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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re S.F., a Person Coming Under the Juvenile
Court Law.

HUMBOLDT COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

H.F.,

Defendant and Appellant.

A135513

(Humboldt County Super. Ct.
No. JV-10-0127)

The minor S.F. (born October 2007), was 2 years 11 months of age when first detained in September 2010. In April 2012, the Humboldt County Superior Court, Juvenile Division, terminated the parental rights of H.F. (Mother) and two alleged fathers, and ordered a permanent plan of adoption, after a hearing under Welfare and Institutions Code section 366.26.¹ In this appeal, Mother contends the juvenile court erred in failing to find that the “beneficial relationship” exception, set out in section 366.26, subdivision (c)(1)(B)(i), applied to preclude the termination of her parental rights. We conclude substantial evidence supports the juvenile court’s exercise of discretion that the exception did not apply, and affirm.

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

BACKGROUND

Mother has a history of substance abuse and involvement in drug-related activities. Her failure to address her substance abuse issues in 2006 and 2007 had serious consequences in July 2007, when the juvenile court terminated her parental rights as to her son E.C.—an older sibling of S.F.

On September 3, 2010, Allan H. telephoned the Humboldt County Sheriff's Office and informed them Mother had left S.F. in his care the previous day, her whereabouts were unknown to him, he was not a relative, and he was no longer willing to care for S.F. After being notified by the sheriff's office, the Humboldt County Department of Health and Human Services (Department) detained S.F. later that day, and on September 8 initiated this proceeding, filing a petition under section 300. The juvenile court formally continued S.F.'s detention the next day.

While the jurisdictional hearing was still pending, on October 17, 2010, Mother was arrested for burglary, possession of a controlled substance, and probation violation.

After the jurisdictional hearing, on October 26, 2010, the juvenile court found S.F. to be a child described by section 300, subdivisions (b) and (g). In doing so, it sustained the following allegations as to Mother:² “b-1: [Mother's] substance abuse has rendered her unable to provide [S.F.] with regular care, thereby placing [S.F.] at substantial risk of suffering serious physical harm or illness[, specifically on] 09/02/2010, and on occasions prior, [when Mother] left [S.F.] in the care of an inappropriate caretaker who has substance abuse issues and domestic violence issues with [a] woman who reside[s] or [has] resided with him[;] ¶ b-2: [Mother's] failure or inability to adequately supervise or protect [S.F.] from exposure to domestic violence has caused [S.F.] to suffer serious physical harm or illness[, specifically on] 08/25/2010, [when S.F.] was taken to the [e]mergency [r]oom at Mad River Community Hospital[, where she] was diagnosed with having Nursemaid's Elbow which resulted from a sudden pulling or force applied to [her]

² The juvenile court also sustained allegations under section 300, subdivisions (b) and (g), against two alleged fathers. We note later paternity tests excluded both alleged fathers as the biological father of S.F.

extended arm[, an injury she] sustained [when Mother] and her significant other were fighting, and [Mother's] boyfriend grabbed [S.F.] by the arm and forcefully moved her[;]
[¶] g-1: [S.F.] has been left without any provision of support[, specifically on] 09/03/2010, [when the Department] was contacted by the Humboldt County Sheriff's Office as [S.F.] was without a care provider[, because Mother] left [S.F.] with a former roommate who was not willing to provide care for the child[, and t]he whereabouts of [Mother] were unknown."³

During the jurisdictional hearing, Mother's counsel informed the juvenile court the assigned social worker (SW) had found a residential program for substance abuse treatment for Mother, so that all were "hopeful that some time in the near future mother and [S.F.] can be reunified." In the dispositional report, completed some 10 days later, the SW noted Mother had previously requested a residential treatment program that would accept children,⁴ and the SW had located one "out of the area." The SW recommended that the court adjudge S.F. a dependent of the court and offer Mother reunification services, but also that it set an interim review hearing to review Mother's progress in the residential program and determine whether it might be appropriate to place S.F. with Mother at that program under a plan of family maintenance services. By the time of the uncontested dispositional hearing, on November 29, 2010, Mother's trial counsel reported Mother had begun the residential treatment program, Project Pride,

