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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B243670
(Super. Ct. No. J1395654)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

M.G. (mother) appeals from the juvenile court orders denying her Welfare and Institutions Code section 388 modification petition, terminating her parental rights, and establishing adoption as the permanent plan for her minor child, M.M. (Bella). (§ 366.26.)¹ Mother contends that the court abused its discretion by denying her section 388 modification petition, and erred by finding that the parental benefit exception does not preclude Bella's adoption. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

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

FACTS AND PROCEDURAL HISTORY

The Santa Barbara County Department of Social Services, Child Welfare Services (CWS) removed two-year, nine-month-old Bella from mother's custody on November 21, 2011. CWS filed a section 300 petition on November 23, 2011. It alleged, among other things, that police arrested mother for being under the influence of methamphetamine, and that she had a substance abuse and criminal history.² None of mother's four older children lived with her. Bella's two siblings, ages three and four, lived with Michael M., Bella's father, due to mother's substance abuse and inability to care for them. Mother's two oldest children lived with maternal relatives.

The November 28, 2011, detention report recommended that Bella remain in foster care, and that mother be offered counseling, parent education, and substance abuse services. It states that on the date of her arrest, mother refused to provide CWS with names of friends or relatives who could care for Bella. A child welfare worker removed Bella from mother's custody. Bella did not ask about mother during the detention or placement process. Father could not care for Bella, and CWS placed her in foster care. Before November 2011, CWS received four inconclusive or unfounded complaints regarding mother's treatment of Bella. On two occasions (June 2009 and July 2010), CWS could not locate mother but determined that Bella was with grandmother or another caregiver.

Mother attended the November 28, 2011, proceedings and requested a contested detention hearing. The juvenile court advised mother that the proceedings could result in the termination of her parental rights; that reunification services would be offered to her, starting from "the date the child is removed"; and expressly urged mother to take advantage of those services. The court ordered that Bella remain in foster care; ordered mother to keep CWS advised of her address; and authorized mother to have two 2-hour visits each week, contingent upon her providing a clean drug test. Mother failed

² We take judicial notice of the record in the case entitled *M.G. v. Superior Court*, No. B239329. (Evid. Code, § 452, subd. (d).)

to appear at the scheduled contested detention hearing on December 5, 2011. The court affirmed its earlier temporary findings.

The January 5, 2012, jurisdiction report states that mother had not contacted CWS since December 2, 2011, when it advised her to report for a drug test in order to visit Bella. She failed to do so. CWS made multiple attempts to reach her without success. Bella was having frequent emotional "melt downs"; and was unable to focus; she also sought affection and attention from, and tried to follow, unfamiliar adults; and she had occasional physical tremors. Mother did not appear at the January 5, 2012, jurisdiction hearing. She had not responded to her attorney's messages. The juvenile court declared Bella a dependent child and ordered that she remain in foster care.

The January 23, 2012, disposition report recommended that the juvenile court bypass reunification services for mother pursuant to section 361.5, subdivision (b)(12).³ Bella's foster home was providing the security and stability she needed, and she was receiving vital services to address her emotional problems. Mother had not contacted CWS to inquire about Bella or seek visitation since early December, and her whereabouts were unknown. Mother's criminal history includes robbery and drug offense convictions. Based on mother's unknown whereabouts, ongoing criminal conduct, apparent lack of a relationship with Bella, and inability to provide the requisite consistency for her, CWS concluded it would not be in Bella's best interest to provide reunification services to mother.

³ Section 361.5, subdivision (b) provides in relevant part as follows: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code." Penal Code section 667.5, subdivision (c)(9) defines robbery as a violent felony.

Subdivision (c) of section 361.5 provides as follows in pertinent part: "The court shall not order reunification for a parent or guardian described in paragraph . . . (12) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

Mother did not appear at the January 23, 2012 disposition hearing. Her attorney requested a contested disposition hearing, and the juvenile court continued the matter. On February 9, 2012, mother appeared in court, and the court set a contested disposition hearing for February 16, 2012.

During the February 16, 2012, disposition hearing, mother admitted a 2003 robbery conviction. She testified that she ceased communicating with CWS in December 2011, because she was "high" and in a deep depression. She surrendered herself at the police station on February 2, 2012, and had since been incarcerated. The juvenile court found that the bypass provisions of section 361.5, subdivision (b)(12) applied, and that it was not in Bella's best interest to offer mother reunification services. It set a section 366.26 permanency planning hearing.

On May 16, 2012, mother filed a section 388 petition seeking reunification services on the ground of changed circumstances. It alleged that since her March 12, 2012, release from custody, mother consistently tested negative for drug and alcohol; participated in 12-step and group meetings; received mental health treatment; and regularly participated in authorized visits with Bella.

In its section 366.26 report, CWS recommended that Bella remain a dependent child and that the juvenile court terminate parental rights. CWS concluded that Bella was adoptable, and it was highly likely that she would be adopted. Bella was in a concurrent planning home, with parents who were committed to adopting her. She referred to them as Mommy and Daddy, and seemed comfortable, at ease and happy in their home, where she had lived for several months. (She previously spent one week in her first foster home, and several months in a second foster home.) Mother and Bella first visited on April 11, 2012. Their visits went well, but Bella acted out after them by having tantrums, becoming defiant, and aggressive.

