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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re H.C., a Person Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. S.H. et al., Defendants and Appellants.	A141220 (Sonoma County Super. Ct. No. 3986DEP)

INTRODUCTION

S.H. (Mother) and J.C. (Father) appeal from an order terminating their parental rights following a Welfare and Institutions Code[1] section 366.26 hearing. Mother's primary assertion is that the juvenile court erred in not finding the "beneficial relationship" exception set forth in section 366.26, subd. (c)(1)(B)(i) applied, and Father adopts Mother's claims.[2] We conclude substantial evidence supports the court's finding

[1] All further undesignated statutory references are to the Welfare and Institutions Code.

[2] Father has joined "in mother's opening brief . . . to the extent it inures to his benefit," but has raised no issues of his own.

that the potential benefit to H.C. from a continuing relationship with Mother or Father is outweighed by the benefit of adoption, and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

H.C., born in 2012, was detained when he was about four months old. The Sonoma County Human Services Department (Department) filed a section 300 petition alleging H.C. was at risk of physical harm due to domestic violence between Mother and Father and Mother's substance abuse.

The petition alleged three incidents of domestic violence between H.C.'s parents, on March 27 and 29, and June 29, 2012, that led to police intervention. The petition also alleged Mother had substance abuse issues and alleged Father was unable to support H.C. because he was incarcerated.

The Department submitted an additional report at the detention hearing. Father had an active warrant from the state of Oregon. He had a prior Oregon conviction for forcible sodomy and was a registered sex offender who had failed to register in California. Mother had a previous dependency case involving H.C.'s half sibling, C.S.,[3] in which the minor was successfully returned to Mother's care after 18 months of services. The previous case was the result of Mother's methamphetamine use. Mother and C.S.'s father had also been involved in incidents of domestic violence.

The court found the Department established a prima facie case under section 319 and detained H.C. and C.S. It subsequently sustained the allegations of the petition and ordered reunification services for Mother. Father filed a written waiver of reunification services.

The Department submitted a status review report in March 2013, in which it indicated Mother was complying with her case plan requirements. She had had no contact with Father and had completed 26 weeks of a 52-week anger management program, and was participating in outpatient substance abuse groups, parent education,

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[3] C.S., who was born in 2005, was also removed from Mother in the underlying proceeding, but is not a subject of this appeal.

and individual counseling. She also had found suitable housing, had unsupervised visits with the minors, and had complied with the visitation schedule.

The Department recommended additional reunification services for Mother, as well as a trial home visit for the minors beginning March 21, 2013. The court adopted the Department's recommended findings and orders, and scheduled the 12-month review hearing for September 12, 2013.

On March 23, two days after the trial home visit began, police arrested Father at Mother's home for domestic violence. Mother told police Father "just got out of jail in November after serving 8 months in jail for assaulting [her]." She allowed him to move back in "so he could spend more time with their son." Police obtained a taped statement from Mother in which she stated Father was living with her. On March 30, Mother went to the police department to "make a correction to the statement she provided . . . the day of the incident." She indicated she "misunderstood [the] question regarding the living arrangements with her and [Father]." Mother claimed she thought police were asking if she was staying at the residence, so she answered "yes for a month now."

After Father was released from jail, he returned to Mother's home. Mother told C.S. "to not disclose that [Father] lived in the home" to the Department. Both minors were removed from their Mother on March 28.

On May 1, the Department filed a section 388 petition seeking termination of reunification services to Mother. The Department indicated "[t]wo days after the trial home visit began, the Santa Rosa Police Department received a call from [Mother] regarding a domestic disturbance. [Mother] told dispatch that [Father] pushed her and was intoxicated inside the residence. [Mother] allowed [Father] to move back in about a month prior so he could spend more time with their son [H.C.]."

In an interim review report, the Department indicated Mother's "corrected" statement to police "contradict[ed] the information she provided to the officer the day of the incident." C.S. told the social worker Mother told her not to tell anyone Father was living at the home, and C.S. thought it was her fault that she and H.C. were removed. C.S. also revealed Mother instructed her not to reveal Father stayed at her grandfather's

(Mother's father's) home when Mother was staying there and C.S. and K.C. had overnight visits. Mother tested positive for benzodiazepines on March 14 and April 2, but provided a "medical summary" indicating she was prescribed Lorazepam for a medical procedure. She then failed to appear for drug tests on April 30 and May 17, 2013. Father told the social worker he had not been living with Mother, but had stopped by the home on March 23 to ask when he could give H.C. a birthday present. He "denied ever being a perpetrator of domestic violence" against Mother, and said she made false accusations. A probation officer in Oregon reported to the social worker Father "has an active warrant and . . . is out of the state without permission."

