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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.L. et al., Persons Coming Under the
Juvenile Court Law.

B266303
(Los Angeles County
Super. Ct. No. CK93498)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Marguerite D. Downing, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Jessica Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

J.L. (Mother) appeals the dependency court's order terminating her parental rights. Since we find substantial evidence supported the finding that the beneficial relationship exception did not apply, we affirm.

FACTS

In October 2011, the Department of Children and Family Services (DCFS) received two separate referrals pertaining to R.L. (born in December 2006) and A.C. (born in August 2008). The first referral stated that the children were constantly left alone unsupervised and frequently went to another household to ask for food. It was further reported that the apartment where Mother lived with the children did not have water, lights, and gas. The second referral alleged physical and emotional abuse by Mother toward the children.

Mother had recently been arrested for possession and sale of a controlled substance. In November 2011, DCFS elected to provide Mother with voluntary family maintenance services. Mother agreed to undergo substance abuse treatment, including random drug testing. In December 2011, however, Mother tested positive for methamphetamine. Soon after, a DCFS social worker attempted to have an emergency meeting, but Mother refused to attend the meeting and avoided the social worker. Mother missed further meetings and failed to comply with her voluntary family maintenance plan.

The maternal grandmother reported that she took care of the children most of the time because Mother was not often at home. The social worker observed that the home was a "complete mess," with piles of clothing and dirty dishes and chairs. The maternal grandmother thought Mother might be sleeping in the garage. The social worker found Mother in the garage, looking disheveled. The grandmother did not appear concerned about Mother's failure to care for the children or her possible drug use.

On May 9, 2012, the dependency court issued an order authorizing immediate removal of the children. On May 10, 2012, prior to execution of the removal order, a DCFS social worker received a telephone call from a police officer, who said that he had just been dispatched to the home of R.L and A.C. because the two children were reported

to be running unsupervised in and out of the street, playing chicken with cars. The maternal grandmother and maternal uncle were at home and were aware the children were outside playing.

DCFS took the children into custody and placed them in foster care. At the detention hearing on May 15, 2012, the dependency court ordered the children detained.

R.L. told a social worker that Mother “doesn’t want to feed me.” The children’s foster caregiver told the social worker that the children’s visits with Mother went well and that A.C. cried because he wanted to go home with Mother.

On May 30, 2012, Mother was arrested. On June 5, 2012, the children were placed in the home of the maternal uncle, Oscar L.

In July 2012, Mother submitted to the allegations of the Welfare and Institutions Code section 300 petition.¹ The sustained petition stated that Mother had a history of substance abuse and was a current user of methamphetamine, rendering her incapable of providing regular care to the children. Mother was provided with reunification services consisting of a drug and alcohol program with testing, parenting classes, and individual counseling. Her visits with the children were to be monitored.

A January 2013 status review report noted that R.L. and A.C. had adjusted well to living with Oscar. Mother was arrested in October 2012 and was held in a detention facility for approximately one month. It was reported that Mother was arrested for possession of a firearm. Additionally, Mother had failed to comply with the court-ordered programs. She was terminated from the drug treatment program due to lack of participation, and she had not attended parenting classes or complied with drug testing. Further, she did not consistently visit with the children and generally saw them only when Oscar brought them to her home. She made little to no effort to meet Oscar and the children at a mall, as had been arranged. She also did not maintain contact with DCFS.

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

R.L. and A.C. continued to be happy living with Oscar in July 2013. Mother had been in and out of jail. She had not cooperated with DCFS and had not complied with reunification services. She also continued to be inconsistent with visits, still only seeing the children when Oscar brought them to her home. Mother exhibited no desire or effort to see the children. The social worker attempted to observe visits between the children and Mother at her home, but Mother either did not attend the visits or called to cancel. She was arrested again in August 2013 and held in a detention facility.

In October 2013, Mother remained incarcerated. The dependency court terminated her family reunification services.

An April 2014 report noted that R.L. had adjusted well to his placement with Oscar. He had visited Mother a couple times in jail and was happy to see her.

