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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re H.B., a Person Coming Under the
Juvenile Court Law.

SONOMA COUNTY HUMAN SERVICES
DEPARTMENT,

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

A135441

(Sonoma County
Super. Ct. No. 3443DEP)

C.C. (mother) appeals an order of the juvenile court, following a hearing under Welfare and Institutions Code section 366.26,¹ terminating mother's parental rights with respect to her infant daughter, H.B., and selecting adoption as the permanent plan. Mother contends the court erred in finding that adoption is not precluded by the parent-child relationship exception to the presumption favoring adoption. We conclude that substantial evidence supports the court's finding and shall therefore affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On September 24, 2010, the Sonoma County Human Services Department (the department) filed a juvenile dependency petition, alleging that the 20-year-old mother's history of substance abuse rendered her unable to provide adequate care to six-month-old

¹ All further section references are to the Welfare and Institutions Code except as noted.

H.B. (§ 300, subd. (b).) The petition alleges that mother's addiction to Vicodin resulted in general neglect of H.B. Instances of neglect included falling asleep midday, leaving H.B. unattended on a couch, failing to refrigerate bottles, causing the child's milk to curdle and spoil, and missing H.B.'s medical appointments. On September 27, 2010, the court found there were no reasonable means to protect H.B. without removing her from the parent's custody and ordered H.B. temporarily detained. One month later, the court declared H.B. a dependent and ordered reunification services for mother.

The court conducted a three-month review hearing on February 17, 2011. The social worker reported that mother had been expelled from two residential drug programs for failing to comply with the protocols for each program. Between November 2010 and February 2011, mother tested positive for methamphetamine on three occasions. The court concluded the hearing stating that "breaking curfew" and "using drugs" does not reflect "somebody who's ready to be a mother." During this period H.B. was placed into a foster-adopt home in Sonoma County and was doing well there. The social worker reported that H.B. is "healthy" and "has made significant progress in the past few months in all areas of her development."

Prior to the six-month review hearing on July 25, 2011, the social worker submitted a report concluding that "mother has failed to successfully demonstrate the capacity to maintain her ongoing recovery and a healthy environment for her daughter" and recommending the termination of family reunification services. The court terminated reunification services and, at mother's request, authorized a "bonding" study between H.B. and herself, and between H.B. and her foster parents.

The social worker's report submitted in preparation for the section 366.26 hearing stated that H.B. was "likely to be adopted" and recommended termination of parental rights. The social worker noted that H.B. "appears to be developing a bond with the potential adoptive parents. . . . She is beginning to see them as her psychological parents who are meeting all of her needs." The social worker explained that H.B. "would benefit from the establishment of a permanent parent/child relationship through adoption" and that "[r]emoval from the current home would be detrimental to the child's well being."

The report concluded that the parent-child relationship exception did not apply under the circumstances.

A contested section 366.26 hearing took place on March 27, 2012. At the hearing, the parties stipulated to H.B.'s adoptability. In response to the department's recommendation, mother asserted the beneficial parent-child relationship exception to adoption. The court found "by clear and convincing evidence—indeed, by stipulation—that it is likely [H.B.] will be adopted. The court further [found] that termination of parental rights would not be detrimental to [H.B.]. The plan of adoption is appropriate and is ordered as the permanent plan. There is sufficient basis for termination of parental rights . . . and [H.B.] shall be freed for adoption." The court explained that "there was contact, that mother did consistently visit" the minor, but that this contact does not "[outweigh] the need for stability and continuity. Given that, the court finds that the plan of adoption is the best to provide long-term stability and security for [H.B.]."

Mother has filed a timely notice of appeal.

DISCUSSION

Mother contends the juvenile court erred in finding that her relationship with H.B. did not invoke the parent-child relationship exception to adoption set forth in section 366.26, subdivision (c)(1)(B)(i). We cannot agree.

Section 366.26, subdivision (c)(1), provides that "[i]f 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." The presumption is in favor of adoption. The court "shall terminate parental rights" unless one of the exceptions applies. (*Ibid.*) Section 366.26, subdivision (c)(1)(B)(i) provides one such exception. It states that parental rights shall not be terminated if "[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid.*) If the court finds that a child is likely to be adopted, "the burden shifts to the parent to show the termination of parental rights would be detrimental to the child under

one of the exceptions listed in section 366.26, subdivision (c)(1).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) In this case, the parties stipulated to H.B.’s likelihood of being adopted. (§ 366.26, subd. (c)(1).) Therefore, it was mother’s burden to prove that section 366.26, subdivision (c)(1)(B)(i), applies to her relationship with H.B.

