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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re FAITH D., a Person Coming Under
the Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

DAN D. et al.,

Defendants and Appellants.

A142098

(San Mateo County
Super. Ct. No. JV80426)

Appellant Dan D. (father) appealed after the juvenile court terminated his parental rights over his daughter, Faith D., born in October 2006. He argues the juvenile court erred because he established Faith would sufficiently benefit from continuing a relationship with him. We disagree and affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Respondent San Mateo County Human Services Agency (Agency) initiated these proceedings in April 2010, when Faith was three years old, based on allegations that Celeste G. (mother) had a chronic mental illness resulting in her becoming psychotic and threatening and that father, who had been living with Faith since her birth, was unable to protect Faith from mother. The juvenile court sustained the dependency petition and

declared Faith a dependent child in June 2010. She was placed with father, and the juvenile court ordered he receive family-maintenance services, including parenting classes and counseling. The court later ordered father, who had a history of drug use and depression, to submit to drug testing.

In late 2010 and early 2011, the Agency filed a supplemental petition under Welfare and Institutions Code section 387¹ and several amendments alleging placement with father was not effective in protecting Faith. The Agency alleged father had tested positive for methamphetamines, failed to participate in court-ordered counseling and other services, and violated a court order prohibiting contact between Faith and her maternal grandmother, who also had tested positive for methamphetamines. Faith was removed from father's custody, the court sustained the supplemental petition, and reunification services were ordered for father.²

After father made progress during the reunification period, the court in July 2012 ordered that Faith be returned to his custody and family-maintenance services were provided. Father ensured that Faith attended school regularly, they participated in various activities together, and they also both participated in therapy.

Faith was again removed from father's care, however, after he relapsed on drugs. On June 27, 2013, the Agency filed a supplemental petition under section 387, alleging placement with father was not effective in protecting Faith. Father had missed 20 of 24 required drug tests in a nearly five-month period, he tested positive in June 2013 for amphetamines and methamphetamines, he acknowledged having relapsed for a few days (telling a social worker it was "obvious" he had done so), and he failed to keep appointments for services required under his case plan. The Agency also learned that during father's relapse, Faith was in the maternal grandmother's care, which concerned

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

² The juvenile court terminated mother's reunification services following a contested hearing on May 2, 2011. Mother appealed from the subsequent order terminating parental rights that father challenges, and she has filed a "notice of joinder" in father's opening brief. Because father's brief raises no issues specific to mother, we focus primarily on father's relationship with Faith.

Agency workers because the grandmother previously had taken Faith from one of her placements, and the police had to search for them so that Faith could be returned. The juvenile court ordered Faith detained in foster care.

When a social worker interviewed Faith about two months later, Faith indicated that she was familiar with drugs. She told the worker that drugs were “little packages like detergent for laundry” and her father had used drugs, and she “d[idn’t] like dad to have friends, they give him drugs.” The social worker acknowledged in a report dated September 9 that father had expressed how much he loved Faith, and it was likewise obvious that Faith loved father. Faith looked to father during the “hard transition” for comfort and reassurance.

As of the filing of a report dated September 9, 2013, father was “for the most [part] . . . maintaining visitation with Faith three times a week.” The visits were not without problems, however. Father brought the maternal grandmother to two visits even though she was not permitted to visit with Faith and father had been informed of this several times, and during one of those visits he apparently lied and claimed the maternal grandmother was his own mother, even though his mother lives in North Carolina. Father missed three supervised visits in July 2013 after complaining that a visitation center being used temporarily was “a dump.” He did not notify the Agency in advance he would be absent, and Faith became upset and fearful father might have been hospitalized or incarcerated.

Around September 2013, Faith began to show severe separation anxiety and developed psychotic symptoms such as hallucinations and paranoid thoughts that the juvenile court was monitoring her at her foster home through cameras. Faith’s therapist attributed the symptoms to the distress caused by uncertainty over her long-term placement. The therapist reported in October that Faith’s mental state improved after father assured her there were no cameras in her room and that she could open up in therapy about her feelings.

In September and October 2013, father was “more consistent in his visitation,” still scheduled for three times a week. The quality of the visits also improved, with father

accepting direction from the social worker and demonstrating an ability to support and guide Faith. In November, father missed three scheduled drug tests and then, once again, tested positive for methamphetamine.

After jurisdiction and disposition hearings on the supplemental petition, the juvenile court on November 26, 2013, sustained the petition, finding that placement with father had not been effective in protecting Faith. The court also found by clear and convincing evidence there would be a substantial danger to Faith's physical or emotional well-being if she were returned to father and there were no reasonable means to protect Faith without removing her from his care. The court terminated father's reunification services and set a permanency-planning hearing under section 366.26. Father filed a petition for extraordinary writ review, which this court denied by nonpublished opinion on March 6, 2014. (*D.D. v. Superior Court* (A140392).)

