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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B258215
(Los Angeles County
Super. Ct. No. CK96193)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JUSTINE G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Amy M. Pellman, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Justine G. (Mother) appeals from the order terminating her parental rights to her then almost two-year-old daughter, Delilah B. Mother argues the juvenile court erred in finding the parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) did not apply to the relationship between her and her daughter. We affirm.

BACKGROUND

When Delilah was born, Mother was a 16-year-old dependent of the juvenile court.² Mother and Delilah lived at a group home where the Los Angeles County Probation Department had placed Mother after she was convicted of assault and battery. In October 2012, when Delilah was three months old (and Mother was 17), group home staff made a referral alleging Mother neglected Delilah's care and was physically abusive toward Delilah (pulling the child's arm and shaking her).

On or about October 7, 2012, DCFS began investigating the referral. On October 20, 2012, Mother left the group home without permission, taking Delilah with her. DCFS determined the allegations of neglect were substantiated, finding: "[Mother] demonstrates abusive and aggressive behaviors in the presence of the child Delilah and toward the child Delilah. [Mother] does not properly care for her child Delilah and displays immaturity and lack of responsibility." DCFS could not take Delilah into protective custody because her whereabouts were unknown.

On October 29, 2012, DCFS filed a dependency petition under section 300, subdivision (b), alleging Mother's failure to provide appropriate care and supervision for Delilah, and Mother's violent behavior in Delilah's presence (punching a wall at the group home, and barricading herself and Delilah in a public restroom until law enforcement intervened). The juvenile court ordered Delilah detained, and issued a protective custody warrant for Delilah and an arrest warrant for Mother.

¹ Further statutory references are to the Welfare and Institutions Code.

² Mother's involvement with the Los Angeles County Department of Children and Family Services (DCFS) dates back to when Mother was under two years old.

On January 16, 2013, DCFS received an anonymous tip about Mother's whereabouts. DCFS responded, detained Delilah, and placed her in a foster home. The juvenile court recalled the warrants for Delilah and Mother. On February 26, 2013, DCFS placed Delilah in the home of a paternal great-aunt.³ Mother was living with another of Father's relatives until they told her to leave due to her disruptive and argumentative behavior. Mother refused to surrender to her probation officer for further placement as she had been instructed.

On April 18, 2013, the juvenile court sustained a first amended petition against Mother after she pleaded no contest. The court's finding against Mother (count b-1) states: "On prior occasions in 2012, the child Delilah B[.]'s] minor mother, Justine G[.] ran away from placement with the child Delilah without disclosing her location. On 10/20/12, mother ran away from placement with Delilah and was whereabouts unknown for approximately three months. On recent and prior occasions, mother has exhibited aggressive behavior and as a result of this behavior mother is a delinquent under the supervision of the juvenile court. Mother has unresolved anger issues. Such conduct on the part of the mother and the mother's lack of stability endangers the child Delilah and places the child at risk of physical harm."⁴

The juvenile court ordered reunification services for Mother and Father. Mother was required to participate in anger management and parenting programs, as well as individual counseling to address the source of her anger and the effect her instability had on Delilah. The court also ordered Mother to obtain housing approved by the Probation Department and DCFS. The court granted Mother and Father monitored visitation to occur three times per week, for three hours each visit.

In a status review report, dated October 7, 2013, DCFS stated Mother had returned to the residential facility (group home) where she had been placed by the Probation

³ Delilah's father, Jose B. (Father), is not a party to this appeal. Therefore, we will not provide a detailed summary of the proceedings as they relate to Father.

⁴ The juvenile court also sustained an allegation against Father regarding his use of cocaine and marijuana (count b-2).

Department. Mother was attending high school, parenting, anger management, and individual counseling programs at the facility. Mother was “having some difficulty getting along with staff and other residents at her placement.”

Delilah was still living with her paternal great-aunt. DCFS noted: “Delilah is doing well in her placement. [The social worker] has observed Delilah to be comfortable at her placement. She goes easily to her caregiver and the caregiver’s adult daughter. Delilah is a friendly child who enjoys playing with her toys. She is an active child. She eats and sleeps well. The caregiver has not reported any problems with Delilah.”