The juvenile court conducted combined contested section 366.26 and 388 proceedings on August 1, 2012. Mother called the CWS case aide who supervised Bella's visits as a witness. He testified that Bella is excited to see mother, her other

relatives, and her foster parents, and she displays affection for all of them. Bella does not seem upset when her visits with mother end. The aide also testified that when he first met Bella, she was excited to see him, and hugged him. When they got in the car, she asked where he was taking her. He said they "were going to see her mom and she asked who her mom was."

Alfredo Crespo, a licensed psychologist, conducted a bonding study of mother and Bella. Dr. Crespo reported that mother and Bella had a healthy attachment, and that Bella referred to her as mother and was affectionate with her. He opined that "provided the mother can overcome her substance abuse problems, maintenance of the mother/daughter relationship would be of greater benefit to [Bella] than a relationship with a foster parent willing to adopt" Dr. Crespo further opined that if she were permanently separated from mother, Bella could suffer "short-term, negative emotional behavior problems," that would place her at risk of having life-long psychological problems. Dr. Crespo testified that mother did not raise her older children "primarily as a result of [mother's] problems with drugs." Although mother had "significant problems, some of them psychological as a result of long-term drug . . . abuse problems," Dr. Crespo considered it "most significant" that mother "was never before in any kind of treatment program." In contrast, the drug counselor who testified on mother's behalf believed that mother had participated in prior treatment programs but "never actually stayed and did the program" in the past.

The juvenile court denied mother's section 388 petition. It also found that mother failed to establish that the parental benefit exception precluded Bella's adoption, and that Bella was adoptable. The court terminated mother's parental rights and selected adoption as Bella's permanent plan. (§ 366.26, subds. (b)(1) & (c)(1)(B)(i).)

DISCUSSION

Section 388 Petition

Mother contends that the juvenile court erred by denying her section 388 petition requesting reunification services. We disagree.

Section 388, subdivision (a)(1) provides that a parent may petition to juvenile court "to change, modify, or set aside" any order "upon grounds of change of circumstance or new evidence." The parent has the burden of showing a genuine change of circumstances, and that granting the petition would promote the best interests of the child. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) In making its determination, the juvenile court should consider the seriousness of the reason for the dependency, the relative strength of the parent-child and child-caretaker bonds, the nature of the change in circumstances and whether it will remove the problem, and the reason the change was not made sooner. (*In re Aaliyah R.*, at pp. 446-447; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) Moreover, where, as here, reunification services have been bypassed or terminated, the focus shifts from the parent's interest to the child's need for permanency and stability, and there is a rebuttable presumption that continued foster care is in the child's best interests. (See *In re Aaliyah R.*, at p. 448.) We review the denial of the petition for abuse of discretion. (*Id.* at p. 447.) There was none.

In assessing mother's petition, the juvenile court stressed the "significant amount of time that" mother had "no contact or visitation" with Bella; that mother "has one of the larger [Proposition] 36 files," which related to her criminal history;⁴ that mother needed "much more treatment"; and that Bella's "four older siblings" were not with mother. Given the length and severity of mother's drug addiction, as well other factors, the court reasonably concluded that mother failed to meet her burden of showing that it was in Bella's best interests to provide her with reunification services. (See *In re Mary G.* (2007) 151 Cal.App.4th 184, 205-206; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423.)

Parental Relationship Exception

When the juvenile court finds that a child may not be returned to his or her parent and is likely to be adopted, it must select adoption as the permanent plan unless

⁴ See Penal Code section 1210.1 [Proposition 36 drug treatment probation].

the parent proves such action would be detrimental to the child under one or more of the enumerated exceptions. (§ 366.26, subd. (c)(1)(B).) Mother claims that the juvenile court erred by finding that the "beneficial relationship" exception did not preclude the termination of her parental rights. (§366.26, subd. (c)(1)(B(i).) We disagree.

We review the juvenile court's termination of parental rights under the substantial evidence standard. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) The beneficial relationship exception applies if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B(i).) The parent must show more than a relationship that is beneficial to some degree. The parent must prove that she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment of the child to the parent. (*In re Aaliyah R., supra*, 136 Cal.App.4th at p. 450; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Thus, to establish the beneficial relationship exception, mother was required to show that she maintained regular visitation and contact with Bella and that Bella "would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(1).) Here, substantial evidence supports the juvenile court's finding that mother failed to make that showing. Mother failed to visit Bella for the first four months of her dependency. Their visits began in April 2012, and were always supervised. It is difficult for a parent to demonstrate a beneficial relationship based on contact that never progressed beyond supervised visits. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Dr. Crespo testified that it would be beneficial for Bella to continue her relationship with mother. However, he repeatedly qualified that conclusion on the "huge" contingency "that the mother [would succeed] in addressing her drug abuse problems." It appears that Dr. Crespo was optimistic that mother could successfully address those problems because he believed she had not previously received drug treatment. Her drug treatment counselor believed otherwise. As in most dependency cases involving substance abuse, mother waited far too long to take the necessary steps towards recovery.

(In re Jamie R. (2001) 90 Cal.App.4th 766, 774.) Substantial evidence supports the juvenile court's conclusion that mother's relationship with Bella did not outweigh her need for stability in an adoptive home.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Maria Salido Novatt, Sr. Deputy County Counsel, Toni Lorien, Deputy County Counsel, for Plaintiff and Respondent.