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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re CHRISTOPHER G., a Person Coming
Under the Juvenile Court Law.

B239712
(Los Angeles County
Super. Ct. No. CK37166)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIEL J.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Anthony Trendacosta, Juvenile Court Referee. Affirmed.

Grace E. Clark, under appointment by the Court of Appeal, for Defendant
and Appellant Minor Daniel J.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant
County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and
Respondent.

Daniel J. (born in 1997) and Christopher G. (born in 2005) are the children of Jessica M. (Mother). On February 1, 2012, at a hearing held pursuant to Welfare and Institutions Code section 366.26,¹ the court found, inter alia, that Christopher could not be safely returned to Mother's custody and was adoptable, terminating her parental rights as to Christopher. Daniel appeals the orders made with respect to Christopher. We affirm.

FACTUAL & PROCEDURAL BACKGROUND

Daniel and Christopher were detained by the Department of Children and Family Services (Department) on June 16, 2009, after Mother was hospitalized for cocaine use and suicidal ideation. The children were living with Mother at the home of their maternal grandmother, Rosa S. At the time, Mother did not know the whereabouts of their fathers.² Prior allegations had been made regarding Mother in 2002, 2008, and 2009,³ and a prior petition had been filed as to Daniel in 1999. This prior action was closed in 2001. The Department filed the instant petition on June 19, 2009, alleging that the children came within the provisions of section 300, subdivisions (b) and (g).

Mother had a criminal history and was currently on parole. She reportedly was bipolar and was engaging in prostitution. The children were placed in foster care, and the court ordered reunification services and monitored visits for Mother.

Connie G., the paternal grandmother of Christopher, said she would take care of Christopher, but not of Daniel, since she already was caring for an autistic grandchild. Connie alleged that Christopher was at high risk for harm while at Rosa's house, since he was often unclean and inappropriately cared for.

¹ All subsequent undesignated statutory references shall be to the Welfare and Institutions Code.

² Their fathers are not parties to this appeal.

³ The 2008 referral was found to be inconclusive but the 2002 referral was found to be substantiated.

Rosa lived with her adult siblings, Jesus S. and Rudy S. Rosa had a lengthy history of substance abuse and a prior criminal record. Rudy had been charged with child molestation in 1982.

The boys were found to be a bonded sibling group.

On July 30, 2009, the court sustained the petition as to two counts pursuant to section 300, subdivision (b), but held two counts as to their fathers in abeyance and continued the hearing.

In August 2009, Mother was residing in a homeless shelter. She appeared slightly disheveled and admitted to recent drug use. A few weeks later, the social worker met with her and she had moved back in with Rosa and was participating in a drug abuse program. Her appearance, speech and interactions were noticeably improved and she was taking new medications. The children remained in foster care together. Mother was allowed reasonable monitored visits.

On August 28, 2009, the court ordered that the children be removed from Mother's custody pursuant to section 361, subdivision (c) and suitably placed.

In February 2010, Connie and Rosa began having unmonitored visits with the children and they were going well. Connie informed the social worker that she wanted to adopt Christopher. Rosa wanted custody of both Daniel and Christopher but was told she could not be considered because of her prior criminal record. Daniel wanted to be placed with Rosa even though he had no complaints about the foster home. He believed Connie was responsible for his placement in foster care. Christopher was also happy in his foster home but wanted to be placed with Connie.

On June 24, 2010, Mother was arrested and incarcerated.

The children continued to do well in foster care. Daniel still wanted to be with Rosa, and Christopher wanted to be placed with Rosa or Connie. Christopher's paternal aunt also expressed an interest in adopting him, but she lived in another state.

In July 2010, Christopher told the social worker he did not like living with his brother. He said Daniel "hurts" him, showing a scar on his hand.

The Department assessed Connie's home and found it to be safe, thus Christopher began overnight visits. Christopher was having behavior problems and attending therapy. His foster mother reported he was doing well.

