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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re J. H. et al., Persons Coming
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

L. A.,

Defendant and Appellant.

C068059

(Super. Ct. Nos.
JD229180, JD229181)

Mother (L. A.) appeals from the juvenile court's orders terminating her parental rights and ordering a permanent plan of adoption for minors K. H. and J. H. (Welf. & Inst. Code,¹ § 366.26.) Mother contends: (1) the termination of parental rights violated due process because the court never found she was an unfit parent; and (2) the court erred by finding the

¹ Further undesignated section references are to the Welfare and Institutions Code.

sibling relationship exception to adoption inapplicable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second appeal in this proceeding. In the first appeal, we upheld the juvenile court's finding that mother had received reasonable services at the 12-month review stage. We also took judicial notice that after the briefing in that appeal was filed, the court terminated mother's parental rights; however, since mother's briefing did not attack that order, we did not address it. (*In re J.H. et al.* (Feb. 14, 2012, C065793) [nonpub. opn.]²) We generally take the facts from our previous opinion up to the time of the finding from which mother appealed in case No. C065793.

This proceeding began in February 2009, when Sacramento County Department of Health and Human Services (the department) filed section 300 petitions as to K. H., a 13-year-old girl, and J. H., an 11-year-old boy, alleging that father (P. H.) had been arrested for sexually assaulting K. H.³ (*In re J.H. et al.*, *supra*, at p. 2.)

According to the jurisdiction/disposition report, the parents were divorced. Mother and her second husband, B. A.

² We take judicial notice of our prior opinion. (Evid. Code, § 459.)

³ The juvenile court denied reunification services to father. (*In re J.H. et al.*, *supra*, at p. 4.) His parental rights were terminated along with those of mother. He is not a party to this appeal.

(the stepfather), had two children. (*In re J.H. et al., supra*, at p. 2.) When the minors were detained, mother was hospitalized and comatose due to alcohol-related liver failure. (*Id.* at pp. 2-3.) The minors were temporarily placed in the home of the paternal grandparents and wanted to stay there. (*Id.* at pp. 3-4.) They did not want to live with mother again because they did not feel safe in her home due to her alcoholism and their alleged mistreatment by her and the stepfather. (*Id.* at p. 4.)

The department recommended removing the minors from both parents' custody, stating that mother's substance abuse problem put the minors at risk.

At the jurisdiction/disposition hearing, where mother submitted on the department's report, the juvenile court ordered out-of-home placement for the minors and offered reunification services to mother, while ordering her to abstain from alcohol and controlled substances and to participate in alcohol and drug treatment and dependency drug court. The court found by clear and convincing evidence that placement with mother would be detrimental to the minors' safety, protection, or physical or emotional well-being.

The juvenile court extended mother's reunification services at the six-month review stage and ordered conjoint counseling for mother and the minors. (*In re J.H. et al., supra*, p. 6.) The court found by a preponderance of the evidence that return of the minors to mother's custody would create a substantial

risk of detriment to their safety, protection, or physical or emotional well-being.

At the 12-month review stage, the juvenile court again extended mother's reunification services, including conjoint counseling. (*In re J.H. et al.*, *supra*, at pp. 11-12.) However, the court noted that the paternal grandparents, with whom the minors had lived for a substantial time (*In re J.H. et al.*, *supra*, pp. 6-7), wanted to adopt them, and the minors wanted to be adopted by the paternal grandparents (*id.* at p. 13).

At the contested 18-month review hearing, the juvenile court terminated mother's reunification services and set the matter for a section 366.26 hearing. The court found that the return of the minors to mother's custody would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. The court explained its finding as follows:

"[I]t boils down to whether there's a substantial risk of detriment to the emotional well-being of the children if I return them to their mother's home today. And it should be noted that although we use the term return[,] this is a place whether neither child has lived for many years, nor had they lived there for months at all . . . before the dependency case even opened. Even before they completely stopped going to their mother's house the testimony shows they were spending significantly less time with their mother than the father and of course the paternal grandparents. By mother's own testimony[,] for at least three years before the dependency case she was ill

on and off, not feeling well, at times hospitalized due to pregnancy and then liver issues and not very interactive at all during the time that she was with her children. And that time dwindled as time went on and now there is no relationship between the mother and the children other than biological. . . . Any relationship appears to be negative[,] at least from the kids' perspective. . . .

"The evidence has shown . . . by at least a preponderance that these children suffer greatly and substantially on an emotional level when contemplating even visiting their mother, let alone going to live with her and the stepfather full time. Fears, fits, outbursts of anger, vomiting and even seizures requiring hospital and emergency room visits are documented. . . .

"The two children are clearly bonded to each other and to their paternal grandparents, but they are clearly not bonded with their mother. They see her as a stranger and invader in their stable lives with their paternal grandparents. Whether or not it [fits] the clinical definition of abusive, they don't like the way they were treated . . . by their mother and stepfather at home

"This perspective on the kids' part was in place long before this case first came to dependency court. . . . [T]he relationship between the mother and the two children was barely viable as a parent-child relationship long before the father molested his daughter and that's what brought us here. . . . [The minors] are only happy and emotional[ly] healthy when they

contemplate staying with their paternal grandparents. When they contemplate placement with their mother they get unhappy and unhealthy and that fact is well documented by the record, certainly by a preponderance and that is substantial risk."