³ The juvenile court also sustained, as to Mother, the following allegation under section 300, subdivision (j), although it did not find S.F. to be a child described by this subdivision: "j-1: One older alleged full sibling of [S.F.] was removed from [Mother's] and [an] alleged father[']s care and detained by the Court on 07/06/2006[; the sibling] came into care due [to] the parents' unaddressed substance abuse issues affecting their ability to provide regular care and supervision[; Mother] also failed to provide the [sibling] with appropriate medical services[;] Family Reunification services were terminated by the Court on 03/14/2007 as the parents did not address their substance abuse issues and were seldom making visits[; and t]he [section 366.26] ruling terminated [Mother's and the alleged father's] parental rights on 07/11/2007."

⁴ In a subsequent report, the SW reported that Mother's request to enter the residential treatment program was motivated, at least in part, because by doing so she could avoid incarceration in the county jail on the charges pending against her after her arrest in October 2010, noted above.

located in Oakland.⁵ At the conclusion of this hearing the court entered dispositional orders that continued S.F. in out-of-home care, directed reunification services for Mother, and set an interim review hearing the following month regarding Mother's residential treatment status.

After the interim hearing on December 29, 2010, the juvenile court entered further dispositional orders, directing the Department to place S.F. with Mother "while in treatment" and to provide Mother with family maintenance services, and authorizing the Department to detain S.F. again if Mother failed to complete the Project Pride program. The Department placed S.F. with Mother on January 5, 2011.

In a report prepared for the six-month status review hearing, completed in late April 2011, a newly assigned SW recommended the juvenile court continue family maintenance services for an additional six months. The SW reported Mother experienced initial difficulties in the Project Pride program: she had been cited on two occasions for being verbally abusive with staff and clients, and had relapsed on methamphetamine in early February 2011. Not long after her relapse, however, Mother's attitude and behavior changed and she was presently "on track" to complete the program on May 8. At the conclusion of the six-month hearing, on May 11, the juvenile court adopted the SW's recommendations, and continued S.F.'s placement with Mother under a plan of family maintenance supervision.

However, five months later, on October 13, 2011, the Department filed a supplemental petition under section 387. This petition alleged Mother, on September 2, had "absconded with the minor out of fear [she] would be placed into protective custody [after Mother] admitted she had been using methamphetamine the previous two weeks." It also alleged that, on September 14, the Department had conducted a team decision meeting to develop a plan "so that [S.F.] could remain with [Mother]," with components requiring Mother to resume her participation in the local Healthy Moms program (including drug testing), to attend Narcotics Anonymous (NA) meetings, and to remain in

⁵ A later report confirmed Mother entered the Project Pride program on November 16, 2010.

contact with the assigned SW and keep him informed as to where Mother and S.F. resided. But between this meeting and the filing of the supplemental petition one month later, Mother had attended the Healthy Moms program only once and had avoided contact with the SW.

Although the Department sought to detain S.F. at the time it filed the supplemental petition, it had been unable to locate her and had issued a protective custody warrant.

In the Department's initial report prepared for the supplemental petition, completed on October 12, 2011, the SW stated that when Mother was near the completion of her treatment in the Project Pride program in early May, she had expressed her intent to move into a "clean and sober house" in Eureka after she left the program. On July 7, however, the SW contacted two clean and sober houses in Eureka, and learned Mother had left both, moving into a transitional housing facility in Eureka—the Multiple Assistance Center (MAC). Thus, the SW reported Mother had "repeatedly" left clean and sober houses the SW helped her to enter.

After contacting the MAC, the SW learned Mother had recently left that facility as well. The SW finally made contact with Mother on July 11, 2011, and learned she was living with a male friend. A few days later, Mother admitted to the SW she had relapsed while living at the MAC. On September 1, Mother contacted the SW and informed him she was "going to [d]etox the following day and wanted to start a program again," admitting she had been abusing drugs "almost every day for the last two weeks." After that the SW was unable to contact or find the whereabouts of Mother for a week. On September 8, the SW learned Mother was in a detoxification facility, but did not learn S.F.'s whereabouts. On September 13, Mother contacted the SW and informed him she was out of "detox," S.F. was with her, and that she was living at a clean and sober house.

