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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re E.W., a Person Coming Under the
Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.T. et al.,

Defendants and Appellants.

A140701

(San Mateo County
Super. Ct. No. 81955)

C.T. (Mother) and M.W. (Father), the parents of E.W., appeal from an order terminating their parental rights. Our review is limited to one narrow question: whether the court abused its discretion when it determined the benefits of continuing Father's relationship with E. did not outweigh the benefits of adoption. Because the ruling has adequate support in the record, we affirm.

BACKGROUND

Much of the relevant background is addressed in our two prior opinions (*In re E.W.* (June 28, 2013, A135812) [nonpub. opn.]; *C.T. and M.W. v. Superior Court* (June 14, 2013, A138123) [nonpub. opn.]) in which we rejected challenges to orders placing E. in a foster home for medically fragile infants and setting a selection and implementation

hearing pursuant to Welfare and Institutions Code section 366.26.¹ Here, we will limit our discussion to the evidence that is relevant to address the parents' assertion that the "beneficial relationship" exception to the preference for adoption precluded termination of their parental rights.

E. was born prematurely and spent his first two years in foster homes. Mother suffers developmental delays with a history of drug and alcohol abuse and diagnoses of personality disorder with volatile explosive behavior pattern, mild mental retardation and other psychological and medical issues. (*In re E.W.*, *supra*, A135812 at p. 4.) Father, who lives with his family in San Francisco, has a long history of criminal charges related to drugs and alcohol. He suffers from chronic health problems and has significant caregiving responsibilities for his brother and elderly mother that prevent him from being with Mother on a daily basis. He and Mother have a history of domestic violence. (*C.T. and M.W. v. Superior Court*, *supra*, A138123 at pp. 2–4.) Mother and Father do not live together, but Father consistently attended E.'s supervised visits at Mother's home throughout the course of the dependency action.

In a June 7, 2013 report for the section 366.26 hearing, the San Mateo County Human Services Agency (the Agency) reported that 18-month old E.'s weekly supervised visits had been going well. Both parents would engage with E., but Father seemed more attentive to the child's needs. E. was beginning to form an attachment to his current foster parents and appeared to be particularly comfortable with male caregivers, including his current and former foster fathers. E.'s family therapist reported that E. was thriving and adjusting well to his current foster home, but she was concerned that he had already been in three foster placements at 18 months old.

By October 2013, the Agency reported that E.'s bond with his foster parents was extremely strong. E. called his foster father "papa" and called Father "dad" or "daddy." E. once asked for Father when he did not attend a visit and then talked to him on the phone. When he visited both parents the following week E. smiled when he saw Father

¹Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

and went to him to be picked up. E. called Father “dada” several times throughout the visit, although he also referred to Dr. Klein, a male psychologist who was observing the visit, as “dada.” Both parents were very prepared for and enjoyed their visits with E., but, his case worker reported, “it is apparent that [E.] does not know they are his parents. [E.] is very interactive with his parents. [E.] makes eye contact, responds verbally when asked questions or during play. However, [E.’s] interaction with his parents appears to be no more than a visit a child might have with a friendly visitor.”

According to the Agency, Mother continued to exhibit abusive and erratic behavior and to “put her own needs above the needs of the child There is no bond with the mother as demonstrated by the child separating from her easily after visits. Although Father’s behavior towards the child is acceptable, there is no bond with the Father as demonstrated by the child separating from him easily after visits.” Father demonstrated better behavior with E., but his substance abuse issues remained unaddressed.

Both the Agency and the Navajo Nation agreed that the best course for E. was to terminate parental rights and place him for adoption with relatives in New Mexico. The prospective adoptive parents had not met E., but they were firmly committed to adopting him and felt prepared to provide him with the financial resources and love and attention he needs. Both are enrolled members of the Navajo Nation. They live on a reservation, participate in Navajo cultural activities, speak the Navajo language fluently and are teaching it to their daughter. They are in contact with Father’s mother, who visits them each year.

The section 366.26 hearing began on October 8, 2013, and concluded after five days of testimony on December 17. Case worker Angela Lailand, who had replaced the prior case worker, testified that her conclusion E. was not bonded to Father was based on the one visit she observed, the observations of social worker Lee Baker, extensive discussions with the case supervisor, and the Agency’s previous reports. Baker testified that E. had a very positive connection to both of his foster parents, but that he generally seemed more comfortable with his male caregivers than with female caregivers. From

her review of the case, discussions with Lailand and observation of one visit, Baker opined there was no parental bond between E. and Father. Rather, the two shared what “appeared to me to be a friendly visitor relationship. One that would be consistent with an interaction between a child and another adult who he’s familiar with and has positive experiences with, but does not view as a parent.” E. called Father “dada,” but he also called his foster parents “momma” and “papa” and “dada.” Baker also was present when E. called Dr. Klein “dada.” She thought E. was not completely clear on what those terms meant, and “it is confusing for him that he has had three homes within the last several months at a very young age.”

