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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re A.M., a Person Coming Under the
Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A144392

(San Mateo County
Super. Ct. No. 83517)

C.S., the mother of A.M., appeals from an order terminating her parental rights. She contends that the juvenile court erred in finding that the beneficial relationship exception to adoption did not apply. We affirm.

I. FACTUAL BACKGROUND

On January 22, 2014, a Welfare and Institutions Code¹ section 300 petition was filed alleging that mother failed to protect A.M., who was then 17 months old. The petition alleged that mother was intoxicated when, with A.M. in the car, she drove and caused a serious automobile accident. Mother’s blood alcohol level was twice the legal limit, she sustained serious injuries, and A.M. suffered a bruise to his right forehead.

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

Mother admitted to the police that the incident constituted her fifth DUI and that she could not control her drinking. The petition alleged that mother's uncontrolled substance abuse placed A.M. at substantial risk of harm and neglect.

The court ordered A.M. detained; the County of San Mateo Human Services Agency Children and Family Services (the Agency) placed him in the home of his maternal great-aunt (maternal aunt). The court ordered that mother, who was incarcerated, receive one contact visit with A.M. per week.

The Agency's report for the jurisdiction/disposition hearing filed February 28, 2014 indicated that mother was incarcerated in the medical unit at the Maguire Correctional Facility and was recovering from injuries sustained in the car accident. She did not remember the accident. She suffered fractures to her neck, ribs, and right hand. She admitted that she had been drinking beer on the day of the accident and did not "count" the number of beers she consumed. She said that it "was just me being stupid" and that she "knows better." Mother reported that she had attended a six-month inpatient substance abuse treatment program through Women's Recovery Association (WRA) after her second DUI charge, that she had been incarcerated for prior DUI offenses, and that her driver's license was suspended. She hoped to enroll in the residential program at WRA.

The Agency reported that mother had participated in supervised visitation and that A.M. was happy, engaged, and affectionate with mother during the visits. The Agency, noted, however, that when mother was moved to the county jail, A.M. was more fussy and cried during the visit as he was uncomfortable in the much smaller space at the jail.

The Agency further stated that A.M. had adapted well to his new home with his maternal aunt. It recommended that reunification services be offered to mother, including that she attend an inpatient substance abuse treatment program and a parenting course. The Agency was unable to determine the identity and whereabouts of A.M.'s father.

The jurisdiction/disposition hearing was continued several times. On April 28, 2014, the Agency filed a first addendum to its jurisdiction/disposition report. Mother was

participating in the Choices Program² at the county jail and continued weekly visitation with A.M. She had also passed two of four portions of the GED examination, was accepted into an inpatient drug treatment program, and had completed a parenting course. Mother was awaiting arraignment in a criminal case on charges, including DUI and child cruelty, resulting from the accident. She continued to have good visits with A.M. and A.M. was “always excited” to see her. The maternal aunt reported that A.M. had difficulty sleeping after visits with mother.

The Agency filed a second addendum to the jurisdiction/disposition report on June 23, 2014. Mother was considering a plea bargain in her criminal case under which she would be sentenced to five years and the court would dismiss some of the charges. Mother continued to have consistent visitation with A.M. The Department’s recommendation included that reunification services be offered to mother.

On August 19, 2014, the Agency filed a third addendum to the jurisdiction/disposition report. The Agency reported that mother was sentenced to five years “with half time” in prison. A.M. continued to reside with his maternal aunt, who wished to adopt him if mother was unable to reunify.

The Agency recommended that the court bypass services pursuant to sections 361.5, subdivisions (b)(13) and (e)(1), due to mother’s long-standing alcohol abuse and the fact that the length of her prison sentence surpassed the reunification time limitations for a child under the age of three. The Agency opined that due to the length of mother’s sentence, reunification services would not be in A.M.’s best interests and would delay permanence for him.

The Agency’s fourth addendum to the jurisdiction/disposition report was filed on September 22, 2014. The Agency reported that mother was transferred from the county jail to the Central California Women’s Facility in Chowchilla (Chowchilla). Mother had not had a visit with A.M. since she was transferred. The Agency continued to

² The Choices Program provides alcohol and drug counseling, classes in domestic violence, parenting, and relapse prevention, and other educational services.

recommend that the court bypass reunification services due to mother's lengthy prison sentence.

The jurisdiction/disposition hearing was held on September 25, 2014. The court found that the allegations of the section 300 petition were true and bypassed reunification services pursuant to sections 361.5, subdivisions (b)(13) and (e)(1). The court set the matter for a section 366.26 hearing.

The Agency's report for the section 366.26 hearing recommended that parental rights be terminated and that the court order adoption as the permanent plan. The Agency noted that A.M. continued to thrive in his placement with mother's maternal aunt and uncle and that they wished to adopt him and provide him with the stability of a permanent home. The Agency reported that visitation with mother had been postponed until she is allowed contact visits in prison.

