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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

L.M.,

Defendant and Appellant.

A139681

(Sonoma County
Super. Ct. Nos. 3782-DEP, 3783-DEP,
3784-DEP)

The Sonoma County Human Services Department (Agency) filed a dependency petition with respect to the three children of appellant L.M. (Mother). Over a year later, the juvenile court terminated reunification services to Mother and scheduled a permanency planning hearing. At the hearing, Mother's counsel asked for a bonding study regarding the oldest child. When the court declined to rule on an oral request, Mother filed a written request, which the court denied. We affirm the denial.

I. BACKGROUND

Mother's three children, M.M., age 23 months, and Ru.M. and Ri.M., twins one month old, were the subject of a November 2011 dependency petition. The petition alleged neglect, failure to protect, and failure to support due to serious domestic violence between Mother and her husband, the minor's presumed father (Father), and substance

abuse by Mother and Father. (Welf. & Inst. Code,¹ § 300, subds. (b) & (g).) The minors were found to be dependents of the court in December 2011, and reunification services were denied to Father as a result of his history of chronic substance abuse. (§ 361.5, subd. (b)(13).)

At the time of the 12-month hearing in December 2012, the Agency recommended termination of Mother's reunification services. After a series of evidentiary hearings, the court terminated services and scheduled a permanency planning hearing pursuant to section 366.26, explaining its decision in a written order.² The order stated that although Mother "has largely complied with the case plan" and "consistently visited her children," her "progress has been neither consistent nor substantial." In the final paragraphs, the court noted the Agency's 12-month status report states: "'[M.M.] is very excited to see [Mother] and greets her with a big smile and hug.' This observation contrasts significantly with that of [Ru.M. and Ri.M.], who are described as ' . . . very clingy with their foster parents after visits and do not want their foster mother out of their sight.' " As a result, the court suggested, "the Permanent Plan for [M.M.] may be different from that of the twins" and appointed separate counsel for M.M.

At the hearing in which the juvenile court announced its ruling terminating services, Mother's counsel, noting questions raised by other counsel regarding the bond between Mother and M.M., requested that the court authorize a bonding study. Citing an applicable local rule governing such requests, the court declined to "respond on an oral basis" and directed Mother to make the request in writing, as required by the local rule.

In her written request for a bonding study, filed one month later, Mother argued good cause for the study existed because (1) she had consistently visited the children during the course of the dependency proceedings, (2) the last Agency status report referenced M.M.'s excitement at visits with Mother, and (3) the court recognized in its

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

² Mother's petition for an extraordinary writ challenging the court's order was denied by this Court in a memorandum opinion filed August 9, 2013. (*L.T. v. Superior Court* (Aug. 9, 2013, A138652) [nonpub. opn.])

written order the possibility of treating M.M. differently from the twins. The Agency opposed Mother's request, arguing M.M.'s excitement at visits, while demonstrating an attachment, did not necessarily demonstrate the existence of a parent/child relationship. At the hearing, M.M.'s counsel also opposed the bonding study, relying largely on the information provided by an Agency social worker. The juvenile court denied the request without explanation, citing *In re Richard C.* (1998) 68 Cal.App.4th 1191 (*Richard C.*) and *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330 (*Lorenzo C.*).

II. DISCUSSION

Mother contends the juvenile court abused its discretion in denying her request for a bonding study.³

The Agency contends Mother waived her right to challenge the juvenile court's denial because she did not raise the claim in her writ petition challenging the court's order in connection with the 12-month review hearing. (See § 366.26, subd. (l)(1), (2) [precluding an issue related to the setting of a section 336.26 hearing from being raised on appeal unless the issue has first been presented in a petition for extraordinary writ review].) Because the juvenile court did not deny the request on the merits at the 12-month review hearing and because a bonding study does not relate to issues bearing on the termination of reunification services, we are skeptical of the Agency's argument. We find it unnecessary to resolve the matter, however, because we deny Mother's appeal on the merits.

The nature of the bond between Mother and M.M. is relevant because the juvenile court has the discretion to select a permanent plan of guardianship for a child, rather than adoption, if it finds that a "beneficial relationship" exists between parent and child. As explained by *In re Marcelo B.* (2012) 209 Cal.App.4th 635: "Section 366.26 provides

³ Father also appealed the denial of his own section 388 petition, and his appeal was docketed as part of this matter. After Father's appointed attorney filed a "no issues" brief, we provided Father an opportunity to raise issues himself. When he failed to do so, we dismissed his appeal in an order filed on February 21, 2014. We therefore address only the issues raised by Mother's appeal.

that if parents have failed to reunify with an adoptable child, the juvenile court must terminate their parental rights and select adoption as the permanent plan for the child. The juvenile court may choose a different permanent plan only if it ‘finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child [because]: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ [Citation.] . . . [¶] ‘To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.’ [Citation.] A beneficial relationship ‘is one 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.” [Citation.] The existence of this relationship is determined by “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” [Citation.]’ [Citation.] . . . Satisfying the [exception] requires the parent to prove that ‘severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’ [Citation.]” (*Id.* at pp. 642–643.)

Mother has no legal right to a bonding study. (*Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1339.) Rather, a bonding study is in the nature of an expert opinion on the issues bearing on the existence of a beneficial relationship. (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084 (*Jennifer J.*)) As the court noted in *Richard C.*, there are practical reasons for the juvenile court to decline to order such expert advice. “Bonding studies after the termination of reunification services would frequently require delays in permanency planning. . . . The Legislature did not contemplate such last-minute efforts to put off permanent placement. [Citation.] While it is not beyond the juvenile court’s discretion to order a bonding study late in the process under compelling circumstances,

the denial of a belated request for such a study is fully consistent with the scheme of the dependency statutes, and with due process.” (*Richard C.*, *supra*, 68 Cal.App.4th at p. 1197.) Further, as noted in *Jennifer J.*, other expert opinions are ordinarily available. (*Id.* at p. 1084.) The juvenile court must decide, within the exercise of its discretion, whether another expert opinion on the nature of the parent/child relationship would be helpful under the particular circumstances. (*Ibid.*)

We find no abuse of discretion in the juvenile court’s decision not to require a bonding study. The primary facts on which the juvenile court must base its decision—the age of the child, the portion of the child’s life spent in the parent’s custody, the effect of interaction between parent and child, and the child’s particular needs (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643)—were not in significant dispute. Agency social workers and M.M.’s therapist, whose expertise will be available to the court, had substantial opportunity to observe the interactions between Mother and M.M. and their impact on and significance to M.M. Mother fails to point to any reason why the particular character of her relationship to M.M. presents “compelling circumstances” (*Richard C.*, *supra*, 68 Cal.App.4th at p. 1197) that would make an additional opinion helpful to the court in deciding whether the relationship qualifies as “beneficial” under the dependency statutes.

Mother argues a bonding study might be helpful to her in demonstrating a beneficial relationship. The argument misses the mark. As noted above, Mother has no right to a bonding study. The purpose of such a study is not to assist the parent in demonstrating a beneficial relationship, but rather to assist the juvenile court in resolving the various issues underlying application of the beneficial relationship exception. The court determined the bonding study was unnecessary for that purpose, and we find no abuse of discretion in that conclusion.

III. DISPOSITION

The order of the juvenile court is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.