In August 2014, DCFS recommend that the dependency court identify adoption as the permanent plan for the children. Oscar had expressed an interest in adopting the children, and the children were well cared for and had a strong bond with him. R.L. and A.C. were happy that they were likely to be adopted by Oscar, although they sometimes missed Mother. Oscar met the children's emotional, psychological, and academic needs.

Mother remained incarcerated in April 2015. She had recently been speaking on the phone with R.L. and A.C. at least twice a week.

In August 2015, the children continued to progress well in Oscar's home. Oscar remained committed to providing a permanent home.

A contested section 366.26 hearing was held on August 10, 2015. Minors' counsel stated, "for the record," that the children did not want to be adopted, "as they don't want their mom to no longer be their mom." Minors' counsel, however, expressed her independent view, as the guardian ad litem, that Mother's parental rights should be terminated. Counsel for DCFS agreed, noting that Oscar intended to adopt the children, that they had resided with Oscar for three years, and that Mother had not regularly visited. Mother's counsel requested that the court establish a legal guardianship and not terminate Mother's parental rights. Mother's counsel stated that Mother had recently been released from state prison and was participating in programs.

The dependency court found that the children were adoptable and that no exception to adoption applied. It terminated parental rights, freeing them to be adopted. Mother appealed.

DISCUSSION

On appeal from an order terminating parental rights, we determine if there is any substantial evidence to support the conclusions of the dependency court. All conflicts are resolved in favor of the prevailing party and all legitimate inferences are drawn to uphold the lower court's ruling. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732; *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 774.)

At the selection and implementation hearing under section 366.26, subject to certain exceptions, the court must select adoption as the permanent plan and terminate parental rights if it finds that a child is likely to be adopted. (§ 366.26, subd. (c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 49; *In re Jamie R.*, *supra*, 90 Cal.App.4th at p. 773.) Adoption, when possible, is the permanent plan preferred by the Legislature. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826; *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1368.)

Mother contends that the dependency court erred because it did not rule in her favor pursuant to the beneficial relationship exception found at section 366.26, subdivision (c)(1)(B)(i), which applies when “parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Mother bears the burden of showing that this statutory exception applies, and that termination would be detrimental to the children. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 826; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.)

We find that substantial evidence supported the dependency court's decision to select adoption as the permanent plan and terminate parental rights, and its ruling that no exception applied. Mother's visits with the children were sporadic at best. In July 2013, the social worker noted that Mother exhibited no desire or effort to see the children. For

a long period following this report, there was little change in the frequency of visitation, and Mother generally avoided contact with DCFS. Mother's inconsistent visitation was reason enough to find that the beneficial relationship exception did not apply. (§ 366.26, subd. (c)(1)(B)(i).)

During the later stages of the dependency proceedings, while Mother was incarcerated, her efforts seemed to improve, as she maintained frequent telephonic contact with R.L. and A.C. Furthermore, at the selection and implementation hearing, the children (according to minors' counsel) did not want Mother's parental rights terminated. Nevertheless, even if she was capable of showing regular visitation, Mother bore the burden of establishing that the children would benefit from continuing the relationship. Even frequent and loving contact between a parent and child may be insufficient to establish the required benefit. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108-1109.) A parent must show that she occupies "a parental role" in the child's life." (*In re Andrea R.*, at p. 1108.) The parent must show that "the relationship 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 other words, 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. 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 Autumn H.* (1994) 27 Cal. App. 4th 567, 575.)

Mother failed to meet her burden of proof. She did not show that severing the relationship with the children would cause great harm to them. By the time of the final hearing, the children had not lived with Mother for more than three years, a significant portion of their lives. When, as young children, they had lived with Mother, it was in an unsafe and unhealthy environment, and Mother generally did not care for them. Thus, there was no substantial evidence of the "consistent, daily nurturing that marks a parental

relationship.” (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.) Instead, Mother failed to comply with court-ordered programs, failed to consistently care for or visit R.L and A.C., and failed to demonstrate that she could provide a stable and nurturing environment.

In contrast, the evidence showed that Oscar was able to provide the children with stable, loving, and consistent care, and the children bonded with him. With the selection of adoption as the permanent plan, R.L. and A.C. could look forward to the prospect of a secure and stable home.

DISPOSITION

The judgment (order terminating parental rights) is affirmed.

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BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.