The October 7, 2013 reports also states Mother regularly visited with Delilah, twice per week for four and one-half hours each visit, when the great-aunt or others transported Delilah to the residential facility. According to staff at the facility, Mother was “loving” toward Delilah and would play with the child and eat lunch or dinner with her. Staff also noted: “[M]other is attentive to her daughter. However, mother does need to remember to keep on track, and not ask staff for so much help during the visits.” A DCFS social worker observed one hour of a visit between Mother and Delilah on August 12, 2013, and noted facility staff were “involved in the visit,” interacting with Delilah and assisting Mother in securing toys for Delilah. The social worker stated Delilah called Mother “‘mama,’” and “‘appeared comfortable with her mother as she would go to her easily.” During the social worker’s brief observation, Delilah “did not need to be fed or have a diaper change so [the social worker] was unable to see mother meet those needs.”

Both parents informed DCFS they wanted to reunify with Delilah. Father regularly visited Delilah at the great-aunt’s home. The great-aunt expressed interest in adopting Delilah if reunification efforts failed. Accordingly, DCFS had initiated an adoption assessment.

Mother requested overnight visits with Delilah. At an October 7, 2013 hearing, the juvenile court granted Mother unmonitored visits at the residential facility to last up to eight hours each. The court granted DCFS discretion to liberalize Mother’s visitation

to include overnight visits once Mother had a permanent placement and DCFS consulted with Delilah's counsel.

In a supplemental report, dated December 11, 2013, DCFS recommended the juvenile court terminate Mother's reunification services. The residential facility had issued 53 incident reports between June and October 2013 regarding Mother's inappropriate behavior. DCFS attached the Special Incident Reports to its supplemental report. Mother's behaviors included verbal altercations with staff and peers, "selling drugs at the placement, and refus[ing] to take her psychotropic medications." Based on its review of the Special Incident Reports, DCFS also filed a section 388 petition requesting the juvenile court order monitored visitation for Mother.

On December 18, 2013, the juvenile court set DCFS's section 388 petition for hearing, and ordered Mother's visits be monitored pending that hearing. The court found Mother's progress with her case plan had been satisfactory and continued her reunification services. The court also continued Father's reunification services although it found he had made only minimal progress with his case plan.

In a status review report, dated January 6, 2014, DCFS stated Mother had moved out of the residential facility and moved in with her own mother (Delilah's maternal grandmother). According to Mother's case manager at the facility, Mother had been discharged from probation and chose to move out of the facility. Mother informed DCFS she had completed her parenting, anger management and individual counseling programs at the residential facility, and was no longer attending continuation high school.

As stated in the status review report, after leaving the residential facility, Mother continued to visit with Delilah twice per week for four hours each visit. The paternal great-aunt (Delilah's caregiver) monitored the visits at her home. The great-aunt reported Mother appeared for the visits on time and "was attentive and appropriate with Delilah during visits." Mother would play with Delilah, feed her and change her diapers during visits. Father also visited Delilah at the great-aunt's home (separately from Mother).

DCFS recommended the juvenile court terminate Mother's and Father's reunification services and set the matter for a section 366.26 hearing. DCFS noted in the

status review report that it had completed the adoption assessment for the paternal great-aunt.

At a January 6, 2014 hearing, the juvenile court terminated Mother's and Father's reunification services and set the matter for a section 366.26 hearing. The court granted DCFS's section 388 petition and ordered that Mother's visits remain monitored.

In the section 366.26 report, dated May 5, 2014, DCFS stated Mother continued to visit Delilah twice per week for four hours each visit at the paternal great-aunt's home. The great-aunt remained committed to adopting 22-month-old Delilah, and had been caring for her for more than a year. The adoption homestudy for the great-aunt was approved. DCFS recommended the juvenile court terminate Mother's and Father's parental rights and place Delilah for adoption.

At the June 5, 2014 contested section 366.26 hearing, Mother testified. Mother stated she was Delilah's sole caregiver for the first six months of Delilah's life until Delilah was detained from her custody. Thereafter, Mother regularly visited Delilah and had unmonitored visits for a few months at the residential facility. During those visits, Mother played with Delilah, read books to her, fed her and changed her, took her to the park across the street from the facility, and took her to "Mommy and Me" activities at the daycare center at the facility. Mother stated she called Delilah every day and Delilah sometimes called Mother and left voicemail messages. Delilah addressed Mother as "mommy," and she referred to the paternal great-aunt as "grandma." Mother sometimes attended events with Delilah and the great-aunt, such as fairs and family events, which occurred outside Mother's regularly scheduled visitation. Since leaving the residential facility in December 2013, Mother had lived with Delilah's maternal grandmother, then Delilah's paternal grandfather, and was currently living with a boyfriend who had not met Delilah.

