

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re RICHARD C., a Person Coming
Under the Juvenile Court Law.

B268023
(Los Angeles County
Super. Ct. No. CK87511)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CYNTHIA M.,

Defendant and Appellant.

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

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Nancy Rabin Brucker for De Facto Parent.

Cynthia M. (mother) appeals from an order under Welfare and Institutions Code¹ section 366.26 terminating her parental rights to her son Richard C. (Richard). We affirm.

BACKGROUND

Richard was born in June 2013, and came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in late June 2013, when DCFS learned that mother had brought the newborn with her to visit her four older children. Richard's four older siblings were living in a foster home after having been declared dependents in 2011 and 2012, following allegations of domestic violence and inappropriate discipline by the children's father R.C. (father), as well as mother's creation of a dangerous home environment by engaging in a physical altercation with the children's maternal grandmother (MGM) in front of the children. Family reunification services were terminated in 2012 for all four children.

Mother and Richard were living with MGM. Mother was not home when a DCFS social worker visited on July 3, 2013, but MGM showed her the baby, who was clean and alert, and the house was appropriately furnished. On July 8, mother met with the social worker and told her that father was Richard's biological father, but mother had not seen father for eight or nine months and did not know where he lived.² The juvenile court granted DCFS authorization to remove Richard on July 12, 2013, and the social worker detained Richard on July 15, 2013 from mother, who cried but cooperated. DCFS was concerned that mother continued to have a relationship with father, who had yet to complete his programs. Further, mother was living in the home of MGM, with whom she had had a physical altercation. Mother did not have good judgment regarding domestic violence and would not be able to protect Richard.

DCFS filed a petition on July 18, 2013, alleging under section 300, subdivisions (b) and (j) that Richard was at risk of harm given mother and father's history

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

² Father was never located and is not a party to this appeal.

of domestic violence. The juvenile court detained Richard on July 18, 2013, ordering DCFS to provide family reunification services.

A jurisdiction/disposition report dated September 4, 2013 stated that Richard was healthy and developing appropriately in the home of a foster father, Ethan C., who was willing to adopt Richard and had an approved home study. Mother had monitored visits twice a week and was participating in parenting education, individual counseling, and a domestic violence support group.

When interviewed, mother described how father broke things, pulled her off the couch so that she fell, and threw things at her if she did not respond immediately when he wanted something. She confirmed that she had argued physically with MGM. After DCFS detained her three older children, she moved back in with father. After she got pregnant with her fourth child she moved in with MGM, and then returned to live with father. She cried all the time after DCFS detained the fourth child, and she and father would argue with bad words and “I guess there was still domestic violence.” Father left before she told him she was pregnant with Richard, and after Richard’s birth she moved back in with MGM. She did not plan to go back to live with father. DCFS stated that although mother had completed court-ordered parent education and domestic violence and individual counseling, “she has failed to recognize the risk to her children and continued to reside with the father resulting in the pregnancy and birth of another child, Richard.” If father had not left, the investigator believed mother would have continued to live with him. DCFS recommended the court bypass reunification services for Richard, as those services had been terminated for Richard’s siblings.

The juvenile court sustained the petition at a hearing on November 4, 2013, sustaining the allegation under section 300, subdivision (j), but dismissing the allegation under subdivision (b). The court ordered reunification services and supervised visitation for mother.

A last minute information filed for the progress hearing on February 3, 2014 reported that mother had completed parenting education and individual counseling, and was enrolled in domestic violence classes. She had been cooperative and participated

actively, and her individual counselor reported that mother was no longer depressed and seemed to be “becoming her own person.” Mother consistently visited Richard and was really trying, and although Richard cried during the visits the first few weeks, he had calmed down and he and mother had positive interactions. DCFS recommended that the court grant it discretion to give mother unmonitored visitation, and the court did so at the hearing on February 3, 2014.

On June 9, 2014, DCFS reported that mother participated actively in her domestic violence support group, her self-esteem had improved, and she understood the impact of domestic violence on her life. The foster mother noted positive changes in mother’s visitation with the four older children and a good relationship with the oldest two. DCFS also reported that Richard was thriving under the care of Ethan C. Mother had complied with visitation and only missed a few visits. Ethan C., however, reported that although Richard had been sleeping through the night and babbling, crawling, and exploring, since unmonitored visitation with mother had begun he was not the same. Richard had separation anxiety and cried when mother picked him up for visits, and was clingy after he returned. He woke up various times during the night crying and wanted to be held, although during a week with no unmonitored visitation he slept through. Mother never called to check on Richard’s well-being except to confirm visitation.

