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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

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

B234406

(Los Angeles County
Super. Ct. No. CK66060)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GUADALUPE C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Veronica S. McBeth, Judge. Affirmed.

Jonathan B. Steiner, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Deputy County Counsel for Plaintiff and Respondent.

Appellant Guadalupe C. (mother) appeals from the juvenile court's order terminating her parental rights over her daughter, Angel A. (born June 2009). Mother contends the order must be reversed because the juvenile court abused its discretion by denying her Welfare and Institutions Code section 388 petition requesting reunification services.¹ Mother further contends the order must be reversed because both the parental exception and the sibling exception to terminating parental rights set forth in section 366.26, subdivision (c)(1)(B)(i) and subdivision (c)(1)(B)(v) apply.

The juvenile court did not abuse its discretion by denying mother's section 388 petition. Mother failed to sustain her burden of establishing that granting her request for reunification services was in Angel's best interest. Mother also failed to meet her burden of establishing that an exception to terminating parental rights applied in this case. We therefore affirm the juvenile court's orders.

BACKGROUND

1. Detention and Section 300 Petition

In June 2009, the Los Angeles Department of Children and Family Services (the Department) received a referral regarding mother and newborn Angel. Mother had a history of substance abuse, as well as four prior referrals to the Department. She had five other children who were no longer in her care, including two children with whom she failed to reunify.

Following a team decision meeting with mother and with Angel's father, Juan A. (father), the Department implemented a voluntary case plan that included individual counseling and random drug testing for both parents.² Mother thereafter enrolled in a treatment program but failed to attend. She also failed to take Angel to a follow-up medical appointment and missed a scheduled drug test.

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

² Father is not a party to this appeal.

Mother tested positive for amphetamines and opiates in August 2009. The Department detained Angel, placed her with a paternal uncle, Adrian A. (uncle), and filed a section 300 petition on Angel's behalf. On August 12, 2009, the juvenile court ordered Angel detained and accorded both parents monitored visits.

2. Jurisdiction and Disposition of Section 300 Petition

Angel remained placed with uncle and his wife Olga in September 2009. Olga had informed the Department's social worker that she and uncle were willing to adopt Angel.

Mother had enrolled in an inpatient drug treatment program but left the program a few days later. She admitted using alcohol and methamphetamine during her pregnancy with Angel. Father denied having knowledge of mother's drug use until shortly before she gave birth to Angel.

At the October 6, 2009 adjudication hearing, the juvenile court sustained an amended petition under section 300, subdivision (b) for mother's past and current drug use and for father's failure to protect Angel. Both parents were accorded monitored visits, two to three times per week for two to three hours per visit.

Both parents visited consistently with Angel on a weekly basis in October and November 2009. The visits were appropriate and the parents were proactive in bonding with the child. Mother tested positive for amphetamine and methamphetamine in November 2009.

At the December 4, 2009 disposition hearing, mother requested six months of reunification services. The juvenile court denied mother's request, citing mother's long-standing drug use, her history of losing custody of her children because of her drug use, and her failure to remain in a treatment program as the reasons for denying her services. The court accorded both parents monitored visits and gave the Department discretion to liberalize father's visits only.

3. Review Proceedings

In May 2010, the Department reported that Angel was receiving services from the Eastern Los Angeles Regional Center. She had been exhibiting some developmental delays but had made some improvement under the care and attention of her caregivers. Angel had also been screened for fetal alcohol syndrome. The results of that screening showed that although Angel did not exhibit facial features typical of the syndrome, she suffered from developmental delays that were consistent with fetal alcohol exposure.

Mother entered an inpatient treatment program in March 2010. In August 2010 she gave birth to another daughter, Perla, on whose behalf the Department filed a section 300 petition. Mother had also enrolled in a parenting class and was attending AA meetings together with Perla's father. She continued to have weekly monitored visits with Angel at the Department's offices, and the visits went well.

In October 2010, father informed the Department that he felt adoption by uncle and his wife would be best for Angel. At a November 24, 2010 hearing, father did not object to terminating his reunification services in order to facilitate the adoption process. The juvenile court terminated father's reunification services and set the matter for a section 366.26 hearing.

4. Section 388 Petition and Section 366.26 Proceedings

In March 2011, the Department reported that a home study was underway for Angel's prospective adoptive parents. Mother's visits with Angel had become sporadic; she attended one visit in June, one in July, three in August, two in September, one in October, one in November, two in December 2010; three in January, and one in February 2011. Mother was appropriate during the visits and was involved in caring for the child.

