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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.H. et al., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.T. AND J.H.,

Defendants and Appellants.

A138453

(Humboldt County
Super. Ct. No. JV100150-1,
JV100150-2, JV100150-3)

Parents appeal from an order terminating their rights to their nine-year-old son and eight- and seven-year-old daughters. They contend the court erred in finding that the parental benefit exception (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i)) did not apply. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2010, the Humboldt County Department of Health and Human Services (hereinafter “the department”) filed a petition pursuant to section 300, subdivision (b), alleging that the children had suffered, or there was a substantial risk that they would suffer, serious physical harm or illness as a result of the failure or inability of their parents to supervise or protect them adequately, by the willful or negligent failure of

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

the parents to provide the children with adequate food, clothing, shelter, or medical treatment, and by the inability of the parents to provide regular care for the children due to the parents' mental illness, developmental disability, or substance abuse.

According to the department's detention report, on October 8, 2010, police contacted the department after conducting a welfare check and finding the living conditions at the family home to be "filthy." The social worker and the police officer walked through the trailer which was found to be in "really bad condition." The sink was overflowing with dishes and moldy food. There was one bed for the family to sleep on and there were piles of clothing and other items surrounding the bed making it difficult for the children to leave in case of emergency. There were dangling exposed electrical wires running through the trailer. The toilet was clogged and the shower entrance was blocked by cleaning products and spray cans. The trailer door could not be opened from inside the trailer. The area outside the RV was filled with piles of boxes, cables, tools, and electronics that the family had collected throughout the years. The social worker concluded that the home, both inside and out, was an unsafe place for children. The children were detained and placed with their paternal aunt.

On October 14, the court vested the care and custody of the children with the department and set a jurisdiction hearing for November 1.

The department's jurisdiction report details the "long standing struggle by [the] parents to adequately care for their children." The report explains that parents had numerous prior referrals to Humboldt County Child Welfare Services based on allegations of general neglect and the parents' use of methamphetamine and that as a result, the family had received family maintenance services on three prior occasions – from April to December 2005, from September to November 2006, and from June 2008, to May 2009. Both the son and older daughter had tested positive for methamphetamine at birth and the younger daughter tested positive for THC at birth.

On November 1, 2010, parents submitted to jurisdiction based on an agreement to amend the petition to strike the words "substance abuse" from the section 300, subdivision (b)(1) allegation. The court sustained the amended petition and found the

children to be described by section 300, subdivision (b). With the home having been cleaned, the children were returned to their parents' care on the same day.

At the December 6, 2010 dispositional hearing, the court continued the children in the home of the parents with family maintenance services. A review hearing was set for June 6, 2011.

The department's six-month review status report stated that the parents were "struggling to consistently provide a safe home environment for their children." The department recommended that the children continue in the home of their mother and father with six more months of family maintenance services. The report noted that in December 2010 and March and April 2011, the social worker had numerous contacts with the parents in which she instructed the parents to clean the trailer and the area surrounding the trailer. In addition, several additional referrals for neglect were made during the review period. On January 10, 2011, the department received a referral alleging general neglect after the social worker with Northcoast Children's Services made an unannounced home visit and found the parents sleeping deeply and the then four-year-old daughter unattended. On January 17, 2011, the police department went to the family's home to investigate a referral alleging possible physical abuse of the older daughter by mother. The officer determined that mother's cigarette accidentally hit the child on her left arm due to the cramped living quarters. The officer found the living conditions to be "unacceptable" due to the amount of garbage and other items scattered around the trailer. Finally, on March 29, 2011, the school secretary called the police department after the parents had not yet picked up the children one hour after school was released. The secretary reported that the children are often late to school, have poor attendance, and often come to school "smelly and dirty." At the six-month review hearing, the court found that the parents had made minimal progress with the case plan and ordered six more months of family maintenance services for mother and father.