Mother had filed a section 388 petition on May 5, 2014 regarding the four other children, requesting additional family reunification services and placement with MGM. The court granted the section 388 petition on June 9, 2014, giving mother six more months of reunification services and unmonitored visitation with all five children including Richard.

Ethan C. filed a request for de facto parent status on July 16, 2014, when Richard was 13 months old. He described how he had cared for Richard since he was six weeks old, taking full responsibility for Richard’s care and spending all his time with him when he was not at work, including social and enrichment activities. He knew what made Richard laugh and be happy and understood his physical and emotional needs, and was the only father Richard had ever known.

In a status review report for the section 366.21, subdivision (f) 12-month review hearing on September 15, 2014, DCFS reported that Richard had bonded with Ethan C., but appeared not to be bonding with mother. After seven months of unmonitored visitation (twice a week for two hours), Richard still cried hysterically when he left for a visit and when he returned, his eyes were red as though he had been crying during the entire visit. DCFS was concerned for Richard's wellbeing because he seemed "traumatized," and recommended joint therapy for mother and Richard. The social worker had seen Richard turn away and refuse to leave when mother came to pick him up, and Ethan C. or Richard's nanny would have to put him in mother's car seat because he would scream and refuse. Richard's pediatrician told Ethan C. this was not normal. The juvenile court granted Ethan C.'s request for de facto parent status and ordered conjoint play therapy for mother and Richard.

DCFS submitted a status review report dated January 22, 2015 in which Ethan C. reported that Richard was not clingy or anxious around people he saw regularly, and Richard's behavior with mother was unique. Richard would cry and cling to Ethan C. and he had even torn Ethan C.'s shirt when pulled away to go to mother. A therapist who observed a visit in mother's home reported that Richard cried throughout the visit until he fell asleep. During joint therapy, Richard cried and did not want mother to come near him, hold him, or touch him. Even mother admitted Richard "does not like [her]." She wanted Richard to stay with Ethan C., but still wanted to be a part of his life. Open adoption with a postadoption contract was an option, but DCFS recommended termination of family reunification services because visitation was of poor quality and detrimental to Richard's emotional well-being. A last minute information received January 30, 2015 reported that mother had missed three recent visits. On February 4, 2015, Richard's attorney filed a section 388 petition requesting an end to unmonitored visitation and that future visitation be monitored or in a therapeutic setting, because after a year of unmonitored visits, Richard still screamed and cried when forced to leave with mother. DCFS also recommended that visits be monitored.

At a March 3, 2015 contested hearing on section 366.22 and Richard's section 388 petition, the juvenile court admitted a visitation log showing that between April 2014 and February 2015, Mother had cancelled six visits, failed to show up for three, and failed to confirm eight (resulting in cancellation). The court ordered Richard's four older siblings returned to mother under DCFS supervision. The court also terminated family reunification services for mother and Richard, granting Richard's section 388 petition and ordering visitation in a supervised therapeutic setting, with Ethan C. not present.

A section 366.26 report filed on June 30, 2015 stated that Richard, now two years old, was thriving in foster care, but when he arrived for therapeutic visitation with mother, he cried and showed extreme distress. At first, Richard would cry for an hour, although in the last month his crying had decreased to three to five minutes. The social worker received a letter from Children's Bureau staff stating that during contact with mother Richard was inconsolable and sobbed convulsively, drawing the attention of other concerned staff. The crying had decreased, but Richard still showed much anxiety the night before and on the morning of the visitation, breaking down in sobs, and clinging to his caregiver when mother tried to pick him up. "[V]isits with mother do not appear to be productive for the child's emotional well being and do not appear to be in the child's best interest." Richard's pediatrician stated that Richard's reaction to visitation with mother (including crying at the sight of mother and nightmares before the visit) was causing "repeated psychological trauma," and recommended the visits be suspended as soon as possible.

A September 1, 2015 status review report stated that according to Ethan C., mother had begun to use candy and cookies to get Richard to come near to her, stuffing his pockets with candy; once home, Richard vomited the candy he had eaten during the visits. Mother would not change Richard's diaper if he soiled it, instead telling Ethan C. or the nanny after the visit that it needed to be changed. Richard's therapist confirmed that mother provided treats before his sessions with mother and the therapist. Although Richard was now engaged and playful with mother and the therapist during the session, he still lost sleep and appetite and was clingy after he returned from the visits. Ethan C.'s

home study had been approved, and he was able to provide Richard with a safe, loving, and stable home. DCFS pointed out that therapeutic visitation began eight months earlier and only recently had there been a slight improvement. “Mother’s visits only exacerbate the symptoms that therapy is working to relieve.” Mother had had eighteen months to reunify. DCFS recommended the termination of visitation, and the termination of mother’s parental rights at the next hearing. At the September 1, 2015 hearing, the court terminated jurisdiction as to the four older children, ordered adoption as the permanent plan for Richard, and set the section 366.26 hearing for September 29, 2015.

