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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re BRANDON N., a Person Coming
Under the Juvenile Court Law.

B236657
(Los Angeles County
Super. Ct. No. CK75936)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

T.M., mother, appeals from the juvenile court's order terminating her parental rights to now six-year-old Brandon N. Mother contends that the juvenile court erred by failing to find the beneficial parental relationship exception to the termination of parental rights under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i)¹ (section 366.26(c)(1)(B)(i)). We affirm.

BACKGROUND

On January 16, 2009, the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition that alleged, as amended, that mother struck Brandon with a belt resulting in swelling to his thigh and marks and bruises to his arms and legs. Such excessive conduct, the petition alleged, caused Brandon unreasonable pain and suffering and placed Brandon at risk of physical and emotional harm.

The Department's January 16, 2009, Detention Report stated that on January 13, 2009, Inglewood Police Department Officer Wang responded to a "check the well-being call" at mother's apartment and heard a woman screaming and yelling and a child crying. Mother answered the door and told Officer Wang that she "whipped" Brandon with a belt because he "wet" himself. Mother reported that she was having difficulty potty training Brandon and had whipped him multiple times with a belt on his legs and arms. Brandon complained to Officer Wang of pain in his left hip. Officer Wang observed that Brandon had bruises, welts, redness, and swelling on his left shoulder and left leg and arrested mother. A social worker picked up Brandon at the police station.

Brandon was taken to the hospital where he was examined by a physician assistant. The physician assistant asked Brandon where he hurt. Brandon lifted his left shirt sleeve and pointed to marks that appeared to be a one centimeter scab and a one centimeter dark spot on his left biceps. The social worker observed that Brandon's left

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

thigh was swollen and red just above the knee and that Brandon had multiple marks, scars, and bruises on both arms and legs. Hospital staff told the social worker that the marks and bruises appeared to have been made over time and that they did not all appear to be the same age.

The social worker took Brandon to his father's (B.N.) home. Father told the social worker that he and mother were together for about a year and broke up when Brandon was about three months old. Mother and father had joint legal custody of Brandon. Brandon resided primarily with mother, but father had visitation with Brandon on the first and third weekends of each month. In 2007, father married Brandon's stepmother, I.M., and lived with her and her two children. Father believed that mother was an adequate parent, but that she was emotionally unstable and sometimes acted "crazy."

At the January 16, 2009, detention hearing, the juvenile court found a prima facie case for detaining Brandon. The juvenile court released Brandon to father, and ordered the Department to provide Brandon and his parents with family maintenance services. The juvenile court ordered that mother was to have reasonable monitored visits with Brandon at a Department office with a Department-approved monitor.

On February 25, 2009, a Department investigator interviewed mother about the allegations in the section 300 petition. Mother explained that she had run out of diapers and Brandon was wearing only underwear. Mother told Brandon that if he needed to use the restroom, he should use the bathroom. Later, mother noticed that Brandon's underwear was wet. Mother had Brandon sit on the toilet for 30 minutes to one hour because a relative told her sitting on the toilet would allow Brandon to "get used to it."

The investigator asked mother when she struck Brandon. Mother responded, "I was talkin' to him. Then I popped him when he was on the toilet the first time. Then he was hollering, he cried like someone hurtin' him. I didn't lie. I did abuse him, I did pop him. I'm trying to potty train him." Mother stated that she "popped" Brandon three or four times. When asked to describe what she meant by "popped," mother demonstrated a slapping motion. Mother denied that she struck Brandon with a belt. Mother said that she lied when she told the police she struck Brandon with a belt because she was upset

and scared and could not think. Mother stated that she did not physically discipline Brandon, and that the events that brought Brandon to juvenile court were an isolated incident.

The Department's March 2, 2009, Jurisdiction/Disposition Report stated that mother was scheduled for weekly visits with Brandon. Mother's first visit was on February 10, 2009, and mother was one and a half hours late. Mother's most recent visit was on February 17, 2009. There were no problems noted during the visit.

On April 6, 2009, the juvenile court held an adjudication hearing. Mother pleaded no contest, and the juvenile court found that clear and convincing evidence demonstrated that a substantial danger existed to Brandon's physical health and that there were no reasonable means to protect Brandon without removing him from mother's physical custody. The juvenile court declared Brandon a dependent child of the juvenile court and ordered Brandon placed in father's home under Department supervision.

The juvenile court sustained the allegations in the section 300 petition that mother struck Brandon with a belt resulting in swelling to his thigh and marks and bruises to his arms and legs, and that mother's excessive conduct caused Brandon unreasonable pain and suffering and placed Brandon at risk of physical and emotional harm. The juvenile court ordered mother to participate in parenting education and individual counseling to address case issues including anger management and appropriate parenting methods. Mother was granted monitored visitation two to three times a week depending on the availability of a Department-approved monitor with the Department having the discretion to liberalize visitation.