On September 6, 2011, the department filed a supplemental petition alleging, among other things, that "[a]s of the writing of [the] petition, neither the father nor mother have complied with their Court ordered case plans," that "[t]he parents have been

prompted to clean up their residence on multiple occasions,” and that “[o]n more than one occasion the parents refused to allow the ongoing social worker to view the interior of the residence.”²

The department’s detention report on the supplemental petition explained that since the six-month review hearing, the family was evicted from their trailer and they moved in with a paternal aunt. The social worker visited the paternal aunt’s home on July 27, 2011, and observed that the children were dirty, were not appropriately dressed, and there were items everywhere in front of the house. The social worker also reported that the aunt’s home was in foreclosure and parents did not have a plan for where they would live when they could no longer stay there. Although the home was in an acceptable condition when the social worker returned on August 23, a week later the department received a referral alleging that the home was unsanitary, had no electricity due to foreclosure, had no stove or refrigerator, and the front yard was filled with garbage and nails. On or about September 1, 2011, the social worker made an unannounced home visit to the residence. The social worker found piles of “miscellaneous stuff” in front of the home. The carpet inside the home was covered with mud and every room in the house was cluttered with food crumbs, mud, laundry, and clutter. The mattresses and blankets the children slept on were extremely soiled with areas of black on them. The report stated that mother “appeared not to recognize the importance of maintaining the residence and blamed the conditions on her children and their friends.” The social worker determined that the children needed to be placed in protective custody and called the police department to assist with the removal. The parents were upset when they were informed that the children were to be removed from their custody, but mother allegedly told the social worker to “hurry up and get this done, I want to go back to bed.” On or about September 12, 2011, a social worker returned to the home and found it to be free from

² At the jurisdiction hearing on the supplemental petition, the petition was amended to delete the additional allegation the conditions in parents’ home was unsafe.

clutter. On October 6, 2011, the court held a jurisdiction hearing on the petition and continued the order for the children to remain out of the parents' custody.

At the disposition hearing on November 8, 2011, the court continued the children's out-of-home placement and ordered six more months of family reunification services for mother and father. The court modified the case plan to include provisions requiring parents to randomly drug test as requested by the social worker and to complete substance abuse assessments. Court Appointed Special Advocates (CASA) were appointed for the children.

On February 1, 2012, the department filed a section 388 petition seeking discretion to transition back to supervised visitation if parents did not follow the department's instructions regarding time, place, and manner for unsupervised visits. The section 388 report indicated that parents had not been abiding by the department's instructions to keep it informed of arrangements they made for unsupervised visits. In addition, the report indicated that during a recent visit, parents neglected to attend to their daughter's urgent medical needs. The report explains that following the youngest daughter's eye surgery, parents did not apply her medicine despite having received instructions from the doctor. The child told the foster care provider that her parents had gotten into a fight and mother had left the visit without applying medicine to her eye. Mother told the social worker that she did not apply the medicine because she did not want to "hold [her daughter] down and apply the medicine against [her] will." According to the nurse assigned to the daughter's case, the parents "seemed unconcerned" about the details of the child's pre- and post-operative care and indicated to her that the foster parents "will take care of it." The children's CASAs supported the department's request for supervised visitation. On February 22, 2012, the court granted the petition and ordered that parents would be offered a minimum of five hours of supervised visitation per week.

In advance of the six-month review hearing, the social worker reported that parents had made minimal progress on completing their case plans. He also reported that during the time since the children were taken into protective

custody, parents refused six of eleven requests that they drug test. At the contested hearing on June 6, the court ordered parents to abide by the terms of the case plan, including random drug tests.

On September 26, 2012, the court received a report prepared for the twelve-month review hearing in which the social worker reported that parents had not demonstrated any progress toward obtaining a residence suitable for reunification, had not followed through with steps necessary to secure income and had not drug tested during the reporting period. He opined further that, while parents were never late for visits and their behavior toward their children during supervised visits was consistently loving, he could not find any evidence to support an expectation that the family would be able to reunify if services were continued. The report recommended that family reunification services be terminated and that a permanent plan of guardianship be ordered. On November 14, 2012, the department submitted an addendum changing its recommendation from a permanent plan of guardianship to a permanent plan of adoption.

At a contested hearing conducted on November 14, 2012, the court terminated reunification services for both parents and set a section 366.26 hearing. The social worker's selection and implementation report recommends termination of parental rights and selection of adoption as the permanent plan for the children. The social worker opined that "[w]hile there is a connection between the children and their parents, it does not outweigh the benefits of adoption. Other than visitation, these parents have made no efforts to meet their parental obligations by availing themselves of the services offered." The report explains that while father has found employment, the parents remain homeless. In addition, parents' monitoring of their children's health and wellbeing was inconsistent and parents have not proven themselves to be free from drug use.

