grandmother demonstrated M.J. and R.J. are comfortable with their older siblings and fond of them, it provided no basis for finding the type of strong and meaningful relationship necessary to support application of the exception.

Even if significant sibling relationships had existed, they would not be of sufficient importance to the lives of R.J. and M.J. to outweigh the benefits of adoption. Because M.J. is very young and R.J. has special needs, the stable and permanent placement provided by adoption is particularly important for both of them.

The circumstances here are factually indistinguishable from those of *In re Celine R.*, in which the Supreme Court found “virtually no basis” for application of the sibling relationship exception: “Celine and Angel had lived with Crystal only a very short time when they were very young. When the children were placed in separate homes in September 2000, Celine was three years old and Angel less than two years old. They had been living separately from Crystal for a year and a half as of the [permanency planning] hearing. Given their age when separated from Crystal and the length of time they had already lived separately from her, the conclusion was virtually compelled that they had not been ‘raised with [Crystal] in the same home’ and had not ‘shared significant common experiences or [had] existing close and strong bonds with [her]’ [citation], or at least that such bonds should not prevent them from gaining a permanent home through adoption. . . . Under the circumstances, the trial court reasonably discounted the importance of the sibling relationship to Celine and Angel, even if it was important to the older child, and, as does the Legislature generally, it valued more their ‘ability to belong to a family.’ ” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

Mother and the two older siblings argue the juvenile court’s grant of the section 388 petition required it to find that a significant sibling relationship existed. Whatever the parties’ reasoning in stipulating to the section 388 petition, it did not bind the court in ruling on the sibling relationship exception. The grant of such a petition merely represents a recognition that “there is a sufficiently close relationship between the siblings that the nonadoptive sibling should be permitted to urge consideration of this factor when a permanency plan for the adoptive child is considered at the section 366.26 hearing.” (*In re Hector A.* (2005) 125 Cal.App.4th 783, 795.) Yet even if grant of the petition was binding as to the nature of the relationship, it did not require the court to find that termination of the sibling relationships would be detrimental to the youngsters or that the benefits of maintaining the relationships outweighed the benefits of adoption. Accordingly, the grant of the section 388 petition did not dictate the juvenile court’s ultimate decision regarding the termination of Mother’s parental rights.

Mother and the two older siblings also argue the juvenile court erred in considering the prospective adoptive parent’s expressed intention to maintain continued contact between the sibling sets. Assuming this is true, it provides no basis for reversing the court’s ruling. “[O]ur focus is upon the ultimate decision rather than the underlying analysis of the trial court. ‘ . . . [W]e review the judgment for reversible error, not merely to determine whether the trial court’s interpretation . . . was correct, but whether the judgment is correct on any theory. . . . ‘ . . . [A] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason.’ ” ” (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1384.) As discussed above, the juvenile court’s ruling was amply supported by the evidence about the relationships between R.J. and M.J. and their older sisters, wholly apart from the intentions of the prospective adoptive parent. Any error in the court’s reasoning was unquestionably harmless.

III. DISPOSITION

The judgment of the trial court is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Dondero, J.