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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

A135212

(Contra Costa County
Super. Ct. Nos. J09-01660, J09-01661,
J09-01662, J09-01663, J09-01664)

Defendant S.A. (Father) is the father of five children by the same mother (Mother). All five children were detained by the Contra Costa County Children and Family Services Bureau (Agency) and placed with their maternal grandmother (Grandmother). When the parents failed to reunify, the court ordered adoption as the permanent plan. Although Grandmother initially planned to adopt the entire group, she eventually concluded she was incapable of raising all five. After the Agency located prospective adoptive parents for two of the children, the court terminated parental rights and allowed separate adoption of the two sibling groups. Father contends the juvenile court erred in declining to invoke the “sibling relationship” exception of Welfare and Institutions Code¹ section 366.26, subdivision (c)(1)(B)(v) to prevent termination of his parental rights. We affirm.

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

I. BACKGROUND

Father's five children with Mother were the subjects of separate dependency petitions under section 300, subdivision (b), all filed December 15, 2009. At the time of filing, J.A. was six years old; M.G. was nearly five years; twin boys C.A. and M.A. had just turned four years; and D.G. had just turned three. The petitions contained identical allegations stating Mother had left the children unattended at home, apparently for periods of more than 24 hours. Father was alleged to have provided inadequate care and supervision. The children were detained, found to be dependents of the court, and placed with Grandmother, who already had custody of an older child of Mother. All of the children present special challenges for a caretaker, since each has developmental delays and behavioral problems associated with their chaotic upbringing.

Mother's participation in the reunification process was sporadic, and she was deported to Mexico late in the course of the dependency proceeding. Although Father visited the children fairly regularly, little in his behavior suggested he could adequately care for them. The court eventually terminated his reunification services and scheduled a permanency planning hearing.

The report prepared by the Agency for the permanency planning hearing in May 2011 recommended the court find "the children have a probability for adoption but are difficult to place," since at the time there was no "approved" adoptive parent. Grandmother, 47 years old, had expressed the desire to adopt all five, but the Agency had not yet completed its adoptive home study of her. The Agency was mildly skeptical of the Grandmother's ability to raise them all, recognizing all "suffer from speech delays and behavioral problems" and "will need special education services at some point."

The juvenile court made the recommended findings, determined adoption to be the permanent plan, and continued the hearing for six months. As to each child, the court found "there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, and because of the presence of a diagnosed medical, physical or emotional handicap and because the child is the age of

seven or more.”² The Agency was directed to locate “an appropriate adoptive family for the child.”

Over the following months, Grandmother came to realize she could not properly care for the entire group of siblings, particularly given their special needs, and the Agency concluded the best solution was to split the children. Grandmother suggested separate placement of the twins C.A. and M.A., and was willing to adopt the remaining three. The court granted the Agency time to find a suitable adoptive family for the twins, since there were no relatives available to accept them. By the date of the next scheduled hearing, the Agency had located a prospective adoptive family for the twins, although the placement was still “in the early stages as the [Agency] wants the prospective adoptive parents and the boys to have the opportunity to develop a relationship.”

At the hearing, Father contested the Agency’s recommendation to permit separate adoptive homes. He called the Agency’s social worker, who testified the children had lived together their entire lives, with the exception of a year of foster care in 2007. Although the social worker said the children appeared to be “bonded to each other,” she provided no further information about their individual relationships.³

The juvenile court terminated parental rights, found that each child was likely to be adopted, and ordered each placed for adoption. In declining to apply the sibling exception to prevent termination of Father’s parental rights, the court stated, “I do not believe that evidence sufficient to have the Court rule in favor of a beneficial relationship has been presented.”

² This finding was made as to each child, but only J.A. had actually reached a seventh birthday at the time the orders were entered.

³ Prior to the hearing, Father had filed a section 388 petition seeking the reinstatement of reunification services “to prevent[] the break up of the sibling group as recommended by the [Agency].” The juvenile court denied the petition, concluding there was no evidence the conduct that led to the termination of Father’s services, in particular his abusive conduct toward Mother and his failure to take responsibility for his actions, had changed. The ruling is not challenged on this appeal.

II. DISCUSSION

Father contends 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 his 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 refuse to terminate parental rights under the sibling relationship exception of subdivision (c)(1)(B)(v) of section 366.26, 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 impaired 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.⁴ (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1038.)

⁴ 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

We find no abuse of discretion here. It is possible one or more of the children are uniquely dependent on his or her bond with another of the children, as required by the sibling exception, but the type of evidence necessary to demonstrate such a bond was wholly lacking. The only evidence presented to support a finding any of the children had formed a “significant sibling relationship” with one or more of the other children was that the group had lived together most of their lives and were, in general terms, “bonded.” Because there was no evidence about any of the specific relationships among the children, there was no substantial evidence to support a finding that severance of any particular bond “ ‘would be detrimental to the child.’ ” (*In re D.M., supra*, 205 Cal.App.4th at p. 290.)

Particularized evidence is especially important here because no child was being separated entirely from his or her siblings. With such a large group, it is unlikely the children had equally strong bonds with one another. For example, it would not be surprising if the twins were most strongly bonded to each other. That bond would not suffer in the proposed adoption. Similarly, the two oldest children might have been most strongly bonded to each other, and they were staying together. Of course, these natural assumptions might have proven incorrect. On the scanty record before the juvenile court, there was simply no way to know. In the absence of such evidence, a finding the proposed adoption in two groups would interfere with a specific “significant sibling relationship,” as defined by section 366.26, subdivision (c)(1)(B)(v), would have been nothing more than speculation.

Even if there were substantial evidence of a significant sibling relationship, however, we would find no abuse of discretion in the trial court’s implicit finding that the value of adoption outweighed the value of the relationships between members of the two adoptive groups. These children were raised under very difficult circumstances that

substantial evidence. (*Garamendi v. Golden Eagle Ins. Co.* (2005) 128 Cal.App.4th 452, 466; see *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 [factual determinations reviewed for substantial evidence, while application of beneficial relationship exception reviewed for abuse of discretion].)

produced severe developmental and behavioral problems. It is the stability adoption will bring, so lacking in their home environment, that is necessary to allow them to overcome their early childhood and flourish. While it would be preferable for the twins to be adopted with their brothers and sister, nonfamily parents willing to adopt a five-member sibling group, each of whom requires special care, are few and far between. We find no abuse of discretion in the juvenile court’s authorization of the only realistic option—adoption of the twins together, separate from the rest.

Father effectively contends the children should be kept together as a group for the sake of preserving their identity as such. If that type of argument were sufficient to satisfy section 366.26, subdivision (c)(1)(B)(v), sibling groups would only rarely be split up. As its name suggests, however, the sibling relationship exception was intended by the Legislature to be the exception, not the rule. “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 choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) There was no showing of such exceptional circumstances here.

III. DISPOSITION

The order of the juvenile court is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.