Visitation between father and Faith continued, but father struggled with timeliness, and some visits had to be cancelled because father did not show up on time. The Agency reported that father was "overall consistently attending his visits," but there were concerns that father was pressuring Faith to attend visits and to call him on the telephone outside the times when he had been approved to call Faith. As for the quality of the visits, father reportedly fell asleep during some of them, and on one occasion Faith told the person supervising the visit that "father was acting weird and she did not want to continue with the visit," which was then stopped. During a visit on April 11, Faith yelled at father that he "put me in the foster care system for four years. Four years of my life just gone. This is your fault. You had a chance to get me back and you . . . choose to be a big shot over me." Father said he told Faith she had every right to be mad at him and that he hoped she could talk with a therapist about her feelings. He also reported Faith told father she loved him, and they had fun playing games, watching movies, and working on craft projects. The social worker acknowledged that father loved Faith and wanted to be with her, but she stressed that Faith was adoptable and needed permanency and stability.

Faith met with potential adoptive parents on April 24, 2014. The meeting went well, and the social worker reported she had never seen Faith so happy. Faith said she liked the couple a “million billion times.” Visits between Faith and the couple increased to at least once a week and continued to go well.

A scheduled visit between Faith and father on April 30 was canceled because Faith said she did not want to attend. Another scheduled visit in May was canceled because of Faith’s lack of interest, and two other visits were canceled that month because father did not arrive on time and did not notify the visitation center he was running late. On one occasion when Faith was told father was not coming to the visit, Faith responded that “he’s not coming, I know, let’s go,” and left the visitation room. The people supervising visits reported that Faith was having a difficult time during visits that did occur, and there was “a lot of crying.” Father was unable to provide the emotional support Faith needed during these episodes, according to the Agency. During a visit in early June, father ended a visit early after he became frustrated that Faith was trying to do handstands against a wall, which he considered unsafe. Father “no-showed” to a scheduled visit two days later.

A contested permanency-planning hearing was held on June 9, 2014. The social worker and father both testified. Father said it was “really important” his relationship with Faith continue, “because adoptive family, with all the good intentions involved, they are not going to know my daughter. They are not going to know her propensities. And I don’t believe they are going to put their life on the line to protect her.”

The Agency argued parental rights should be terminated and that father had not met his burden to establish the beneficial-relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i). Faith’s attorney acknowledged there was “no question” father and Faith loved each other, but she agreed with the Agency’s recommendation because it was in Faith’s interest to terminate parental rights and free her for adoption. Father’s counsel countered that Faith had lived with father for five of the seven years of her life, and father provided substantial care during that time. Counsel contended that even after father relapsed, he consistently visited with Faith and fulfilled

his parental role during visits, and terminating parental rights would be detrimental to Faith.

The juvenile court acknowledged it was clear father loved Faith. But it concluded father had not met his burden to establish the beneficial-relationship exception to adoption, stressing that “Faith deserves to have permanency and stability in her life.” The court terminated the parents’ parental rights and ordered adoption as the permanent plan.

II. DISCUSSION

In this timely appeal, father argues the juvenile court erred when it declined to apply the beneficial-relationship exception to adoption. We conclude substantial evidence supports the juvenile court’s order.³ (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.)

“At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans.” (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.) “Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citations.] Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when ‘[t]he parents have

³ As father recognizes, different 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 Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [abuse of discretion standard].) There is no question the standard of review is a deferential one, and we would affirm under whatever standard of review is applied. (*Jasmine D.*, at p. 1351 [practical differences between substantial evidence and abuse of discretion standards are minor]; see also *In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.)

maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.’ ” (*Id.* at p. 297, italics added.)

There is no dispute Faith is likely to be adopted, as the juvenile court found. As for whether father maintained regular visitation and contact with his daughter, the juvenile court noted “that’s questionable here,” because the visitation was not regular. Father contends he did, in fact, maintain regular visitation with his daughter, and he highlights all the time he spent with her and downplays the times he missed visits.

Even if father had an unblemished record of visiting with Faith, it does not follow that he established the beneficial-relationship exception to adoption. “The ‘benefit’ prong of the exception requires the parent to prove his or her relationship with the child ‘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.*’ [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ [Citation.] Moreover, ‘[b]ecause 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.’ [Citation.]” (*In re K.P., supra*, 203 Cal.App.4th at p. 621, italics added.) “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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.)

Father focuses on all the positive aspects of his relationship with Faith, and this court acknowledges it is essentially undisputed they love each other, as the juvenile court stated at the permanency-planning hearing. But we disagree that the *only* reasonable inference is that Faith would be “greatly harmed” by the termination of parental rights, as father claims. Father consistently struggled with staying drug-free, and Faith suffered when it was unclear when and where she would find stability and permanence. And while contact with father had some positive aspects, the contact also caused no small amount of emotional distress for Faith. We will affirm the juvenile court’s order if supported by substantial evidence, even if other evidence supports a contrary conclusion. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Father is essentially asking us to reweigh the evidence and to substitute his judgment for that of the juvenile court, which we decline to do. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Reviewing the record as a whole, there is substantial evidence that no beneficial parent-child relationship existed such that termination of parental rights would be detrimental to Faith, or that maintaining her relationship with father would benefit her to such a degree as to outweigh the well-being she will gain in a permanent home with adoptive parents. (*In re K.P., supra*, 203 Cal.App.4th at p. 621; *Casey D.*, at p. 53.)

In sum, although it is clear that father and daughter’s relationship had positive attributes, father has not shown the juvenile court erred in terminating his parental rights.

III. DISPOSITION

The juvenile court’s order terminating parental rights is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.