At the hearing on September 29, 2015, mother’s counsel stated, “[W]e would like to have a hearing. We believe she’s made substantial progress. [¶] And if the court is inclined to follow the recommendation, we would like a hearing. If the court is not, then we would be glad to hear whatever the court recommends.” Counsel for DCFS responded, “I would ask for an offer of proof. [Counsel for mother] just indicated the mother made substantial progress, but that is not an issue at the .26 hearing.” The court agreed, “No, it’s not We’re set for a .26 today. The recommendation is to [terminate parental rights]. [¶] . . . [¶] Are we ready to proceed?” Counsel for mother answered “[y]es,” and the court continued, “You know, these cases come in—it’s really sad that these cases come in. [¶] And parents are given an opportunity to comply with the case plan. [¶] You knew your son was in a fost-adopt home way back when. . . . Richard, he’s never even lived [with] you. He’s never even had a bond with you or—I don’t know how to put it in a diplomatic way—a relaxing visitation with you. And the court has no other option but to proceed today.” “[W]ith a heavy heart,” the court found that Richard was adoptable, and “over the mother’s objection,” terminated mother’s parental rights and ordered the case referred for adoption, designating Ethan C. as the prospective adoptive parent.

Mother filed this timely appeal, arguing that the court erred in denying her a contested section 366.26 hearing. We disagree.

A section 366.26 hearing takes place after reunification services have been terminated. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308–309.) “Once reunification

services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.” (*Id.* at p. 309.) The court ““must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.”” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) If the children are adoptable, there is a strong preference for adoption over the alternatives of guardianship or long-term foster care. (*Id.* at p. 528.) “[A] parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B).” (*Ibid.*)

Section 366.26, subdivision (c)(1), provides that the court “shall terminate parental rights” if the minor is likely to be adopted, unless termination would be detrimental to the child under one or more statutory exceptions. (§ 366.26, subd. (c)(1)(B).) Mother invokes section 366.26, subdivision (c)(1)(B)(i), which provides an exception to termination of parental rights when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) “It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] “Interaction between [a] natural parent and child will always confer some incidental benefit to the child” [Citation.] For the exception to apply, ‘a *parental* relationship is necessary.’” (*Id.* at p. 529.) Mother’s “due process right to present evidence on the exception is limited to relevant evidence of significant probative value and . . . if she proffered irrelevant evidence ‘on the issue being contested, the court could properly exclude such evidence.’” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1121.) “[D]ue process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest.” (*Id.* at p. 1122.) Further, “[t]he offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Id.* at p. 1124.)

Mother did not make an offer of proof of relevant evidence regarding the exception. She offered no specific evidence, instead making only a general assertion that she had made substantial progress. Not only is that vague, Mother’s progress is irrelevant

to the question whether *Richard* would benefit from continuing the parental relationship. The evidence before us is to the contrary. A friendly and loving relationship is not enough to show benefit, and mother could not show even that, as Richard continued to resist visitation and suffer adverse effects. Mother did not have a parental relationship with Richard, and continuing her parental rights would be detrimental to Richard. In contrast, there is a strong preference for adoption, and the record also shows that adoption by his foster father would be in Richard's best interests.

The denial of a contested hearing did not harm mother. Whether we review the court's determination that the parental benefit exception did not apply for substantial evidence, for an abuse of discretion, or both (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 530), we affirm the court's conclusion that mother's limited relationship with Richard did not outweigh the benefits of permanence and adoption. Richard was miserable before, during, and after his unsupervised visitation with mother, and only recently less so during the visitation supervised by the therapist. Mother did not take full charge during the visits, and Richard ran to the foster father or the nanny at the end of the visits. "[T]he beneficial relationship exception must be examined on a case-by-case basis, taking into account the many variables that can that can affect the parent-child relationship." (*Id.* at p. 532.) Richard was two years and four months at the September 29, 2015 hearing, and had been with his prospective adoptive father for more than two years. Richard was attached to Ethan C. and was happy and active in their home. A contested hearing would not have shown "compelling evidence" that the benefits of Richard's fraught relationship with mother outweighed the benefit of adoption. (*Ibid.*)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.