The substantial evidence standard of review applies to an order rejecting application of a statutory exception to the presumptive preference for adoption. (See *In re Michael G.* (2012) 203 Cal.App.4th 580, 589 [the reviewing court must affirm the juvenile court’s rejection if the ruling is supported by substantial evidence]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [substantial evidence supports the order terminating defendant’s parental rights].)² “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.*, *supra*, at p. 576.)

Under the first prong of section 366.26, subdivision (c)(1)(B)(i), the parent must prove that she maintained “regular visitation and contact with the child.” (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court found that “there was contact, that mother [had] consistently visit[ed]” H.B. and the parties do not contest this finding. The second prong of section 366.26, subdivision (c)(1)(B)(i) requires that “the child would benefit from continuing the relationship.” Courts have interpreted this requirement to mean that “the relationship [between the parent and child] promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with

² Mother refers to an alternative standard of review articulated in *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528-1529. In that case, the court found that “where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for judicial determination that it was insufficient to support a finding.’ ” (*Id.* at p. 1528.) This standard applies at most if the parent’s evidence in support of the exception is uncontradicted, which is not the case here. In all events, the result in the present case would be the same under either standard.

new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Mother testified that she consistently visited H.B. throughout the dependency period. The two ate, read, and played together. H.B. called her “[m]ama.” Her interactions with H.B. were positive as she was “attentive and presented with excitement.” Mother states she encouraged H.B. to learn the names of animals, mimic noises, and brought to her visits age-appropriate toys and snacks. She claims her bond with H.B. was evident as H.B. was always “very content to sit in her lap.” Mother does not dispute that H.B. has developed a bond with her adoptive parents but argues that the child’s bond with them is “no greater” than the bond between her and H.B.

Despite mother’s evidence of a congenial relationship, there was substantial evidence tending to show that mother’s bond with the child was not as strong as she suggests. The social worker testified that H.B. “push[ed] [mother] away” when mother made attempts to hug and kiss her. Throughout the dependency period, H.B. did not establish “eye contact” with mother and consistently failed to reciprocate demonstrations of affection. Although mother interpreted H.B. sitting in her lap as a sign of love and comfort, H.B. sought the lap of complete strangers. Moreover, the psychologist found that H.B. “seemed to have very little interest in interacting [with mother].” The psychologist noted that H.B. “is noticeably more interactive and engaged and emotionally present [when she is with her potential adoptive parents] than she was observed to be with her mom.”

The evidence supports the court’s finding that the relationship between H.B. and mother is not the strong and beneficial parent-child relationship envisioned by the adoption exception. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) At the time of the section 366.26 hearing, H.B. was a little over two years old. Therefore, H.B. was possibly too young to “understand the concept of a biological parent.” (*In re Angel B.* (2002) 97

Cal.App.4th 454, 467 [the court deemed a two-year old to be too young to understand the difference between biological and adoptive parents].) Furthermore, H.B. spent only the first six months of her life with mother. Of those six months, H.B.'s grandmother provided some of the care for H.B. as mother had difficulty caring for the baby and often responded in a non-nurturing way. The bonding study obtained at mother's request concludes that "a secure attachment did not develop in the early months of [H.B.'s] life." The study notes that H.B. does not mind leaving mother when her visits are over and often looks to the door, anticipating the arrival of her potential adoptive parent. Although the visits between H.B. and mother were pleasant, "the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.)

As the social worker observed, H.B. currently "spends all of her time in the care of either one of the potential adoptive parents." She is "developing significant emotional ties to the potential adoptive parents. She seeks out both parents and loves to be held while one of the parents reads her favorite storybooks to her." She is beginning to see them as her psychological parents who are meeting all of her needs. When H.B. cried and became restless after visits with mother, she often exhibited "very needy, clingy behavior toward the potential adoptive parents." The department concluded that if the relationship between H.B. and her adoptive parents was severed, such action would be "detrimental to the child." Substantial evidence thus supports the court's finding that mother does not have a sufficiently strong parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The juvenile court reasonably found that the benefit that H.B. would receive from preserving the parental relationship with mother does not outweigh "the need for stability and continuity."

The evidence was uncontradicted that H.B.’s potential adoptive parents have created a stable environment for H.B. They have implemented schedules and routines in order for H.B. “to gain a better sense of regulation.” A child “has a compelling right ‘to [have] a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ ” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) The juvenile court reasonably concluded that “the plan of adoption is the best to provide long-term stability and security for [H.B.]”

DISPOSITION

The order is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.