In a July 16 addendum report, the Department reported Mother and Father were involved in another incident of domestic violence on June 5, following which the court issued an emergency protective order against Father. Police indicated Mother and Father were both intoxicated. Mother failed to disclose the incident to her social worker, and was dishonest about the incident and her alcohol use with her reunification service providers. The Department reiterated its recommendation to terminate reunification services. On July 23, the court granted the Department's section 388 motion, terminated reunification services to Mother, and set a section 366.26 hearing.

A week later, Father filed a section 388 petition seeking revocation of his voluntary waiver of reunification services, placement of H.C. with him with family maintenance services, or, alternatively, reunification services. The court denied that petition.

The section 366.26 hearing date was continued six months to January 23, 2014. Two days before the hearing date, Mother filed a section 388 petition seeking placement of H.C. She alleged she had had no contact with Father since June 2013, and had been clean and sober since her positive benzodiazepine test in April. Mother acknowledged some of her prior decisions, such as allowing Father to "come to her home" and telling

C.S. to lie about it, were "poor." She further alleged H.C. was attached to her. The court denied her petition.[4]

In the Department's report for the section 366.26 hearing, the Department indicated H.S. had been placed in a "concurrent" home, with foster parents who wished to adopt him, since June 28, 2013. H.S. was a "well child" who was up to date on his immunizations, had "hearing acuity within normal range," and gross motor skills in the "low average range," though he had achieved a "remarkable progression of motor skills in a short period of time." He was receiving weekly instruction from a developmental specialist. The social worker reported H.C. was displaying no "serious behavioral, emotional or mental health issues." She observed he "has a positive and healthy relationship" with the foster parents and "appears to be developing an attachment" to them as his "psychological parents." The foster parents have "an approved adoption home study."

Mother was consistent in her visitation with H.C. after the trial home visit failed in March 2013. She had had supervised visitation once a week, and the visits had been appropriate. Father had one-hour supervised visits with H.C. once a month, and the supervisor reported Father was "appropriate" and the visits went "smoothly."

The primary social worker assigned to the case since August 2013 testified as an adoption expert. She had reviewed all notes from the supervised visitation with Mother, and concluded there was "no evidence" H.C. "look[ed] to Mother as a parent." While the visits were generally positive, there was no evidence H.C. "views his mom as something other than a visiting person, an extended relative." Nothing in the notes indicated H.C. cried at the end of any visit with Mother, as Mother had testified. In contrast, the social worker had observed H.C.'s interactions with his foster parents, and testified "[h]e always appears relaxed and comfortable with them. He seeks them out to get his needs met. He seeks them out for affection [and] . . . seems to follow them when they leave the room . . . ."

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[4] Mother's appeal from that order is pending (No. A141448).

The Department indicated "[a]lthough interaction between the child and the birth parents may have some incidental benefit, such benefit does not outweigh the benefit that will be gained through the permanence of adoption." The Department stated "[u]nsupervised contact with [Mother] is not appropriate due to [Mother's] failure to protect her children during the trial home visit, [Mother's] attempt to get [C.S.] to keep secrets from the Department, and additional domestic violence between [Mother] and [Father] since the minors' removal from the trial home visit."

The juvenile court found by clear and convincing evidence it was likely H.C. would be adopted and termination of parental rights would not be detrimental to him. The court also found the section 366.26, subdivision (c)(1)(B)(i) "beneficial relationship" exception to termination of parental rights did not apply, terminated the parental rights of both Mother and Father, and ordered adoption as the permanent plan.

DISCUSSION

Mother and Father maintain the juvenile court erred in terminating their parental rights and attempt to frame the issue as whether the court erred in considering "circumstances irrelevant in determining whether an available affirmative defense existed to the termination of parental rights." Mother specifically claims "[r]ather than a section 366.26, subdivision (c)(1)(B)(i) analysis, the court performed a heavy analysis based on the likelihood [H.C.] would be exposed to future domestic violence if parental rights were not terminated."

The focus of a dependency proceeding shifts once it has proceeded to the point of a section 366.26 hearing. "[A] parent and a child share a fundamental interest in reuniting up to the point at which reunification efforts cease. [Citation.] However, the interests of the parent and the child have diverged by the point of a .26 hearing to select and implement a child's permanent plan. [Citation.] ' "[C]hildren have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the

child." [Citation.]' . . . [¶] Consequently, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

"[O]n [the] eve of [the] permanency planning hearing, children's interest in stability is [the] 'court's foremost concern and outweighs any interest in reunification.' " (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1163, citing *In re J.C.*, *supra*, 226 Cal.App.4th at p. 527.)