The next day, September 14, 2011, Mother agreed to an action plan that allowed S.F. to remain with her so long as Mother regularly attended the Healthy Moms program, attended NA meetings, and remained in contact with the SW. Subsequent events indicated Mother failed to comply with the plan in any substantial manner, and her whereabouts, as well as S.F.'s, were unknown when the SW completed the report.

At the initial hearing on the supplemental petition on October 14, 2011, the juvenile court issued a citation to Mother to produce S.F. immediately. Later that day, the Department informed the court that S.F. had been detained without incident. The court ordered formal detention for S.F. three days later. At that time, the court also ordered interim reunification services for Mother in the form of a parent education program, drug testing, an assessment for recommended further substance abuse treatment, and a mental health assessment.

At the jurisdictional hearing on the supplemental petition, on November 14, 2011, the juvenile court sustained the allegations summarized above. Among the many incidents related in the SW's report submitted for that hearing, was a statement by Mother on October 14 that she might do "dope," but she did not do it in front of S.F. and made sure S.F. was "cared for when she [was] using." On December 7, following the dispositional hearing, the court ordered that S.F. be continued in out-of-home care, terminated further reunification services for Mother after determining "the statutory time for the provision of services ha[d] expired," and set a hearing to select a permanent plan for S.F. under section 366.26.

In the report submitted for the section 366.26 hearing, completed in mid-February 2012, a second newly assigned SW recommended termination of Mother's parental rights and the selection of a permanent plan for S.F.'s adoption. In an addendum report completed a few weeks later, SW submitted the adoption assessment completed in mid-February by the State Department of Social Services (SDSS). The SDSS report found S.F. "likely to be adopted and recommend[ed] parental rights be terminated." After specifically considering the "beneficial relationship" exception to the termination of parental rights—set out in section 366.26, subdivision (c)(1)(B)(i)—this assessment concluded that the "termination of [Mother's] parental rights would not be detrimental to [S.F.]" within the meaning of that statutory exception.

At the section 366.26 hearing on April 2, 2012, Mother sought to establish a "beneficial relationship" under section 366.26, subdivision (c)(1)(B)(i), in order to preclude termination of her parental rights. She testified S.F. had been in her care from

the minor's birth in October 2007, until her initial detention in September 2010. Following S.F.'s second detention in October 2011, pursuant to the supplemental petition, Mother said she had visited S.F. "every day" for "four [or] five hours," up until two weeks before the section 366.26 hearing. During these visits, she and S.F. would "play[] dollhouse for hours," "play[] pretend," or "play[] fairies." Mother elaborated that she "just play[ed] with her [and was] always on her level when [she visited] with [S.F.]" Mother would also read books to S.F. and work with her on her "ABCs." Mother asserted S.F. loved her, and was always excited to see her, wanting her attention. Mother claimed she had never neglected S.F., "never put her in harm," but rather had taught S.F. "[e]verything she knows." Mother claimed she did not know why S.F. was "not with me right now."

The juvenile court, nevertheless, found "no exception [was] applicable" to preclude the termination of Mother's parental rights in order to achieve for S.F. the stability and permanence of adoption. Thus, on April 12, 2012, the court entered orders terminating Mother's parental rights as to S.F., and terminated the parental rights of the two alleged fathers, as well. It found S.F. to be adoptable, and ordered for S.F. a permanent plan of adoption.

This appeal followed. (See § 395.)

DISCUSSION

A. Appellant's Contention Regarding the "Beneficial Relationship" Exception

A finding that the court "has continued to remove the child from the custody of the parent . . . and has terminated reunification services[] shall constitute a sufficient basis for termination of parental rights [unless] [¶] [t]he court *finds a compelling reason for determining that termination would be detrimental to the child* due to . . . [¶] [the fact that t]he parents have maintained regular visitation and contact with the child and the child would *benefit from continuing the relationship*." (§ 366.26, subd. (c)(1)(B)(i), italics added.)

