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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re I.L., A Person Coming Under the
Juvenile Court Law.

2d Juv. No. B264792
(Super. Ct. No. JV51807)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

J.M. (father) appeals the juvenile court's orders denying his petition requesting family maintenance services (Welf. & Inst. Code, § 388),¹ terminating parental rights to his daughter, I.L., and selecting adoption as the permanent plan. (§ 366.26.) Father contends (1) the court abused its discretion by denying his section 388 petition and (2) the beneficial parent-child relationship exception precludes the child's adoption. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

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

FACTS AND PROCEDURAL BACKGROUND

On July 24, 2013, the San Luis Obispo County Department of Social Services (Department) filed a dependency petition alleging that I.L.'s mother had placed I.L., age six months, at significant risk of harm due to mother's unstable mental health condition, participation in criminal activity and inability to meet the child's physical needs. (§ 300, subd. (b).) At the time of her detention, I.L. was malnourished and dehydrated, exhibited weak muscle tone and had received no postnatal medical care or immunizations. Father, who had never been involved in I.L.'s life, was on probation for convictions for battery, disobeying a court order and dissuading a witness from testifying.

The trial court sustained the petition, and I.L. was placed with relatives who wished to adopt her. Mother was denied family reunification services because of her mental illness. Father was offered services, but the juvenile court found his level of progress towards alleviating the causes which necessitated I.L.'s detention was minimal. For example, I.L.'s evaluation with the Tri-Counties Regional Center revealed that she was delayed in all areas of development except adaptive/self-care skills. Her foster mother placed her in an infant development program to address those concerns. Father declined to participate in this program or to attend I.L.'s visit to Martha's Place, another children's assessment center.

At the three-month review hearing, father was reportedly living in a bed-and-breakfast. He continued to pursue free-lance computer work and was trying to pay outstanding fines and fees on his criminal case, but expressed concern "that certain enforcement officials were out to get him." Father showed up late for some supervised visits and did not attend one of I.L.'s medical appointments. In addition, father claimed that people were going to kill him because he owed them money. He said "he would be dead soon" and "did not think it was appropriate to continue visiting [I.L.]." Father subsequently told the social worker that although he was having some difficulty with the criminal court, he was confident he could

resolve the issues. The juvenile court continued services for another three months but noted that father had significant barriers to reunification.

At the six-month review hearing, the Department reluctantly recommended that services be continued to the twelve-month date subject to certain conditions. The court agreed to the extension, but again found that father had made only minimal progress toward meeting the goals of his reunification plan. Visitation remained supervised, three times per week for a total of six hours.

Father successfully completed a parenting class, but continued to "have some unrealistic expectations and a limited understanding of the work and time that goes into caring for a young child." The case workers who supervised his visits with I.L. noted that father was not receptive to their observations, suggestions or feedback. He was also forgetful or ill prepared, neglecting to bring proper food, diapers and toys to the visits.

At the twelve-month review hearing, the Department originally recommended continuation of reunification services. Because there were still concerns regarding father's ability to care for I.L., a new psychological evaluation was ordered. This evaluation revealed that father suffers from narcissistic personality disorder (with schizoid traits). The evaluator, Dr. Carolyn Murphy, noted that father "often sees others as having unreasonable expectations of him and may not emotionally connect with others as a result of his degree of self-focus." His demonstrated grandiosity was the result of underlying narcissism which was hidden by "a carefully cloaked sense of low self-esteem and inferiority. If challenged, he is likely to respond with anger or rebukes, and is likely to perceive any feedback, no matter how slight, as a personal criticism to be avoided or ignored."

Father admitted being on Supplemental Security Income (SSI) for many years but would not disclose his diagnosis to Dr. Murphy except to state that he suffers from depression. Father also questioned why he had to follow the Department's directions, acknowledging that he often engages in a "power struggle"

with social workers. Father described himself as a "serial entrepreneur," stating he currently did "web design" and "search engine optimization," claiming to earn anywhere from \$5,000 to \$12,000 per month. He admitted, however, that he had never filed a tax return or reported this income to the Social Security Administration.