The section 366.26 hearing was held on January 6, 2015. The court found that A.M. was adoptable and that mother's parental relationship with A.M. did not outweigh the benefits of adoption.

II. DISCUSSION

Mother contends that the juvenile court erred in not applying the section 366.26, subdivision (c)(1)(B)(i), exception to termination of parental rights because A.M. would benefit from continuing the parent/child relationship with her.

Section 366.26, subdivision (c)(1), provides that the denial of reunification services "shall constitute a sufficient basis for termination of parental rights" unless "(B) [t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . ." The parents have the burden of proving the applicability of the exception. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 773; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*))

The *Autumn H.* court recognized that "[i]nteraction between natural parent and child will always confer some incidental benefit to the child." (*Autumn H.*, *supra*,

27 Cal.App.4th at p. 575.) “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.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The exception under section 366.26, subdivision (c)(1)(A), applies only when the relationship with the natural parent “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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Only 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 [is] the preference for adoption . . . overcome [so that] the natural parent’s rights are not terminated.” (*Ibid.*) 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.” (*Id.* at p. 576.)

Preliminarily, we address mother’s suggestion that we should apply the substantial evidence standard of review to the court’s findings under section 366.26, subdivision (c)(1)(B)(i). Mother recognizes that there is some dispute about the precise standard of review applicable to the court’s finding on whether one of the exceptions to adoption applies. (See *Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–577 [substantial evidence standard applies to finding on the applicability of the parent-child exception]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [applying abuse of discretion standard but recognizing difference in standards is not significant]; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 [both standards of review apply—the substantial evidence standard applies to the court’s finding on the existence of a beneficial parent-child relationship while the abuse of discretion standard applies to question of whether the relationship provides compelling reason for applying exception to adoption].) We agree with the *Jasmine D.* court that the practical differences between the two standards of review in evaluating the parent-child exception to adoption are not significant. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) In any event, on the record before us, we affirm the court’s findings under both standards.

The record demonstrates that mother had a strong parent-child relationship with A.M. and regularly visited with him.³ This relationship, however, did not outweigh the benefits to A.M. of a stable and permanent home that adoption with the maternal aunt and uncle will provide. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A.M.'s need for a stable, consistent environment outweighs any benefit he would derive from continuing his relationship with mother.⁴ We are mindful of mother's obvious love for A.M., and the significant progress she has made with her sobriety and education. While A.M. would derive some benefit from continuing his relationship with mother, there was insufficient evidence presented that A.M. would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468 (*Angel B.*) [no hint in the record that child would suffer harm if visits with child's mother were to end].) Mother has not shown that the juvenile court erred in terminating her parental rights.

Relying on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), mother contends that the court erred in not applying the beneficial relationship exception here. In *S.B.*, the father was the primary caregiver for three years, and when his daughter was removed from parental custody, he immediately started services, maintained his sobriety, sought medical and psychological services, and maintained consistent visitation. (*Id.* at p. 298.) In short, he complied with his case plan, but his current health problems, including posttraumatic stress disorder, impeded his ability to care for his daughter full time. (*Id.* at pp. 294, 298.) The evidence also included a bonding study that indicated a strong bond between the father and daughter and that there was a potential for harm if she lost the parent-child relationship. (*Id.* at pp. 295–296.) The court held that the evidence showed that the daughter would be greatly harmed by the loss of her significant relationship with her father. (*Id.* at p. 301.)

³ We recognize that the visits ceased when she was sentenced to Chowchilla, but both mother and the maternal aunt agreed it was in A.M.'s best interests that visitation wait until mother could engage in contact visits with A.M. at the prison.

⁴ We note that the maternal aunt and uncle have expressed their commitment to continuing contact with mother post-adoption.

Here, although mother consistently visited with A.M., she has not shown “that severing the natural parent-child relationship would deprive [A.M.] of a *substantial*, positive emotional attachment such that [A.M.] would be *greatly* harmed.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) Mother remains incarcerated, and she will not be released in time to make substantial progress toward reunification with A.M. within the statutory time limits for a child under the age of three. (See § 366.21, subd. (e) [at six-month review hearing, court has discretion to schedule a section 366.26 hearing unless there is a substantial probability that child under the age of three will be returned to parent in six months].) It would be detrimental to A.M. to deprive him of a permanent, stable, and loving placement while mother is unable to parent him. Her incarceration places A.M. at risk of further instability in his life if permanency is delayed to await her release from prison. (See *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1030–1031 [where parent will be incarcerated longer than the maximum time period for reunification, providing services to parent may be detrimental to the child as permanency is delayed with no likelihood of reunification].) A.M.’s need for a stable, loving environment outweighed any benefit to him from continuing his relationship with mother. The court did not err in finding that the section 366.26, subdivision (c)(1)(B), exception did not apply.

III. DISPOSITION

The order terminating parental rights is affirmed.

Rivera, J.

We concur:

Ruvolo, P. J.

Streeter, J.