Mother’s primary contention⁶ is she met her burden to establish the existence of this “beneficial relationship” exception, and that the juvenile court erred by failing to find the exception applicable so as to preclude termination of her parental rights.

B. The Standard of Review

There is a split of authority concerning the appropriate standard for reviewing a ruling that relates to the applicability of a statutory exception to the termination of parental rights at a section 366.26 hearing—exceptions currently set out in section 366.26, subdivision (c)(1)(B). The Fifth District, in the first decision to consider this point, relied on both of the two standards on which the current split rests, stating simply that “[t]he issue on review [is] whether this . . . finding is supported by substantial evidence; that is, whether the juvenile court abused its discretion.” (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 851.)

The Fourth and Second Districts, in a majority of the published decisions addressing this point, apply the substantial evidence standard. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297–298; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 (*Amber M.*); *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1533–1534, 1538; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575–576 (*Autumn H.*.)

Division Three of this court determined, on the other hand, that the abuse of discretion standard is more appropriate. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*.) District Three has since followed *Jasmine D.* in applying this standard. (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1038.) The Sixth District, too, has, in effect, applied the abuse of discretion standard. (*In re C.B.* (2010) 190 Cal.App.4th 102, 123 (*In re C.B.*.) In the latter decision, the Sixth District “agree[d] that the abuse of discretion standard governs review, but also recognize[d] that the substantial evidence

⁶ In her reply brief, Mother also requests that we strike certain references in the Department’s responding brief: specified facts relating to one of the alleged fathers, and prior referrals to the Department that it ultimately determined to be unfounded or inclusive. We have not considered these facts or prior referrals in any manner in reaching our disposition of this appeal.

[standard] applie[d] to pure findings of fact.” (*Ibid.*, citing *Jasmine D.*, *supra*, at p. 1351.) In citing *Jasmine D.* on this point, the Sixth District panel recognized what Division Three of this court had earlier acknowledged—that is, “[t]he practical differences between [the substantial evidence standard and the abuse of discretion standard] are not significant” when reviewing a ruling on the applicability of one of the statutory exceptions to the termination of parental rights set out in section 366.26, subdivision (c)(1)(B). (*Jasmine D.*, *supra*, at p. 1351.) Such rulings invariably require express or implied factual findings based on the evidence, and hence the evaluation of “ ‘the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling[, in that b]road deference must be shown to the [juvenile court, and t]he reviewing court should interfere only [if it] find[s] that under all the evidence, viewed most favorably in support of the [juvenile] court’s action, no judge could reasonably have made the order that he [or she] did.’ ” (*Ibid.*, quoting *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Given the current state of this split of authority, we join Division Three of this court, and apply the abuse of discretion standard that it first held to be more appropriate in *Jasmine D.*, *supra*, 78 Cal.App.4th at page 1351. In doing so, we join, as well, the Sixth District’s most recent restatement of this standard. That is, we review “ ‘the [juvenile] court’s findings of fact . . . for substantial evidence, its conclusions of law . . . de novo, and [we reverse] its application of the law to the facts . . . only if arbitrary and capricious.’ ” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 123, quoting *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711–712.)

C. Abuse of Discretion in Ruling on the Evidence of a “Beneficial Relationship”

When, as here, the juvenile court has not returned an adoptable dependent child to the parent’s custody, and has terminated the parent’s reunification services, adoption becomes the presumptive permanent plan and parental rights should ordinarily be terminated at the section 366.26 hearing. The parent has the burden of proving that termination of parental rights would be detrimental to the child under the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i). (*Jasmine D.*, *supra*,

78 Cal.App.4th at p. 1350.) This requires the parent to show that he or she has “maintained regular visitation and contact” with the child, and also that the child “would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

Here, it appears Mother’s testimony was essentially undisputed as to the first prong of this statutory requirement, showing she had “maintained regular visitation and contact” with S.F. after the child’s second detention pursuant to the supplemental petition. (§ 366.26, subd. (c)(1)(B)(i).)