The Department's October 5, 2009, Status Review Report stated that Brandon remained in father's home. The report stated that on January 29, 2009, mother had enrolled at Lunns Hope Corporation, an entity that provided individual and group counseling and parenting and drug and alcohol education. On April 23, 2009, mother received a certificate from Common Sense Parenting. The Department opined that mother did not completely comprehend the juvenile court's order because mother enrolled in a drug treatment program but did not have a substance abuse problem.

Mother had not attended individual counseling or classes since May 2009 because she did not have medical insurance to pay for those services. Thus, mother had not fully complied with the juvenile court's order.

As for visitation, the Department's report stated that mother had weekly monitored visits with Brandon from April 6, 2009, to May 9, 2009. On May 9, 2009, a social worker liberalized mother's visits to unmonitored visits. Mother would pick up Brandon from father's home on Sundays. Mother reported that she took Brandon to church and then brought him back home. Beginning on July 28, 2009, mother had visits with Brandon twice a week. Mother visited with Brandon on Tuesdays from 2:00 p.m. to 6:00 p.m. and on Sundays from 8:00 a.m. to 1:00 p.m. A social worker observed mother during her unmonitored visit with Brandon on July 28, 2009. Mother interacted appropriately with Brandon. The social worker noted, however, that mother was "okay" with Brandon playing independently and that Brandon had a very short attention span. The social worker suggested that mother engage Brandon by reading to him and working with him on learning colors and shapes, and mother was able to do so.

Mother stated that she wanted to reunify with Brandon and that she knew how to care for him. Mother admitted to "wrong doing and that she 'slipped' under a lot of stress." Mother stated that she had learned to cope better with "life issues." Mother was trying to rent an apartment so that Brandon could be with her.

On November 3, 2009, the Department filed a subsequent petition pursuant to section 342 that, as amended, alleged that father and stepmother had a history of engaging in physical altercations in Brandon's presence that resulted in injuries to stepmother. Such conduct, the petition alleged, placed Brandon at risk of physical and emotional harm, damage, and danger. The petition further alleged that Brandon's home had been found in an unsanitary condition which endangered Brandon and placed him at risk of harm.

At the November 4, 2009, detention hearing, the juvenile court found a prima facie case for detaining Brandon. The juvenile court ordered Brandon removed from father's

physical custody and placed him in the Department's custody. The Department placed Brandon in foster care.

The Department's December 2, 2009, Interim Review Report stated that mother had been consistent in visiting with Brandon, but had been late either in picking him up or returning him home. Mother stated that she would take Brandon to the park and to movies during visits. A social worker reported that she observed that Brandon became excited about visits with mother. The Department's December 2, 2009, Jurisdiction/Disposition Reports stated that mother's visits with Brandon had gone well and that Brandon's foster mother stated that mother had been appropriate and on time.

On January 6, 2010, the Department informed the juvenile court that during the past period of supervision, mother had visited Brandon and taken him for the day on all days available to her for visits. However, mother was consistently late—often more than one hour—in picking up Brandon and returning him to his foster family. Mother stated that she was late because she did not drive and the bus trip to pick up or return Brandon took a long time.

On January 6, 2010, the juvenile court held an adjudication hearing on the section 342 subsequent petition. Father pleaded no contest, and the juvenile court found true the amended allegations in the petition. The juvenile court declared Brandon to be a dependent of the juvenile court under section 300 and ordered him removed from father's physical custody. The juvenile court granted mother unmonitored day visits, which the Department had discretion to liberalize. The Department was to assess mother's new apartment for overnight visits after mother moved.

The Department's April 6, 2010, Interim Review Report stated that during the period under review mother had not complied with the juvenile court's order for individual therapy to address case issues and anger management. The report stated that mother had her "intake" for individual counseling at Jewish Family Services on October 29, 2009, and attended two sessions thereafter. Mother had several appointments that she failed to attend. After mother missed an appointment scheduled for February 23, 2010,

Jewish Family Services terminated mother's individual counseling. As for visitation, the social worker stated that Brandon was excited to see mother on March 5, 2010.

The Department's July 7, 2010, Status Review Report stated that mother was not in compliance with the juvenile court's orders. During the period under review, mother had failed to participate regularly and to make substantive progress in court-ordered individual counseling to address case issues including anger management and appropriate parenting methods. Since March 2010, mother had not had any visits with Brandon or contacted Brandon by telephone.

On July 14, 2010, the social worker discussed with mother the importance of visiting Brandon and inquired about why mother had not had any contact with her son. Mother stated that she was depressed and had "a lot of people in her ear" telling her what to do. Mother had a visit with Brandon on July 24, 2010. Mother picked up Brandon on time, but returned him one hour late.