The section 366.26 report recommended termination of parental rights and the adoption of the minors by the paternal grandparents. The report noted that the minors would like to visit their two half siblings (mother's and the stepfather's children), but not if mother or the stepfather were present.

At the contested section 366.26 hearing, mother asserted that termination of her parental rights would violate due process because she had never been found an unfit parent, and that the sibling relationship exception to adoption applied.

Mother testified that the minors shared a home with the half siblings (D., aged six, and K., aged five) for four years before the dependency began.⁴ The half siblings asked "almost daily" where the minors were. The minors' absence had greatly affected the half siblings; K. wanted to know "when they're coming home."

Mother testified further that she had not taken D. and K. to visit the minors since June 2010.⁵ She would not allow D. and

⁴ On cross-examination, mother testified that D. was four years old when the minors left the home, and K. was "about three weeks [old]."

⁵ The section 366.26 hearing took place on April 13 and 14, 2011.

K. to visit the minors if she could not be present. Neither the department nor the paternal grandparents had tried to arrange visitation between the minors and the half siblings.

Soua Vang, the former case-carrying social worker, testified that mother had not contacted her since November 2010 (when Vang transferred the case to the adoptions unit) to set up visitation between the minors and the half siblings. So far as Vang knew, the last visit between the minors and the half siblings occurred in June 2010.

The juvenile court rejected both of mother's arguments against the termination of parental rights.

Finally, the benefit of permanence to the minors from adoption far outweighed the benefit of maintaining the sibling relationship.

The juvenile court also found that termination of mother's parental rights would not violate due process, for the following reasons:

California law does not require that a parent be found "unfit" before parental rights may be terminated; the focus is on "detriment to the child." The juvenile court found at the dispositional stage by clear and convincing evidence that placing the minors with mother would be detrimental to their well-being.

In any event, the reports in the case showed two types of detriment to the minors: mother's inability to care for the minors due to her alcoholism, and the resulting emotional damage they had incurred, which led them to feel unsafe in mother's

home and to become physically ill from anxiety at the thought of visits with her.

The fact that mother had completed her services except for conjoint counseling did not alter the outcome. The emotional detriment which mother's prior conduct had caused the minors made them unable to take part in conjoint counseling, which had been intended to address their lack of trust in mother. Thus, although mother had benefited from services, the detriment to the minors remained. Because the evidence supported the finding of detriment, the termination of parental rights "comports completely with due process."

The juvenile court terminated mother's parental rights and ordered adoption as the permanent plan.

DISCUSSION

I

The Termination Of Parental Rights Did Not Violate Due Process

Mother contends again that the termination of her parental rights violated due process because she was never found to be an unfit parent. She is wrong. A finding of parental unfitness at the section 366.26 hearing is not required in order to terminate parental rights, and the findings repeatedly made in this case that return of the minors to mother would cause detriment are sufficient to satisfy due process.

The department also asserts that mother's contention is procedurally barred. However, we need not reach its theory since mother's contention fails on the merits.

“Parents have a fundamental interest in the care, companionship, and custody of their children. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758 [71 L.Ed.2d 599]) *Santosky* establishes minimal due process requirements in the context of state dependency proceedings. “Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations *by at least clear and convincing evidence.*” [Citation.] “After the State has established parental unfitness at that initial proceeding, the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge.” [Citation.] “But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.” [Citation.]” (*In re Frank R.* (2011) 192 Cal.App.4th 532, 537.)

“California’s dependency system comports with *Santosky*’s requirements because, by the time parental rights are terminated at a section 366.26 hearing, the juvenile court *must* have made prior findings that the parent was unfit. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254) “The number and quality of the judicial findings that are necessary preconditions to termination convey very powerfully to the fact finder the subjective certainty about parental unfitness and detriment required before the court may even consider ending the relationship between natural parent and child.” [Citation.] The linchpin to the constitutionality of the section 366.26

hearing is that prior determinations ensure “the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must align itself.” [Citation.]’ (*In re Gladys L.* [(2006)] 141 Cal.App.4th 845, 858 . . . ; accord, *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1211 . . . ; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1210-1211)” (*In re Frank R., supra*, 192 Cal.App.4th at p. 537.)⁶

“With respect to the necessary finding of unfitness, ‘California’s dependency scheme no longer uses the term “parental unfitness,” but instead requires the juvenile court make a finding that awarding custody of a dependent child to a parent would be detrimental to the child. [Citation.]’ (*In re P.A., supra*, 155 Cal.App.4th at p. 1211, citing *In re Dakota H., [supra]*, 132 Cal.App.4th [at p.] 224, fn. 3) In *In re P.A.*, we held that findings of detriment by clear and convincing evidence [at the disposition stage] can provide an adequate foundation for an order terminating parental rights, if supported by substantial evidence. (*In re P.A., supra*, at

