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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B258791
(Los Angeles County
Super. Ct. No. CK90857)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Denise M. Hippach, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Mother L.L. challenges the order terminating her parental rights over her daughter K.L. We affirm.

FACTS AND PROCEDURE

Mother, a dependent of the juvenile court, gave birth to K.L. in July 2011 just before her 18th birthday. Mother had a long history of running away from her foster placements.

1. Detention and Jurisdiction

On November 17, 2011, mother did not pick K.L. up from daycare. Mother's foster mother reported that mother did not return from school on November 17, 2011, and did not make any arrangements for K.L.

On November 18, 2011, when K.L. was about four months old, K.L. was placed with her foster mother D.N.

Also in November 2011, the Los Angeles County Department of Children and Family Services (DCFS) reported that mother had been hospitalized after efforts to harm her unborn child, though mother denied having the intent to hurt her baby. Mother acknowledged that she had anger issues and stated that she was willing to attend counseling. Mother also agreed to take parenting classes. Mother promised to not run away again.

But, despite her promise, mother ran away again. DCFS was unable to interview mother for the jurisdictional hearing as her whereabouts were unknown.

The court sustained the following allegations and found K.L. a dependent of the juvenile court: Mother left K.L. at daycare without making arrangements for her supervision. Mother also left K.L. with her foster mother for extended periods of time without making arrangements for her supervision. Mother has a history of mental and emotional problems rendering her incapable of providing regular care for K.L. Mother was hospitalized for evaluation and treatment of her psychiatric condition. After assuming jurisdiction over K.L., the juvenile court awarded mother monitored visits.

2. Reunification Period

Mother reappeared on January 17, 2012. Mother acknowledged that she was diagnosed with attention deficit disorder and depression.

Mother was placed in a foster home, but she did not follow the rules. Mother left the foster home one night, and her foster mother filed a missing person report. Mother returned the next day. But then mother disappeared on January 26, 2012. DCFS searched for mother and found that she had been charged with attempted burglary and had been incarcerated.

DCFS later learned that mother had been convicted of burglary, and her sentence had been suspended. Mother also had been cited for loitering with the intent to commit prostitution. After her release, mother did not inform DCFS of her whereabouts. Eventually she contacted DCFS and requested DCFS secure a placement for her. She was placed in a foster home. Mother admitted using a controlled substance when she left her placement.

At the dispositional hearing, on March 15, 2012, mother was ordered to attend counseling to address mental health issues and parenting responsibilities. Mother also was ordered to attend a parenting class. Mother was again awarded monitored visitation.

In October 2012, mother again left her placement.

On November 13, 2012, the court ordered mother to have three-hour visits three times a week. The court found mother made minimal progress toward alleviating the causes necessitating jurisdiction.

In January 2013, mother told a social worker that “I cannot do everything I am asked to do. I have been like this since I was a kid. I should just drop dead because I cannot live in a world by myself. I do not think I can live by myself. I need a caretaker because I cannot remember to do things. Maybe we should get a doctor to look up here (pointing to her head). I have a problem, but I want to get my baby back. However, I do not think I can because I cannot get anything done. I need another psychological evaluation. . . . I am like a little kid you have to tell me and show me.”

Mother was arrested again February 1, 2013. Mother was sentenced to two years in state prison because of her repeated failure to cooperate with probation or appear in court. On May 23, 2013, the court ordered DCFS to set up visits with mother if appropriate in accordance with the rules of the facility where mother was incarcerated.

Mother visited K.L. 13 times during the reunification period. There was no indication K.L. knew mother as her mother.

3. Postreunification Period

On July 11, 2013, the court terminated mother's reunification services. On the same day, the court ordered mother to have visits at her place of incarceration if it allowed visitation with inmates. DCFS was ordered to use its best efforts to facilitate such visits. In July 2013, mother reported that she was in a fire-fighting program and did not have time to take any of her court-ordered programs. She said "I am training to fight fire[s] so we are gone all the time."

In August 2013, DCFS contacted the prison where mother was housed and was informed that each person visiting an inmate needed to complete an application. DCFS reported that it had not received the application by October 2, 2013, and had not been able to reach anyone to discuss it.

In January 2014, DCFS reported that it had not scheduled a visit because of a union work action, the holiday season, and the processing time required by the prison. DCFS's request for a visit on January 15, 2014, was declined by the prison. K.L. visited mother once in April 2014 and once in May 2014. Mother and K.L. played with toys.