On August 23, 2010, the social worker filed a section 388 petition (request to change court order) seeking to change mother's visits with Brandon from unmonitored to monitored. The petition stated that mother returned Brandon from his August 7, 2010, visit two hours late. During mother's visit with Brandon on August 14, 2010, mother was arrested at a mall for shoplifting. Mother took a \$12 ring from a JC Penney store. Brandon's foster parents had to pick up Brandon at a police station. The juvenile court ordered that mother's visits temporarily would be monitored pending the hearing on the social worker's request. On September 28, 2010, the juvenile court granted the social worker's request that mother's visits with Brandon be monitored. At the same hearing, the juvenile court terminated mother's reunification services.

The Department's January 5, 2011, Status Review Report stated that mother's visits with Brandon had been consistent for the prior two months. The report stated that father failed to complete his domestic violence classes and had not participated in individual counseling since July 2010. In February 2009, father was arrested for driving with a suspended license and reckless driving. In October 2010, father was arrested for selling drugs. Father was convicted of two counts of violating Health and Safety Code

section 11352, subdivision (a) and placed on formal probation for three years. On March 7, 2011, the juvenile court terminated father's reunification services, and set the matter for a hearing to select and implement a permanent plan under section 366.26.

On March 22, 2011, mother filed a section 388 petition concerning the juvenile court's orders terminating mother's and father's family reunification services and setting the matter for a permanent plan hearing. Mother alleged that she reenrolled in individual therapy and completed a Parents Beyond Conflict class. Mother sought an order placing Brandon with her or providing her with family reunification services. Such an order would benefit Brandon, mother contended, because she was very bonded with him, she had maintained visitation with him, and his foster father reported that the visits were appropriate and consistent. The juvenile court set the section 388 petition for a hearing.

The Department's May 12, 2011, Interim Review Report stated that mother had not visited Brandon since January 2011. Brandon's foster parents reported that mother called about once every two weeks to see how Brandon was doing. The report stated that mother had a history of being inconsistent in her visitation and contact with Brandon. As to mother's visitation history, the report recalled that mother did not have any contact with Brandon from March 2010 to July 2010.

The Department's July 1, 2011, Section 366.26 Report stated that mother had not visited Brandon since January 12, 2011, even though Brandon's caregivers made Brandon available at a YMCA every Saturday. The report stated that mother had a pattern of being inconsistent with her visitation and contact with Brandon. The report stated that mother had a number of periods where she had not seen or contacted Brandon for months, such as the period from March to July 2010, and January to July, 2011.

The report stated that Brandon had lived with his prospective adoptive parents for about one year. The prospective adoptive parents were an ordained pastor and his wife who worked as, among other things, on-call Pentecostal ministers. The prospective adoptive parents wanted Brandon to be reunified with his parents, but were willing to adopt if reunification was unsuccessful. The prospective adoptive parents believed strongly that it was in Brandon's best interest that visitation with his biological family

continued as long as Brandon benefited from visits. The prospective adoptive parents were willing and able to use resources for Brandon, who was attending therapy and receiving special education services. The report stated that the prospective adoptive parents had been doing an excellent job meeting Brandon's needs, and Brandon was reported to be doing very well in the prospective adoptive parents' care. Brandon was described as a loved member of the prospective adoptive parents' family. The report stated that it was clear that Brandon was happy in the home and that he wanted to stay there, although Brandon was unable to understand the concept of adoption.

The hearing on mother's section 388 petition began on August 16, 2011, with the section 366.26 hearing trailing. At the hearing on mother's petition, mother testified that she learned in parenting class how to talk to Brandon and discipline him properly and not strike him. Mother learned how to cope with her anger and depression. Mother testified that she used proper discipline in her visits with Brandon.

Brandon's foster father, P.C., testified that mother's visits with Brandon took place at a YMCA. P.C. had been present for 99 percent of mother's visits with Brandon. According to P.C., mother was "always" late for her visits with Brandon. During the visits, mother would "hang out" with Brandon, playing basketball with him or swimming in the pool. P.C. did not observe anything between mother and Brandon that he considered inappropriate. Brandon seemed comfortable with mother. Mother missed three visits with Brandon in the preceding month.

Due to P.C.'s difficulty in being available to testify at a future date, the juvenile court permitted P.C. to testify about matters relevant to the section 366.26 hearing. P.C. testified that his family loved Brandon and that Brandon had been with his family for over a year and was considered part of the family. P.C.'s two biological children loved Brandon "dearly."

The juvenile court denied mother's section 388 petition and found that there was not a change in circumstances and that it would not be in Brandon's best interest to reinstate reunification services. The juvenile court then held the hearing on the termination of parental rights under section 366.26.