In a February 2011 report, the social worker stated, "The likelihood that [Daniel] will be adopted is low because he will not agree to any permanent plan that does not include his maternal grandmother, Rosa []. The child does not want to accept that he may not be able to live with his grandmother Rosa []." The social worker noted that the likelihood that Christopher will be adopted was high and that two families were willing to adopt him and knew that Daniel had behavior problems and were not able to meet his emotional needs. The prospective families expressed that they were committed to continue the relationship between the boys.

In a March 2011 report, the social worker reported that the foster mother said she had taken the children to conjoint therapy and the therapists told her to separate the boys because, "Daniel felt Christopher did not let him talk and threatened and yelled at Christopher." At this point, Daniel was 13 years old and Christopher was 5 years old. The foster mother believed Christopher would be better off at Connie's home. Daniel thought it would be better for Christopher to live with Connie, but he wished they could both live with Rosa. Daniel said Rosa was no longer using drugs. Christopher said he was afraid of Daniel because he hits him. Christopher wanted to live with Connie and said he would not miss Daniel because he yelled and cursed. Connie said she wanted custody of Christopher and that Daniel had been turned against her by Rosa and her family.

On April 8, 2011, Daniel filed a section 388 petition requesting that he be allowed to participate in the section 366.26 hearing so he could assert a sibling relationship exception. The petition was granted.

The social worker reported in April 2011 that Daniel did not like Connie. He continued to blame Connie for their living situation and did not want her to take Christopher away from him. Daniel continued to receive individual therapy. The

therapist reported that he demonstrated “poor social boundaries with younger brother as demonstrated through engaging in name calling towards his brother.”

Rosa feared that if Connie adopted Christopher, they would no longer see him. The foster mother told the social worker that Rosa’s family favored Daniel as evidenced by the gifts they gave the boys.

A section 366.26 hearing was scheduled for April 14, 2011, but was continued until October 2011.

In June 2011 Christopher was seeing Daniel every weekend and they were getting along better. In July 2011, the social worker reported that Christopher, who was on an extended visit with Connie, was thriving in her care. Connie voiced concerns about Christopher’s contact with Rosa and her siblings because of their history. Connie promised to cooperate with visits between Christopher and the maternal family.

The boys attended a five-hour bonding study by a licensed therapist, Lynda Doi Fick in June 2011. Fick observed that Daniel and Christopher interacted well with each other and that Christopher often looked to Daniel for reassurance and affirmation. Daniel said he missed Christopher, and appeared to be very fond of him. He continued to blame Connie for making up lies about Mother. Christopher claimed Daniel hit him and was “mean” but later contradicted these statements. Daniel admitted to slapping Christopher and said he was trying to punish Christopher by taking things away when he did not listen. Daniel and Christopher were observed playing together, and Fick found they exhibited a close sibling attachment. Fick noticed Christopher exhibited behavior which resembles a “tic” which escalated when he became anxious or stressed and she recommended a neurological assessment. She observed that Daniel had learning disabilities and suffered from depression. Fick wrote, “The preservation of this highly significant attachment, the sibling relationship, is paramount to Daniel’s and Christopher’s abilities to validate their identities and struggles and to find emotional comfort in a relationship that will likely outlast that of each child and their respective caregivers. . . . [¶] While permanence adds security and emotional safety to a child’s

life, an adoption for Daniel and Christopher would sever the sibling relationship which affords each boy lifelong comfort and support.”

At a team decision meeting in August 2011, the Department discussed concerns about the criminal records of Rosa and Rudy. Rudy was confrontational with the Department staff and often tried to coach Daniel during the meeting. He was eventually asked to leave the room when he made inappropriate comments in front of the children. Connie revealed that Rudy had verbally abused her in the past. Christopher remained in Connie’s arms during the meeting, and when asked to hug Rosa, he did so but quickly returned to Connie’s husband’s arms. He did not acknowledge Rudy. After the meeting, when the social worker made a follow-up phone call to Rudy to find out his home address, Rudy became upset and began to yell, and the social worker ended the phone call.

In an October 2011 report, the social worker stated Rosa and Jesus had insisted that they wanted both boys in their care. Jesus accused the Department of a conspiracy against their family and verbally abused the social worker. Connie reported that Rosa’s family told Christopher Connie’s family had killed his father and upon his return to her home, Christopher had engaged in defiant behavior.