Delilah's paternal great-aunt and caregiver also testified. She stated she wanted to adopt Delilah. She also wanted Delilah to continue to have a relationship with Mother and Father. According to the great-aunt, Delilah rarely cried at the end of monitored visits with Mother, but she used to cry when the great-aunt dropped her off at the

residential facility for unmonitored visits with Mother. Delilah looked to the great-aunt to meet her needs and would stay attached to the great-aunt during monitored visits unless the great-aunt encouraged Delilah to play with Mother.

DCFS's counsel and Delilah's counsel argued the juvenile court should terminate Mother's parental rights and select adoption as the permanent plan. Father did not contest DCFS's recommendation that his parental rights be terminated. Mother's counsel urged the court not to terminate Mother's parental rights, arguing there was a strong bond between Mother and Delilah and Mother wanted to regain custody.

The juvenile court found Mother did not meet her burden of showing the parent-child relationship exception to termination of parental rights applied. The court found by clear and convincing evidence that Delilah was adoptable. The court terminated parental rights and identified adoption as the permanent plan. The court designated the paternal great-aunt as the prospective adoptive parent.

DISCUSSION

Mother contends the juvenile court erred in terminating her parental rights because she established the parent-child relationship exception applied to her relationship with Delilah.

“At a hearing under section 366.26, the court is required to select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) When the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the court must terminate parental rights unless the parent opposing termination can show that one of the exceptions set forth in section 366.26, subdivision (c)(1) applies. (*Ibid.*) “Because a parent’s claim to such an exception is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

“The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions.” (*In re C.B.* (2010) 190

Cal.App.4th 102, 122.) To satisfy the burden of proving the parent-child relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B), a parent must demonstrate that he or she has “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 second prong of this exception requires the parent to demonstrate that his or her relationship with the child “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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Even frequent and loving contact between a child and a parent is not sufficient, by itself, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one” because “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile “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 Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

“Reviewing courts have applied various standards of review when considering trial court determinations of the applicability of these statutory exceptions to termination of parental rights. In *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, the court observed that both the substantial evidence test and the abuse of discretion test have been

applied, and the court stated that “[t]he practical differences between the two standards of review are not significant. “[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.” . . .” [Citations.] However, the abuse of discretion standard is not only traditional for custody determinations, but it also seems a better fit in cases like this one, especially since the statute now requires the juvenile court to find a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) That is a quintessentially discretionary determination. The juvenile court’s opportunity to observe the witnesses and generally get “the feel of the case” warrants a high degree of appellate court deference. [Citation.]” (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)

Under either the substantial evidence or abuse of discretion standard of review, we will not disturb the juvenile court’s decision terminating parental rights because Mother did not establish the parent-child relationship exception applied to her relationship with Delilah. Mother satisfied the first prong of the exception by showing she had maintained regular visitation and contact with Delilah. But she did not satisfy the second prong of the exception because she did not demonstrate the requisite benefit to Delilah from preserving her parental rights and foregoing an adoptive home.

Delilah lived with Mother for six months immediately after her birth. At the time of the section 366.26 hearing, she had been out of Mother’s care for more than 16 months. The paternal great-aunt (and prospective adoptive parent) had been caring for Delilah for more than 15 months. The evidence demonstrates, during the most recent period of monitored visitation, Delilah still needed encouragement to separate from the great-aunt and play with Mother. At the end of a visit when it was time for Mother to leave, Delilah did not have a difficult time separating from Mother. During the brief period of unmonitored visitation at the residential facility, however, Delilah would cry and show distress when the great-aunt dropped her off for visits with Mother.

Although Delilah called Mother “mommy,” and Mother fed Delilah and changed her diaper during visits, Mother did not occupy a parental role in Delilah’s life. That role was filled by the great-aunt. Mother occupied the role of a frequent and loving visitor or playmate, not a parent instrumental in meeting Delilah’s physical or emotional needs. The evidence does not demonstrate that “severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.) Although Mother maintained consistent visitation with Delilah, the evidence does not indicate Delilah shared a bond with Mother which promoted Delilah’s well-being in some substantial way.

The paternal great-aunt was committed to adoption and Delilah was thriving in her care. There are no “exceptional circumstances” here which would warrant the court choosing a permanent plan other than adoption. (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.) The juvenile court did not err in finding the parent-child exception to termination of parental rights did not apply.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.