4. K.L.'s Bond to Her Foster Mother

K.L. bonded to her foster mother with whom she lived since she was four months old. K.L.'s foster mother wanted to adopt her. Foster mother provided K.L. all of the necessities of life and ensured she received medical care. K.L. "displayed attachment" to her foster mother who provided a stable and safe home.

After K.L. lived with her foster mother for two years, DCFS described K.L. as thriving in her foster mother's care. Foster mother was loving and nurturing toward K.L. and continued to want to adopt her.

5. Mother's Letter and Testimony Regarding Termination of Parental Rights

Prior to the Welfare and Institutions Code section 366.26 hearing to determine if mother's parental rights should be terminated, mother wrote a letter expressing her love for K.L.¹ Mother said that she was able to take care of K.L for four months after her birth. She wanted to love K.L. the way she wished her mother had loved her. Mother's "heart broke in many pieces" when K.L. was removed from her care.

Mother testified at the section 366.26 hearing. Mother testified she did not want her parental rights terminated because she loved her daughter. Because mother was in a fire camp she was unable to take parenting classes. Mother would be released from custody June 2, 2015. Mother testified that she had only two visits since she was incarcerated.

6. Order Terminating Parental Rights

The court terminated mother's parental rights. The court found that DCFS diligently tried to facilitate mother's visitation but was stymied by the prison facility. The court further found that mother did not stand in a parental role to K.L. and had no parental bond with K.L. Mother appealed from that order.

DISCUSSION

Visitation is a critical component of a reunification plan and it must be as frequent as possible, consistent with the child's wellbeing. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) Under section 366.26, parental rights cannot be terminated when a parent shows she "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Mother argues that she could not establish this exception because DCFS failed to facilitate visits with her when she was incarcerated. In contrast, the record showed that mother could not establish this exception because of her conduct prior to her incarceration.

From the beginning of this case mother was permitted visitation. Mother challenges only the visitation after she was incarcerated. By then mother had received

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

over a year of reunification services. This extensive opportunity for mother to visit K.L. distinguishes this case from all of the cases mother cites in which courts have held that the failure to permit visitation required extending the reunification period.²

Mother could not show the exception to termination of parental rights because she regularly ran away and failed to visit K.L. Prior to her incarceration, she failed to develop any bond with K.L. She also failed to follow her case plan. She neither attended individual counseling nor pursued parenting classes. She did not improve in any of the areas leading to the dependency jurisdiction and even acknowledged that she was unable to adequately care for K.L. In over a year, mother visited K.L. only 13 times.

By the time mother was incarcerated, she had *no* bond with K.L. In contrast to *In re Hunter S.*, *supra*, 142 Cal.App.4th at page 1501, in which the mother and son maintained a “loving close relationship” prior to the mother’s incarceration, here mother had no relationship to K.L. K.L. had bonded only to her foster mother, who provided a loving and stable home where K.L. felt safe. DCFS’s alleged failure to provide adequate visits during mother’s incarceration had no impact on mother’s ability to bond with K.L. because, by the time mother was incarcerated, K.L. had been living with her foster and preadoptive mother for over one year and strongly bonded to her. No

² In *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407, the court held that the social services agency should have provided visitation to mother during the reunification period, and reunification services were inadequate because the agency did not. In *In re Dylan T.* (1998) 65 Cal.App.4th 765, 770, the Kern County Department of Social Services failed to provide visitation during a substantial portion of the six-month reunification period. In *In re Monica C.* (1995) 31 Cal.App.4th 296, 301, the court considered the reasonableness of reunification services and found them unreasonable because the reunification plan did not allow for mother, who was incarcerated the entire reunification period, to visit her child. In *In re Hunter S.* (2006) 142 Cal.App.4th 1497 this division reversed an order denying a mother’s section 388 petition because the mother had not been afforded any visitation prior to or after reunification services terminated. (*Id.* at p. 1508.) The child was basically given complete discretion to veto visitation. (*Id.* at p. 1505.) In contrast to these cases mother was not incarcerated and could have visited for the majority of the reunification period but frequently chose to forego the visitation permitted to her.

evidence supported the inference that additional visits while mother was incarcerated would have improved her ability to show that the termination of parental rights was detrimental to K.L.³

DISPOSITION

The order terminating mother's parental rights is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

³ For purposes of this appeal, we assume that DCFS should have provided additional visits during mother's period of incarceration.