On May 3, 2011, mother filed a section 388 petition seeking reunification services and unmonitored visits with Angel. In support of her petition, mother submitted evidence that she had tested negative for drugs, completed a parenting program and was participating in individual psychotherapy and individual and group counseling sessions

through Homeboy Industries. The juvenile court set the hearing on mother's petition for the same day as the section 366.26 hearing.

On May 17, 2011, the juvenile court returned Perla to mother's care. At the same time, the court accorded mother unmonitored visits with Angel, two to three times per week, two to three hours per visit.

In a status review report dated May 24, 2011, the Department reported that mother and Perla were attending weekly two-hour visits with Angel. The visits went well and mother interacted positively with Angel.

Attached to the Department's report was an assessment report prepared by a therapist who had been working with Angel and Olga since January 2011. The assessment report noted that mother had visited inconsistently with Angel over the past several months, and that Angel occasionally exhibited behavioral problems after the visits. Angel had difficulty with transitions. She was also experiencing sensory processing problems and speech delays that were likely contributing to her behavioral issues. Angel's behavioral problems were abating, however, after several months of therapy.

At a May 24, 2011 hearing, the juvenile court ordered mother to participate in a class on fetal alcohol syndrome as a condition to continued unmonitored visits with Angel.

By June 2011 mother had completed 107 group sessions and 32 counseling sessions at Homeboy Industries. She had also completed a six-month outpatient treatment program, and was participating in after care. Although mother tested positive for methamphetamine on February 4, 2011, she disputed the accuracy of the test results. On March 10, 2011, mother voluntarily submitted to a hair follicle test that indicated she had been drug free for the past three to six months. Mother subsequently missed a scheduled drug test on April 19, 2011.

Mother's weekly visits with Angel went well. Mother reported that Angel had called her "mama" for the first time during a visit in June 2011. It was unclear however,

whether Angel understood the term, as she also called Olga “mama.” The social worker who had monitored several of mother’s visits noted that although Angel recognized mother as a familiar person, she did not necessarily recognize mother as her “mother” in a maternal role.

Angel remained placed with uncle and his wife, who consistently met Angel’s special needs. They had participated in every program offered to them through the Regional Center. A home study had been approved on May 25, 2011, and they were committed to adopting Angel.

5. Section 388/366.26 Hearing

Mother testified at the June 17, 2011 combined section 388 and section 366.26 hearing. She discussed her progress in completing a substance abuse program, maintaining her sobriety, and continuing in individual therapy and counseling. Mother said she believed Angel knew her as her mother because the child hugged her and had called her “mama” on one occasion.

Mother stated she had been unaware of Angel’s developmental problems because the caregivers had not told her about them and because the physical manifestations of fetal alcohol syndrome were not evident in the child. Mother also claimed a doctor had told her she could consume up to two beers a day during her pregnancy and that she had done so on occasion to calm her nerves. She also admitted using methamphetamine while pregnant with Angel.

After mother’s testimony, the juvenile court heard argument regarding the section 388 petition. Mother’s counsel argued that mother’s progress in completing her programs and her continued sobriety established changed circumstances and that granting mother reunification services was in Angel’s best interest. Counsel for Angel and father joined the Department in asking the juvenile court to deny mother’s petition.

The juvenile court denied the section 388 petition, finding it was not in Angel’s best interest to grant mother reunification services. The court noted that mother still did not understand the gravity of Angel’s problems, that the child was “deeply bonded” with

her caregivers, who provided her with a loving and protective home, and that it was not in Angel's best interests to grant mother's petition.

The court then proceeded with the section 366.26 hearing. Mother's attorney argued that both the sibling and parental exceptions to terminating parental rights applied. Counsel argued that mother had visited consistently with Angel and had included Perla in the visits. Terminating mother's parental rights, counsel argued, would substantially interfere with Angel's relationship with her siblings.

The juvenile court commended mother on her efforts to turn her life around but noted that those efforts were made very late in the case and should have happened sooner. The court found no exception to terminating parental rights applied and then terminated mother's parental rights. This appeal followed.

DISCUSSION

I. Section 388 Petition

Section 388 provides in relevant part: "Any parent . . . [of] a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . to change, modify, or set aside any order of court previously made." To obtain the requested modification, the parent must demonstrate both a change of circumstance or new evidence, and that the proposed change is in the best interests of the child. (§ 388; Cal. Rules of Court, rule 5.570(a), (e); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "[T]he change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

The parent bears the burden of proving the requested modification should be granted. (Cal. Rules of Court, rule 5.570(i); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) A juvenile court's determination on a petition brought under section 388 is reviewed under the abuse of discretion standard. (*Id.* at p. 318.)