After receiving the evaluation, the Department recommended that family reunification services be terminated. Following a mediation, father submitted on the Department's recommendation in exchange for a limited unsupervised visitation schedule. The plan was to evaluate the unsupervised contact between father and I.L. and then to hold a post-permanency mediation to determine his level of involvement in I.L.'s life should the adoption go forward. After each unsupervised visit, however, the Department received information that I.L. "displayed various signs of dysregulation including sleep disturbances, increased clinginess, and an overall disruption in her routine and behavior."

The Department referred father and the foster parents to mediation to develop a post-adoption contact plan. After rejecting the foster parents' proposal to limit his visitation to four times per year, father sent an email to the foster mother stating that he was "far from helpless in developing a relationship with I.L. after you've adopted her." He also stated "the adoption doesn't mark the end of my efforts. It's actually just the beginning. The difference between dealing with me as a cooperative person and as an adversary will become evident." Father sent a similar threatening email a couple days later.

Father filed a section 388 petition requesting placement of I.L. with him in family maintenance. Father alleged he was gainfully employed, had a suitable two-bedroom home and now owned a car. He believed his recent, unsupervised visitation went well, and that he and I.L. had developed a "loving, close parent-child bond." The Department recommended that the petition be denied and that parental rights be terminated in favor of adoption. Kerry Margason, the court-appointed special advocate (CASA), agreed with the recommendation, stating

that I.L. was making great strides in all areas of development and had established a strong bond with both foster parents. I.L. looked to them to meet her needs and also exhibited deep connections with her adult foster siblings.

Margason expressed significant concern about I.L.'s interactions with father. She observed that father was "not addressing the entire scope of issues that [had] been raised over his care of I.L. throughout the reunification process." He failed to participate in I.L.'s doctor appointments, did not provide adequate food at visits and could not anticipate I.L.'s needs when she was in his care. Margason believed I.L.'s advancements were due solely to the foster parents' efforts in consistently seeking early intervention services and providing a nurturing environment.

On May 29, 2015, the juvenile court conducted a combined hearing on father's section 388 petition and the Department's recommendation to terminate parental rights. The adoption expert, Ann Sederberg, testified regarding I.L.'s special needs and noted that father repeatedly failed to participate in intervention services. She opined that father did not possess the ability to care for I.L. full time, that I.L. was attached and bonded to her prospective adoptive parents and that it would be detrimental for her to be removed from their care. She also stated that I.L. showed signs of regression following the unsupervised visits with father.

Father testified he had a two-bedroom apartment which was already child proofed. He claimed his web design business netted between \$2,000 and \$4,000 per month. Father acknowledged having problems getting up in the morning to care for I.L. but believed he had not missed any visits in the past six months. He stated that I.L. has a very close bond with him and that she was "extremely" happy to see him. He said he fixed her meals, changed her clothes, bathed her and disciplined her when needed. Father supported a guardianship for I.L., rather than adoption, "because it leaves the door open for [I.L.] to have her real father in her life and . . . that's, kind of, the keystone of what we're concerned about."

The juvenile court denied father's section 388 petition, terminated parental rights and found I.L. to be adoptable. The court based its ruling on evidence of I.L.'s special needs and father's lack of involvement in intervention services. The court found that "the great weight of evidence -- and I'm talking about information from Ms. Sederberg, from Dr. Murphy and CASA and from the caregiver totally contradicts [father's] testimony here in court today." The court determined that what was presented was a tale of two very different people: father's version of himself versus what everyone else was seeing. It questioned father's credibility and found "the greater weight of the evidence [was] that I.L. [was] upset . . . [and] agitated when she return[ed] from [the] visitation" with father. The court ruled that there was no showing of changed circumstances and that it was in I.L.'s best interests to deny father's request for placement and family maintenance services. Father appeals.

DISCUSSION

Section 388 Petition

Father contends the juvenile court abused its discretion by denying his request under section 388 for placement and family maintenance services. The grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed unless abuse of discretion is clearly established. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point, 'the focus shifts to the needs of the child for permanency and stability' [Citation.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) To prevail on a section 388 petition, the parent must establish that new or changed circumstances exist and that the proposed order would promote the best interests of the child. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642; *In re S. J.* (2008) 167 Cal.App.4th 953, 959.)