The preliminary adoption assessment submitted in advance of the hearing recommends termination of parental rights and selection of adoption as the permanent plan. The report indicates that the children have been living with their maternal uncle

and his partner for about a year and the preliminary evaluation of the caregivers shows them to be suitable and committed to the adoption of the children. “The children are developing a trusting and loving relationship with their potential adoptive family and would benefit from the establishment of a permanent parent/child relationship through adoption.” The assessment determined that the termination of parental rights would not be detrimental to the children as the children look to the potential adoptive family to meet their needs, not their parents. The children’s CASAs agreed with the recommendation that the court terminate parental rights and select adoption as the permanent plan.

At the contested section 366.26 hearing held on March 13, 2013, mother testified that she has a strong bond with her children and the children referred to her as “mom”. She described her visits with the children as “good” and characterized her children as excited to see her. She indicated that while she wanted the children to be returned to her, she did not have her own home. She was opposed to adoption and would prefer a plan of guardianship.

After considering the evidence and testimony adduced at the hearing, the court declined to make a finding that the benefit of the parental relationship outweighed the benefit of adoption. The court found by clear and convincing evidence that the children would be adopted, terminated mother and father’s parental rights, and identified adoption as the permanent plan.

Parents filed timely notices of appeal.

DISCUSSION

“After reunification services have terminated, the focus of a dependency proceeding shifts from family preservation to promoting the best interest of the child including the child's interest in a ‘placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.]’ ” (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child

placed in long-term foster care. (*Ibid.*) “Adoption is the preferred plan and, absent an enumerated exception, the juvenile court is required to select adoption as the permanent plan. [Citation.] The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions.” (*Ibid.*; § 366.26, subs. (c)(1)(A) & (c)(1)(B)(i)-(vi).)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Courts have interpreted the phrase “benefit from continuing the relationship” to refer to a 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 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. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a “parental role” in the child’s life, resulting in “a significant, positive, emotional attachment from child to parent.” (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

In this case, parents contend the court erred in finding the beneficial parent-child relationship exception to adoption did not apply to preclude terminating their parental

rights. They assert mother maintained regular visitation and contact with the children, had a loving, nurturing, and bonded relationship with them, and occupied a parental role in their lives such that termination of parental right will greatly harm the children. We disagree.

The evidence establishes that mother had regular visitation with the children and that she had a generally positive, loving relationship with the children. The evidence does not establish, however, that she was acting in a parental role in that relationship or that she had such a “significant, positive, emotional attachment” with the children that terminating the parent-child relationship would result in great harm to the children. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Despite numerous attempts, mother was not able to ameliorate the risks that caused the children to be removed from her custody. She could not maintain stable employment or housing and could not establish that she was drug-free. Contrary to parents’ argument, this evidence is relevant not only to her inability to reunify with her children but also to the strength and nature of her relationship with her children. Repeated failure to make progress on her case plan calls into question whether mother is occupying a parental role in the children’s lives. Her inability to follow through on the medical care following her daughter’s surgery further supports the conclusion that she was not capable of or not interested in parenting the children. The social worker, CASAs, and the children’s attorney uniformly agreed that the children’s need for stability, safety, and permanency clearly outweighed any possible detriment that would be caused by severing the parental relationship. Whether this court applies an abuse of discretion or substantial evidence standard of review, the result is the same; there is no error. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [applying an abuse of discretion standard but noting that “[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)]; *In re C.B.* (2010) 190 Cal.App.4th 102,123 [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.’ ”].)

Contrary to mother’s argument, a permanent plan of guardianship would not serve the children’s best interests because adoption is the only option that would provide them with the stability and permanence they need. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [Legislature has decreed guardianship is not in best interests of children who cannot be returned to their parents; only adoption affords the most permanent and secure alternative]; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368–1369 [parents' preference to preserve family unit does not override best interests of minors in stability and security of adoptive home].)

DISPOSITION

The order terminating parental rights is affirmed.

Pollak, J.

We concur:

McGuinness, P.J.

Jenkins, J.