" 'At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care.' " (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165.) A plan of adoption requires the termination of parental rights. (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) If the child is adoptable, however, "there is a strong preference for adoption over the other alternatives. [Citation.] Once the court determines the child is adoptable . . . , a parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B)." (*Ibid.*)

Mother contends the juvenile court erred in not finding the "beneficial relationship" exception of section 366.26, subdivision (c)(1)(B)(i) applied. That section provides an exception to termination of parental rights if "[t]he court finds a compelling reason for determining that termination 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." (§ 366.26, subd. (c)(1)(B)(i).) "[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence. [Citation.]" (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption." (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469; accord, *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

"The 'benefit' necessary to trigger this exception has been judicially construed to mean, 'the relationship 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.' [Citations.] [¶] A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence. [Citation.] It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ' "Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . ." ' [Citation.] For the exception to apply, 'a parental relationship is necessary . . . .' " (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 528–529.)

" 'The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The 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 are some of the variables which logically affect a parent/child bond.' [Citation.]" (*In re C.B.* (2010) 190 Cal.App.4th 102, 124.) "While the exact nature of the kind of parent/child relationship which must exist to trigger the application of the statutory exception to terminating parental rights is not defined in the statute, the relationship must be such that the child would suffer detriment from its termination. [Citation.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) The exception "appl[ies] to situations where a dependent child benefits from a continuing parental relationship; not one . . . when a parent has [loving and] frequent contact with but does not stand in a parental role to the child." (*In re*

Beatrice M. (1994) 29 Cal.App.4th 1411, 1420.) "We review a juvenile court's order on the beneficial-relationship exception for substantial evidence."[5] (*In re G.B.*, at p. 1166.)

In considering whether this exception applied, the dependency court properly considered whether a continuing relationship with Mother or Father would promote H.C.'s well-being, taking "into account the many variables which affect a parent/child bond." (*In re C.B.*, *supra*, 190 Cal.App.4th at pp. 123–124.) The court explained: "[I]t is an unfortunate reality that this child was exposed, at such an early age, to significant domestic violence. And no child deserves that. And that weighs heavy in the Court's analysis here, that there is an atmosphere here that, quite frankly, the Court did not receive any evidence that the issue [was] being dealt with in any significant way. And if the Court were to rule that parental rights were not terminated, this child right now, I believe, faces significant exposure to future domestic violence."

Mother does not dispute there is a significant risk H.C. would be exposed to more domestic violence if parental rights were not terminated. Nor does she dispute she failed to protect H.C. from exposure to domestic violence, she was untruthful with the Department and police about those incidents of domestic violence, and she instructed H.C.'s half sibling to lie to the Department about continuing contact with Father. Instead, she maintains the court erred by "focus[ing] heavily, by its own admission, on what it would be like if [H.C.] were returned to [Mother's] care." This is a misreading of the court's comments. The court did not consider the "potential of return to parental custody." It appropriately considered, in determining whether the beneficial relationship

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[5] "[S]ome courts have applied different standards of review. (*In re K.P*. [(2012)] 203 Cal.App.4th [614,] 621–622 [question of whether beneficial parental relationship exists is reviewed for substantial evidence, whereas question of whether relationship provides compelling reason for applying exception is reviewed for abuse of discretion]; *In re C.B*. (2010) 190 Cal.App.4th 102, 122–123 . . . [abuse-of-discretion standard governs review, but 'pure' factual findings reviewed for substantial evidence]; *In re Jasmine D*. (2000) 78 Cal.App.4th 1339, 1351 . . . [applying abuse of discretion standard].) On the record before us, we would affirm under either of these standards. (E.g., *Jasmine D*., at p. 1351 [practical differences between substantial evidence and abuse of discretion standards are minor].)" (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.)

exception to termination of parental rights applied, whether a continued relationship with Mother would continue to expose H.C. to domestic violence, and whether the "atmosphere"—referring to the domestic violence and dishonesty surrounding it—had been "dealt with in any significant way." Given the evidence Mother and Father had repeatedly engaged in domestic violence around H.C., had been untruthful to police and the Department about their domestic violence, and Mother had been untruthful about her substance abuse, the court's consideration of Mother's inability to protect H.C. from exposure to this violence was certainly proper in determining whether continuing their relationship "promotes the well-being of the child." (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 528–529.)

Neither Mother nor Father met their burden of proving the existence of such exceptional circumstances that the benefit to H.C. of a continuing relationship with either of them would outweigh the benefits of the stability and permanence of adoption. Accordingly, the juvenile court did not err in finding the "beneficial relationship" exception did not apply.

DISPOSITION

The order terminating parental rights is affirmed.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.