The Department received a report that Christopher alleged Connie tried to drug him and kill him, but after investigation, the social worker determined Rosa had instigated these allegations and coached Christopher. Connie reported that after visits with Rosa, Christopher engaged in inappropriate behavior and consistently claimed Rosa had told him that he should live with her.

At a team decision meeting in November 2011, Jesus was uncooperative and accused the Department of conspiring against their family. He then verbally attacked the Department staff and Connie. Rosa denied telling Christopher to make accusations against Connie.

Christopher was happy in Connie’s home and during visits they appeared to be attached and bonded. Christopher had a mental evaluation in November 2011 and the therapist indicated there was a possibility he had bipolar disorder, fetal alcohol syndrome

or autism spectrum disorder. The therapist stated he needed a very structured, professionally designed, behavior management plan, and she recommended training for Connie on techniques to use at home.

In January 31, 2012, Rosa filed a section 388 petition seeking the return of Christopher. The court denied the petition.

In a February 2012 report, the social worker stated that at a January 2012 team decision meeting, Daniel claimed he had not visited Christopher, and made negative comments about his foster parents. Christopher, who had been placed with Connie, was doing well at school but was having behavioral problems at school. Connie believed the visits with Rosa's family continued to be stressful for Christopher and that they continued to blame her family for Department involvement. Rudy again claimed the Department was biased against him and coaching Christopher. He continued to blame Connie and her husband for Christopher's behavioral problems and maintained the children were removed from their family for no reason. Jesus accused Connie of abusing Christopher and also accused the Department of bias against their family.

Rosa filed section 388 petitions in June 2011 and October 2011, seeking to keep the boys together and to stop Christopher's visits with Connie. She complained about the social workers and Connie.

On February 1, 2012, the court held a section 366.26 hearing and the hearing on the section 388 petitions filed by Rosa. Daniel testified in chambers. Daniel said it would be "pretty terrible" if he did not see his brother and was afraid that Christopher would not remain his brother if adopted.

The court found that Christopher was adoptable but that Daniel failed to meet the burden of showing that the sibling relationship was strong enough to avoid the preference for adoption. The court stated, "Finally, my comment with respect to [Fick . . . is that she has identified only half the issue. When we're talking about the balancing test, we're balancing Christopher's relationship with Daniel vis-à-vis Christopher's relationship with the paternal grandmother I don't think anybody disagrees [Daniel's relationship with Christopher] isn't a close relationship and isn't a bonded relationship, but when the

court has to balance whether the bond and the benefit to Christopher is balanced or outweighed by the relationship he has with the paternal grandmother And it's not the Department's burden to make that showing. It's the objecting party's burden to show that. . . . [Christopher's] now at a point where he's making progress and thriving. And he is a special-needs child. And we have a situation where [Connie] has in fact quit her job to take care of Christopher full-time and that Christopher's making good progress. [¶] So the court does obviously recognize the close relationship, understands the shared common experiences, but let's look at some of those shared common experiences. The chaos that they suffered, the acting out. . . . The battling that's going on, that's gone on. The stressors that have gone on between Christopher and Daniel versus the various relatives. And the issues that have gone on in the maternal relatives' home." The court terminated parental rights with respect to Christopher but ordered Daniel's section 366.26 hearing continued. It ordered the Department to continue regular monitored visits between the children at least weekly but no less than twice per month. It found adoption to be the plan for Christopher and legal guardianship to be the goal for Daniel. It found that the section 388 petitions were rendered moot.

Daniel appealed, contending that the court erred when it did not apply the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)) and terminated Mother's parental rights as to Christopher, allowing him to be adopted by Connie. He contends that he had a highly significant attachment to Christopher and ongoing contact between them was in their best interests.