ICWA social worker and Navajo tribal representative Lynette Mose testified that continued parental custody was likely to cause E. serious harm and that he should be placed with his relatives in New Mexico. Family care worker Diamond McMillian, who supervised some 16 to 18 visits, testified that E. was generally happy to see his parents and called them “momma” and “dada.” He would get excited when he arrived at Mother’s home and would search for either parent if they went to a different room. E. would look for Father if Father “even leaves a few feet from him.” Both parents fed, changed and comforted E. during visits. Both were affectionate with him. Family care worker Carlos Medina, who supervised 10 visits, gave similar testimony.

Mother testified that E. was affectionate with Father, followed him around and called for him, and would get “a little sad” when Father was not there. She confirmed that Father played with, cooked for, changed and comforted E. during their visits.

The court found all of the witnesses to be credible with the exception of certain parts of Mother’s testimony. The court specifically credited Lailand’s testimony that “there was no bond between the mother and the child and no parental bond that she observed between the child and the parents,” and Baker’s testimony that there was only a “friendly visitor relationship between [E.] and his parents.” The court found that by maintaining regular visitation with E., Mother and Father had satisfied the first requirement for application of the beneficial relationship exception. “However, the second prong, the parents must establish that the benefit to the child of maintaining the

parent/child relationship outweighs the benefit of adoption. The Court cannot find that this has been demonstrated at all by the moving parties. [¶] It is clear to this Court that this child is very adoptable. He is two years old. And that the history and—and that the child does not have a bond with his parents. The bond that has been described as noted is a friendly visiting relationship with the parents. Even the testimony of Diamond McMill[i]an and Carlos Medina in the Court’s view demonstrates that. I mean, they describe the play, if you will. They described the interactions, but there were a lot of terms about ‘Sometimes the child is affectionate.’ ‘Sometimes the child,’ you know, ‘hugs the parents.’ [¶] So it is clear to the Court that based on the evidence presented, that this is a friendly visitor relationship with parents, and there is no parental bond such that the parents must establish that the benefit to the child [in] maintaining the parent/child relationship outweighs the benefit of adoption. That has clearly not been demonstrated here in this case.”

Mother and Father filed timely appeals from the orders terminating their parental rights and selecting adoption as the permanent plan.

DISCUSSION

Both parents contend the court erred when it declined to find the benefits of Father’s relationship with E. precluded the termination of parental rights. We review the juvenile court’s decision for abuse of discretion. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)²

If a child is found adoptable at the section 366.26 hearing, the juvenile court must terminate parental rights and place the child for adoption *unless* it finds termination would be detrimental to the child because, inter alia, “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing

²While we recognize that other courts have reviewed such a determination to see whether it is supported by substantial evidence (see, e.g., *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228), we will not address the divergence here. As we observed in *In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1351, the practical differences between the two standards of review in these cases are minimal and not outcome determinative. In this case, beyond any doubt, the result would be the same under either test.

the relationship.” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.] The parent must demonstrate more than incidental benefit to the child. In order to overcome the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment of the child to the parent.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) The child’s relationship with the parent must “promote[] 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 (*Autumn H.*)). Only in extraordinary cases will preservation of the parent’s rights prevail over the Legislature’s preference for adoption. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

This is not a case where the child’s relationship to his father so clearly outweighs the well-being he could gain in a permanent adoptive home. We do not question that Father loves E., and that he shares a bond with his son. But “a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) It is clear from this extensive record that, despite the evident affection between E. and his parents, neither Mother nor Father shares with E. a “real parental relationship” (*id.*) that provides the stability, security and nurturance he will, as we hope and the record indicates, find in a permanent adoptive home. Moreover, there is nothing in the record to

suggests that E. will be “greatly harmed” (*see Autumn H, supra*, 27 Cal.App.4th at p. 575) if his parental relationship with Father is terminated. Father contends the court failed to distinguish between E.’s relationship with Mother and his relationship with Father in analyzing the beneficial relationship exception, but the record, which we have carefully reviewed, does not support his contention. We therefore cannot conclude the court abused its discretion when it declined to find E.’s well-being would be better served by continuing Father’s parental relationship than by freeing him for adoption.

DISPOSITION

The order terminating parental rights and selecting a permanent plan of adoption is affirmed.

Siggins, J.

We concur:

McGuiness, P.J.

Jenkins, J.