The juvenile court concluded that granting mother's petition for reunification services was not in Angel's best interest. Factors to be considered in determining what is

in the best interests of a child under section 388 include “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) Here, mother’s long-standing drug use caused her to lose custody of several children, including Angel. Although at the time of her petition, mother had completed a six-month treatment program and tested negative for drugs, mother’s period of sobriety was relatively short in comparison to her long history of substance abuse.

Mother failed to demonstrate that granting her petition was in Angel’s best interest. At the time of the hearing on mother’s section 388 petition, Angel was two years old and had lived with her caregivers for all but two months of her life. Uncle and his wife were strongly bonded with Angel and had demonstrated their ability to meet her special needs on a daily basis. Mother, on the other hand, failed to recognize Angel’s behavioral and developmental problems.

In light of mother’s long-standing substance abuse issues and her relatively attenuated relationship with Angel in comparison to the child’s bond with uncle and his wife, the denial of mother’s section 388 petition was not an abuse of discretion. (*In re Kimberly F., supra*, 56 Cal.App.4th at pp. 530-532.)

II. Termination of Parental Rights

Section 366.26, subdivision (c)(1), provides for the termination of parental rights if family reunification services have been terminated and the juvenile court finds by clear and convincing evidence that the child is likely to be adopted. Once reunification services have been terminated, “[f]amily preservation ceases to be of overriding concern . . . the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citations.]” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) “Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn*

H.).) Although the statutory preference is in favor of adoption, section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

The juvenile court’s ruling on whether an exception applies to terminating parental rights pursuant to section 366.26 is reviewed under the substantial evidence standard. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Under this standard, an appellate court must affirm the juvenile court’s order if there is evidence that is reasonable, credible, and of solid value to support the order (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080), and the evidence must be considered “in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*Autumn H.*, at p. 576.)

A. Parental Exception

Mother contends the exception to terminating parental rights set forth in section 366.26, subdivision (c)(1)(B)(i) applies. That exception provides as follows: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

The parent bears the burden of proving that this exception applies. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-954.) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

For the exception to apply, the parent must have maintained regular visitation with the child, and the juvenile court must determine that the parent/child 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent must establish more than merely some benefit to the child by continuing the parent/child relationship. That relationship must be “a substantial, positive emotional attachment such that the child would be greatly harmed” if the relationship were severed. (*Ibid.*) To overcome the benefits associated with a stable, adoptive family, the parent seeking to continue a relationship with the child must prove that severing the relationship will cause not merely some harm, but *great harm* to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Factors that the juvenile court should consider when determining the applicability of the exception include “[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” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

There is ample support in the record for the juvenile court’s determination that the parental exception to terminating mother’s parental rights did not apply. Mother had custody of Angel for only two months. Although she visited Angel fairly regularly throughout the case, those visits remained monitored until the month preceding the section 366.26 hearing. Angel’s interaction with mother during the visits indicated a familiar relationship rather than a parent/child relationship. There was scant evidence of a parent/child bond that would cause Angel great harm if severed or that would outweigh the benefits of a permanent adoptive home.

In contrast, Angel’s prospective adoptive parents have cared for her nearly her entire life. They received training and counseling to help them address Angel’s special needs. They had an approved home study and are willing to adopt Angel and to provide a permanent home for her. Substantial evidence supports the juvenile court’s determination that Angel’s need for stability outweighed any benefit she would derive from continuing a parent/child relationship with mother.

B. Sibling Exception

In determining whether terminating parental rights would substantially interfere with a sibling relationship, the juvenile court must first evaluate the nature and extent of that relationship, “including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) “If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.]” (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 952.)

To show a substantial interference with a sibling relationship, the person opposing the termination of parental rights “must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 952, fn. omitted.) To determine the significance of the sibling relationship, the juvenile court considers the factors set forth in section 366.26, subdivision (c)(1)(B)(v). (*Ibid.*)

There was no evidence of a significant sibling relationship between Angel and Perla. Angel and Perla never lived together and shared no significant common experiences. There was no evidence of a close and strong bond between Angel and Perla. Mother accordingly failed to establish that the sibling exception to terminating parental rights applied in this case. (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 952.)

DISPOSITION

The order denying mother's section 388 petition and terminating mother's parental rights is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD