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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B263873
(Super. Ct. No. J069626)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINA R.,

Defendant and Appellant.

Christina R., the mother of Jonathan R. (child), appeals from an order terminating her parental rights and selecting adoption as the permanent plan. (Welf. & Inst. Code, § 366.26.)¹ Mother contends that the juvenile court erroneously failed to apply the beneficial relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

Background

Child was born in March 2013 and is presently two years old. In September 2013, when child was six months old, a juvenile dependency petition was filed. The petition

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

alleged: (1) mother had left child unattended while she went to a store, (2) mother has a history of mental illness that interferes with her ability to care for and support child, and (3) mother has not benefited from "voluntary services" offered to her in the past.

In October 2013 the petition was sustained after an uncontested hearing. The juvenile court ordered that custody of the child be removed from mother and that she be provided with family reunification services. In November 2014 the court terminated reunification services and set the matter for a section 366.26 hearing.

Beneficial Relationship Exception

"By the time of a section 366.26 hearing, the parent's interest in reunification is no longer an issue and the child's interest in a stable and permanent placement is paramount. [Citations.] . . . The child has a compelling right 'to [have] a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' [Citation.] Adoption is the Legislature's first choice because it gives the child the best chance at such a commitment from a responsible caretaker. [Citations .]" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

"If the 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 it finds that termination of parental rights would be detrimental to the child under one of [several] specified exceptions. [Citations.]" (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The beneficial relationship exception consists of two prongs: (1) the parent has "maintained regular visitation and contact with the child," and (2) "the child would benefit from continuing the relationship." (§ 336.26, subd. (c)(1)(B)(i).) The parent has the burden of establishing the exception. (*In re Derek W., supra*, 73 Cal.App.4th at p. 826; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

Standard of Review

We review under the substantial evidence standard the trial court's finding that mother failed to establish the beneficial relationship exception. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 824; *In re Derek W., supra*, 73 Cal.App.4th at p. 827; contra, *In re Jasmine D., supra*, 78 Cal.App.4th at p.

1351 [reviewing court should apply abuse of discretion standard].) We view the evidence in the light most favorable to respondent, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.) "The appellant has the burden of showing the finding . . . is not supported by substantial evidence. [Citation.]" (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) "Substantial evidence is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged [Citation.]" (*In re Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1539.)

Substantial Evidence Supports the Juvenile Court's Finding that Mother Failed to Satisfy the Second Prong of the Beneficial Relationship Exception

Respondent concedes that mother satisfied the first prong of the beneficial relationship exception - regular visitation and contact with the child. On the other hand, respondent argues that substantial evidence supports the juvenile court's finding that mother failed to satisfy the second prong - "the child would benefit from continuing the relationship." (§ 336.26, subd. (c)(1)(B)(i).) "Satisfying the second prong requires the parent to prove 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. [Citations.] A . . . parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.' [Citation.] Evidence that a parent has maintained ' "frequent and loving contact" is not sufficient to establish the existence of a beneficial parental relationship.' [Citation.]" (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 643.)

Viewing the evidence in the light most favorable to respondent, we conclude that a reasonable trier of fact could find that mother's contact with child had not continued or developed " 'a *substantial*, positive emotional attachment such that the child would be *greatly* harmed' " if the relationship were terminated. (*In re Marcelo B., supra*, 209

Cal.App.4th at p. 643.) The section 366.26 report notes that, during visits between mother and child, "[t]here were . . . many occasions . . . where the child would often stare at his mother" and "showed no emotions or interest in participating in visitation." "[O]n a number of occasions," a social worker "needed to intervene as the mother was unable to appropriately respond to [child's] needs." The social worker observed "that [child] displays little reaction or excitement at the beginning of [the] visit and has no separation issues after leaving his mother's company." Child's foster and prospective adoptive mother reported that child "is 'confused' after his visits and can be 'oppositional.'" The section 366.26 report concludes, "Given [child's] lack of consistent interest in these visits as well as his general ambivalence about them, the child's level of attachment to his mother is uncertain." "There is no support for continued visitation or contact between the child . . . and his mother . . . as he appears ambivalent in his interactions with the mother and has difficulty transitioning back home after his visits."

The section 366.26 report continues: "The prospective adoptive mother has been lovingly caring for [child] for a total of sixteen months, which given his young age, is a significant amount of time. Due to the prospective adoptive mother's considerable involvement with [child], she is aware of his needs and believes she can care for him and continue to meet his future needs." Child "appears to be thriving in [her] home." "He was observed to be actively engaged with his surroundings and looks to the prospective adoptive mother for assurance." He has "positive interactions" with her.

Mother was the only witness who testified at the section 366.26 hearing. She said that she had attended 46 weekly visits with child and had missed three visits. At the beginning of each visit, she would greet child while he was still in the car: "[U]sually I wave, and I'm allowed to open the [car] door. And when I say, 'Hi, Jonathan,' he'll look up and he'll make eye contact with me. And I say to him, 'It's mommy.' *I make sure I reassure him who I am that I'm not just a stranger approaching him.* I tell him, 'Mommy's here,' and he looks at me and he'll smile . . . or sometimes he'll say okay." (Italics added.) If child had developed "a *substantial*, positive emotional attachment" to mother (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643), she would not need to

reassure him that she was "not just a stranger approaching him." He would recognize mother as soon as he saw her.

Mother further testified that, after she unbuckles child from his car seat, she picks him up and he "throw[s] himself in [her] arms. [A]t least eight out of ten times . . . he places his head on [her] chest." Mother carries child into the visitation room. Sometimes he says, " 'Mommy I love you.' " Mother gives child toys to play with or reads to him. During reading, child sits on mother's lap and hugs her. When the visit is over, child shows his displeasure by making "a mess" and "throw[ing] things deliberately." He "refuse[s] to clean up. . . . [H]e's rebelling because he does not want to say goodbye."

In finding that mother had failed to establish the beneficial relationship exception, the juvenile court reasoned: "[T]he visits [between mother and child] are definitely pleasant. Mom clearly enjoys them. [Child is] not disturbed by them, I'll put it that way. I do have evidence in the [section 366.26] report to suggest that the benefit that he derives from the visits [is] not quite as much as what mom might perceive. But, regardless, even if he enjoys the visits, the law says that's not enough. . . . Pleasant visits. It needs to be more than that. You need to have a strong relationship. [¶] . . . [Child] really needs permanency. He needs a place that he can call his home forever. And so for that reason, I don't find that the [beneficial]-relationship exception outweighs the benefit[s] of adoption which the law says are great and in this case would be."

Substantial evidence supports the trial court's finding. "A parent must show more than frequent and loving contact or pleasant visits. [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) "Instead, the parent must show that he or she occupies a 'parental role' in the child's life. [Citation.]" (*In re Derek W., supra*, 73 Cal.App.4th at p. 827.) "Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. [Citation.]" (*In re C.F., supra*, 193 Cal.App.4th at p. 555.) No evidence of such detriment was presented at the section 366.26 hearing.

Accordingly, "[t]his is not the extraordinary case where an adoption should have been foreclosed by the exception provided in section 366.26, subdivision (c)(1)(A) [now

(c)(1)(B)(i)]." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1352.) "[T]he juvenile court properly found there was no beneficial parental relationship sufficient to overcome the statutory preference for adoption." (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 644.)

Disposition

The judgment (order terminating parental rights and selecting adoption as the permanent plan) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Tari L. Cody, Judge
Superior Court County of Los Angeles

Michelle Ben-Hur, under appointment by the Court of Appeal, for Appellant.

LeRoy Smith, County Counsel, County of Ventura; Joseph J. Randazzo, Assistant
County Counsel, for Respondent.