The second prong of this requirement, however, requires the parent to establish that termination of the parent-child relationship “would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 (*Angel B.*)). The presumptive plan of adoption is not overcome merely by a parent’s showing that the child “would derive *some* benefit from continuing [the] relationship . . . with the parent.” (*Ibid.*) Further, this prong requires a showing of a “*parental* relationship . . . not merely a friendly or familiar one.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) The showing of a relationship that is “beneficial in some degree[,] but [fails to] meet the child’s need for a parent” is not enough. (*Ibid.*) Thus, the juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. (*Ibid.*)

Mother’s testimony that S.F. continued to love her and enjoyed the visits Mother maintained was consistent with the SW’s report concerning her visitation. But there was other evidence before the juvenile court indicating that a continuation of the parent-child relationship would not benefit S.F. so significantly as to outweigh the strong preference for adoption. The court was familiar with the SW’s earlier report submitted for the dispositional hearing on the supplemental petition that showed that, despite Mother’s successful completion of the Project Pride program, she had been “willing to remain in treatment [only for] the minimum recommended time as she did not feel further treatment was warranted.” When she subsequently relapsed, she refused an offer of further residential treatment at the Project Pride program, which would have allowed S.F. to be

placed with her. While she admitted using “dope,” she felt at that time that “her drug use[e] did not negatively impact her ability to parent/care for [S.F.]” At the time of the section 366.26 hearing, Mother testified she had “never done nothing wrong,” from which the court might reasonably have inferred that she still maintained her previously expressed conviction that her substance abuse problems had no negative effects on her ability to parent S.F. and, hence, required no further treatment.

In addition, the adoption assessment submitted by the Department at the section 366.26 hearing noted the SDSS had observed S.F. in her current foster placement with a prospective adoptive parent, and it reviewed all available records regarding S.F.’s developmental, psychological, medical, and scholastic background. Although the SDSS conceded S.F. “clearly ha[d] a strong connection” to Mother, it also expressed the opinion, as we have noted, that the termination of Mother’s parental rights would not be detrimental to S.F. within the meaning of section 366.26, subdivision (c)(1)(B)(i).

The juvenile court, for its part, made no express findings relating to the “beneficial relationship” exception, determining only that it did not apply. On this record, the only reasonable inference to be drawn is that the court impliedly found that Mother had not sufficiently established that S.F. “would benefit from continuing the relationship” so as to outweigh the preference for adoption. The evidence contrary to Mother’s testimony on this point, summarized above, provides substantial support for this implied finding.

We disagree, moreover, with Mother’s contention that the juvenile court “left out a critical [consideration]” because it “failed to consider the potential detriment to S.F.” in the event it terminated Mother’s parental rights. As noted above, there *was* evidence—based on observations of S.F. and a review of her psychological, developmental, and medical records—that it would *not* be detrimental to S.F. if Mother’s parental rights were terminated. There were no professional opinions to the contrary, and, while Mother’s visits with S.F. went well, there was no evidence S.F. had difficulty separating from her at the end of these visits. (Cf. *Amber M.*, *supra*, 103 Cal.App.4th at p. 689.) We conclude it is reasonable to infer that the court did consider the potential detriment to S.F., and impliedly found that the termination of Mother’s rights would not “deprive

[S.F.] of a *substantial*, positive emotional attachment such that [she] would be *greatly* harmed.” (*Angel B., supra*, 97 Cal.App.4th at p. 466.) The foregoing evidence provides substantial support for this implied finding.

At this point, we note that under the substantial evidence standard, a reviewing court upholds the juvenile court’s ruling if it is supported by substantial evidence, “even though . . . the [court] might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We discern no “practical difference[]” in applying the abuse of discretion standard. (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) So long as substantial evidence supports the juvenile court’s express or implied factual findings, we reverse its application of the law to those findings “only if arbitrary and capricious,” and not simply because we might have reached a different conclusion. (See *In re C.B., supra*, 190 Cal.App.4th at p. 123.)

In sum, we conclude, on the basis of the juvenile court’s implied findings, supported by substantial evidence, the court did not abuse its discretion in determining the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude its termination of Mother’s parental rights.

DISPOSITION

The order entered April 12, 2012 is affirmed.

Marchiano, P. J.

We concur:

Dondero, J.

Banke, J.