DISCUSSION

Section 366.26 provides an exception to the termination of parental rights when "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the 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).) The court first determines whether terminating parental rights would substantially interfere with the sibling relationship. Then the court weighs the child's best interest in continuing that relationship against the benefit the child would receive by the permanency of adoption. Substantial interference requires a showing that the severance of the sibling relationship would be detrimental to the child. If the relationship is not sufficiently significant such that it would suffer upon termination, there is no substantial interference with that relationship. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) The burden is on the party seeking a plan other than adoption to demonstrate that termination of parental rights would be detrimental. (*Id.* at p. 949; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

On appeal, we review for substantial evidence the determination of whether a beneficial sibling relationship exists, but utilize an abuse of discretion standard to review a determination of whether termination of that relationship would be detrimental. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

Daniel argues the two boys had lived together until he was placed with Connie and had a significant loving relationship. However, the record indicates that their relationship was often rocky. Christopher told the social worker he would not miss Daniel because he yelled. The social worker observed Daniel threatening Christopher. Christopher was afraid of Daniel and had asked numerous times if he could live with Connie.

Christopher was extremely bonded to Connie and her husband. In addition, Christopher demonstrated several developmental disabilities and was getting a lot of services he needed. There was also almost eight years difference between the siblings. In a few years, Daniel would be an adult, and would not necessarily be living with him. Even Daniel thought it would be better if Christopher were adopted.

Daniel argues that Connie had shown an objection in the past to Rosa's family members and argued that there was a probability that she would be hostile to continued contact. However, Daniel cannot show anything more than a suspicion or hunch. Evidence that the prospective adoptive parent is willing to maintain sibling contact demonstrates that there is no substantial interference with the sibling relationship. (*In re*

Megan S. (2002) 104 Cal.App.4th 247, 254.) Here, Connie testified that she was willing to continue the visits and there was no evidence that she had ever acted in contravention to court orders or would do so in the future. The court found that Connie had promised there would be continued contact between the siblings.

Daniel contends that this case is similar to *In re Naomi P.* (2005) 132 Cal.App.4th 808, where the sibling exception was applied. In that case, Naomi, the minor in question, had three older, teenaged siblings who lived with their maternal grandmother. Naomi was placed in foster care at birth when her mother admitted to using drugs during pregnancy. (*Id.* at pp. 812-813.) The siblings and maternal grandmother visited her often. (*Ibid.*) The foster parent was willing to adopt Naomi but the maternal grandmother felt she could not take her on because of problems with one of the other siblings. (*Id.* at pp. 814-815.) The social worker who did not ask the siblings or Naomi about their feelings, testified that it was in Naomi's best interests to be adopted. (*Id.* at p. 816.) The juvenile ordered legal guardianship by the foster mother with regular visits to continue. The Department appealed. The court of appeal held that "when considering the sibling relationship exception, the concern is the best interests of the child being considered for adoption, not the interests of the child's siblings." (*Id.* at p. 822, citing *In re Celine R.* (2003) 31 Cal.4th 45, 49-50, 55.) The court found that the juvenile court relied on the testimony of the children and the foster mother, that the siblings had strong bonds and common experiences, and questioned the foster mother's appreciation of the importance of the sibling relationship. It held that the juvenile court properly determined that guardianship was necessary in order to ensure continuation of the sibling relationship. (*In re Naomi P., supra*, 132 Cal.App.4th at p. 824.)

Here, there is no question that the siblings have a significant relationship. But in this case, unlike *Naomi P.*, there was no suitable way for them to live together. Since Connie was unwilling to adopt Daniel, and Rosa's home was not a suitable place for Christopher, Connie's home was Christopher's only hope of attaining long-term stability. Christopher did not benefit from time spent with Rosa and her family; in fact, his visits with her caused his behavior to worsen. It appeared that Rosa's family was intent on

keeping Christopher away from Connie and engaged in inappropriate behavior in front of Christopher. On the other hand, there was no evidence that Connie was hindering Christopher's relationship with Daniel and promised to continue their visits.

Under these circumstances, any detriment to Christopher from the loss of a legal tie to Daniel, his sibling, was necessarily outweighed by the benefit of being freed for adoption into a loving home. We find no abuse of discretion in the juvenile court's determination that the sibling relationship exception of section 366.26, subdivision (c)(1)(B)(v) did not apply.

DISPOSITION

We affirm the orders made on February 1, 2012, with respect to Christopher.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.