Here, father failed to establish the existence of new or changed circumstances since the juvenile court's termination of reunification services. He

testified that he had obtained a two-bedroom apartment, was earning \$2,000 to \$4,000 per month and had a car, but provided no corroborating evidence of these facts. He did not submit the apartment to a social services review, and the juvenile court did not find his testimony regarding his income to be credible. The court stated: "Certainly, there's a question in my mind about the actual amount of income you do make; you could have brought documents to court to confirm that. Apparently, you haven't ever filed tax returns. And, apparently, by your own testimony, you're receiving disability when you're not entitled to it and, in fact, . . . you probably are violating the law."

The juvenile court further found that the post-termination unsupervised visitation did not favor the granting of father's petition. To the contrary, when I.L. returned from those visits, she was upset and agitated. The court found that "the great weight of evidence is that [increased visitation] really hasn't changed your relationship with your daughter or her relationship with you."

Father also failed to show that placing I.L. in his care would be in her best interests. Following termination of reunification services, the juvenile court's primary focus was upon the "'needs of [I.L.] for permanency and stability'" (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) As the court observed, I.L. was detained due to the parents' failure to meet her mental, emotional and developmental needs. I.L. has spent most of her life with her foster parents, who now satisfy her every basic and special need, providing her with the only stability she has ever known. They are actively involved in her intervention services, which include participation in an infant development program four times a week, physical therapy three times a week and speech therapy three times a week. Father not only refused to engage in these services, but he also was resistant to the social workers' recommendations regarding I.L.'s care.

In addition, Sederberg testified that removing I.L. from her current environment and placing her with father, with whom she has never lived, would undermine her strong bond with her foster parents and disrupt her stability,

including her deep connections with her adult foster siblings. (See *In re D.R.* (2011) 193 Cal.App.4th 1494, 1512-1513 ["the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion"].) It also would jeopardize the advancements I.L. has made as a result of her foster parents' efforts to provide her with early intervention services and a nurturing home environment. Under these circumstances, the juvenile court did not abuse its discretion by denying the section 388 petition.

Beneficial Parent-Child Relationship

Father argues the juvenile court erred in terminating parental rights and choosing adoption as the permanent plan because I.L. will benefit from continuing the parent-child relationship. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

"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 parent-child beneficial relationship exception precludes adoption where (1) the parent has maintained regular visitation and contact with the child, and (2) the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) In deciding whether the parent-child beneficial relationship exception applies, "the 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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Historically, our courts have applied the substantial evidence standard of review when the trial court finds that the parent-child beneficial relationship exception does not apply. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) In *In re Bailey J.* (2010) 189 Cal.App.4th 1308, the Court of Appeal applied the

substantial evidence standard to the trial court's determination whether a beneficial relationship exists, and the abuse of discretion standard to the court's determination whether the relationship is so important that it compels a plan other than adoption. (*Id.* at pp. 1314-1315; see *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re J.C.* (2014) 226 Cal.App.4th 503, 530-531.) Here, we affirm under either standard.

The Department does not dispute that father regularly visited I.L. and had a loving relationship with her. To establish a beneficial parent-child relationship, however, father also needed to demonstrate that I.L. would benefit from continuing that relationship. Father's visitation with I.L. showed they had pleasant visits and affectionate contact. But even frequent and loving contact between parent and child is not sufficient to establish the requisite benefit to the child if the father does not occupy a parental role and is unable to take custody. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) A "pleasant" relationship is not enough to establish a benefit to the child because "it bears no resemblance to the sort of consistent, daily nurturing that marks a parental relationship." (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827; see *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

I.L. was more than two years old at the time of the permanency hearing and had spent her entire life outside her father's custody. She has looked to her foster parents for comfort and to meet her daily needs since she was six months old. Father was unable to show that he can safely parent I.L. and meet those daily needs. Among other things, he neglected to participate in I.L.'s doctor appointments, did not provide adequate food at visits and had difficulty anticipating I.L.'s needs when she was in his care. Simply put, the relationship between father and I.L. did not outweigh the well-being she would gain in a permanent home with new, adoptive parents. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038, superseded by statute on another

ground as stated in *In re Eli F.* (1989) 212 Cal.App.3d 228, 234.) Father makes no showing that the trial court erred in terminating parental rights and freeing I.L. for adoption. (See *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 622-623.)

DISPOSITION

The orders denying father's section 388 petition, terminating his parental rights and selecting adoption as the permanent plan are affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Richard Curtis, Judge
Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Catherine C. Czar, under appointment by the Court of Appeal, for
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