For the section 366.26 hearing, the juvenile court admitted mother's testimony at the hearing on mother's section 388 petition. Counsel for the Department, mother, and Brandon stipulated that Brandon loved mother. Mother requested the juvenile court to find that the section 366.26(c)(1)(B)(i) beneficial parental relationship exception to the termination of parent rights applied and to not terminate parental rights. Mother argued that her visits with Brandon had been "high quality," nothing during the visits had been "detrimental," and Brandon was happy and he and mother "were doing" appropriate things.

The juvenile court found that Brandon was adoptable and that it would be detrimental to return him to his parents; that no exception to adoption applied; that mother failed to maintain consistent contact with Brandon; and that mother did not have a clear parent-child bond with Brandon. The juvenile court further found that Brandon had a bond with his prospective adoptive parents and that breaking that bond would be detrimental to Brandon. The juvenile court ordered mother's and father's parental rights terminated.

DISCUSSION

Mother contends that the juvenile court erred in failing to find the beneficial parental relationship exception to the termination of parent rights under section 366.26(c)(1)(B)(i). The juvenile court did not err.

A. Standard of Review

Some courts have held that challenges on appeal to a juvenile court's determination under section 366.26(c)(1)(B)(i) are governed by a substantial evidence standard of review. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 & fn. 4.) Under a substantial evidence standard of review "the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the

evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ [Citation.]” (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on other grounds as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D., supra*, 70 Cal.App.4th at pp. 52-53.)

Other courts have applied an abuse of discretion standard of review. (See, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) Under an abuse of discretion standard of review, we will not disturb the juvenile court’s decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) In this case, we need not decide whether a juvenile court’s ruling on the section 366.26(c)(1)(B)(i) exception is reviewed for substantial evidence or abuse of discretion, because, under either standard we affirm the juvenile court’s decision.

B. Application of Relevant Principles

Once a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, parental rights may be terminated unless the court finds a compelling reason for determining that doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R.* (2003) 31 Cal.4th 45, 52-54.) These “exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Id.* at p. 53; *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350 [“Because 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”].)

The beneficial parental relationship exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Application of the beneficial parental relationship exception consists of a two-prong analysis. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at pp. 449-450.) The first is whether there has been regular visitation and contact between the parent and child. (*Id.* at p. 450.) The second is whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from its termination. (*Ibid.*)

The parent/child relationship 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.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

The beneficial parental relationship exception does not apply when a parent fails to occupy a parental role in his or her child’s life. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51 [parents who have essentially never had custody of children or advanced beyond supervised visitation will have a difficult time establishing the beneficial parental relationship exception].) To establish the beneficial parental relationship exception, “the parents must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A relationship sufficient to support the beneficial parental relationship

exception “aris[es] from day-to-day interaction, companionship and shared experiences.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

Whether the exception applies is determined “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.*, *supra*, 27 Cal.App.4th at p. 576.) A parent must show that he or she has maintained regular visitation and contact with the child and that a benefit to the child would result from continuing the relationship. (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 821; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The juvenile court found that the section 366.26(c)(1)(B)(i) exception to the termination of parental rights did not apply because mother failed to maintain consistent contact with Brandon and she did not have a clear parent-child bond with Brandon. The juvenile court further found that Brandon had a bond with his prospective adoptive parents and that breaking that bond would be detrimental to Brandon.

Substantial evidence supports the juvenile court’s determination that mother failed to meet her burden of establishing that the beneficial parental relationship exception to the termination of her parental rights applied. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.) Mother failed to show that she visited Brandon regularly. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 450.) Mother did not visit Brandon from January 12, 2011, to at least July 1, 2011. Mother also missed three visits in the month preceding P.C.’s September 26, 2011, testimony at the hearing on mother’s section 388 petition.

Likewise, there is evidence that mother failed to show that she occupied a parental role in Brandon’s life (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M.*, *supra*, 29 Cal.App.4th at pp. 1418-1419; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51) or that her relationship with Brandon promoted Brandon’s well-being to such a degree that it outweighed the well-being Brandon would gain in a permanent home with his prospective adoptive parents (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re*

Dakota H., supra, 132 Cal.App.4th at p. 229). There is evidence that mother loved Brandon, and it was stipulated that Brandon loved mother. Brandon was, at times, excited about his visits with mother, and mother interacted appropriately with Brandon during their visits. At the same time, however, the prospective adoptive parents were described as having done an excellent job meeting Brandon’s needs. The prospective adoptive parents were willing and able to use resources for Brandon who was attending therapy and receiving special education services. Brandon was doing very well in the prospective adoptive parents’ care and was a loved member of the prospective adoptive parents’ family. Brandon was happy in the prospective adoptive parents’ home and wanted to stay there. A juvenile court may choose an option other than adoption only in “exceptional” circumstances. (*In re Celine R., supra*, 31 Cal.4th at p. 53; *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) There was sufficient evidence before the juvenile court that such exceptional circumstances did not exist.

DISPOSITION

The order is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.