⁶ Although mother cites *In re Gladys L., supra*, 141 Cal.App.4th 845, her opening brief does not squarely address its holding that the finding of detriment required under California’s dependency law is the finding of “parental unfitness” required by due process under *Santosky v. Kramer, supra*, 455 U.S. 745 [71 L.Ed.2d 599]. (*In re Gladys L., supra*, 145 Cal.App.4th at p. 848; see also *In re Frank R., supra*, 192 Cal.App.4th at p. 537; *In re P.A., supra*, 155 Cal.App.4th at p. 1211; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 224, fn. 3.)

pp. 1212-1213.)" (*In re Frank R.*, *supra*, 192 Cal.App.4th at pp. 537-538.)

"[A] child may be declared a dependent if the actions of either parent bring the child within the statutory definitions of dependency. [Citations.] . . . Thus, the absence of a jurisdictional finding that related specifically to [one parent] does not prevent the termination of [that parent's] rights. To the extent the disposition in *In re Gladys L.* suggests a sustained dependency petition alleging unfitness of *each* parent is a necessary precedent to termination of parental rights, we respectfully disagree." (*In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212; italics added.)

Here, the juvenile court found at the dispositional stage by clear and convincing evidence that returning the minors to mother's custody would be detrimental to them, based on the undisputed allegations that mother's alcoholism and related mistreatment of the minors made them feel unsafe with her. (*In re J.H. et al.*, *supra*, pp. 2-4.) Substantial evidence supported that finding. Therefore, contrary to mother's position, she was not a "nonoffending parent" within the meaning of the dependency statutes, and it is immaterial that the section 300 petition did not allege her unfitness. For due process purposes, the court's dispositional finding sufficed to establish her unfitness with respect to the subsequent termination of her parental rights. (*In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212.)

Furthermore, the juvenile court made the required finding of detriment not only at disposition, but also at the six-month

review stage and the 18-month review stage. Thus, even if the dispositional finding alone were insufficient (a proposition for which mother cites no authority), the court's subsequent findings in conjunction with the original finding met any possible due process benchmark. (See *In re Frank R.*, *supra*, 192 Cal.App.3d 532, and cases cited therein.)

So far as mother asserts that the juvenile court's findings of detriment did not satisfy due process because they were unrelated to mother's fitness as a parent or because the problems they identified were ameliorated later, we are unpersuaded. First, the court's original finding at disposition went directly to mother's parental unfitness. Second, mother cites no authority holding that a juvenile court violates due process by terminating parental rights if, as here, the court finds detriment to the minor from return to parental custody on one ground at disposition and on other grounds at later stages, and case law suggests otherwise. (See *In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212 [due process in terminating parental rights satisfied where detriment finding at disposition was based on jurisdictional finding made only as to nonappealing parent, while second finding of detriment pertained specifically to appealing parent]; *In re Joseph B.* (1996) 42 Cal.App.4th 890, 899-900 [detriment which justifies continued removal of minor from parental custody need not be akin to detriment which necessitated juvenile court jurisdiction].)

The cases on which mother relies are distinguishable. In those cases, unlike here, the juvenile courts terminated

parental rights without ever having made a valid finding of detriment to the minor from placement in the parent's custody. (*In re Frank R.*, *supra*, 192 Cal.App.4th at pp. 538-539 [father deemed nonoffending parent at jurisdiction, finding of detriment made only as to mother]; *In re P.C.* (2008) 165 Cal.App.4th 98, 103-107 [only alleged detriment from return to mother's custody after she completed her case plan was her inability to obtain suitable housing, which is not a valid basis for detriment finding]; *In re G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1210-1216 [father nonoffending noncustodial parent, only alleged detriment was failure to find suitable housing due to poverty]; *In re Gladys L.*, *supra*, 141 Cal.App.4th at pp. 847-848 [nonoffending parent, no finding of unfitness].)

We conclude mother has shown no violation of due process.

II

The Sibling Relationship Exception To Adoption Did Not Apply

Mother contends the juvenile court erred by finding the sibling relationship exception to adoption inapplicable. We disagree.

At the selection and implementation hearing, the juvenile court must choose one of four alternative permanent plans for a minor; the permanent plan preferred by the Legislature is adoption. If the minor is adoptable, the court must terminate parental rights absent a showing of detriment to the minor. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to

adoption applies. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 998; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The sibling relationship exception to adoption applies if “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) A parent appealing the termination of parental rights has standing to raise this exception. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 402.)

When the juvenile court rejects an exception to adoption, we review the court’s finding deferentially. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [whether standard of review deemed substantial evidence or abuse of discretion, broad deference to lower court required]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [abuse of discretion]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [substantial evidence].)

Here, the juvenile court found that mother had not established: (1) that the relationship between the minors and their half siblings was strong or close; (2) that an order terminating parental rights was likely to cause substantial interference with that relationship (since the lack of visits

between the minors and the half siblings stemmed from the tension between mother and the paternal grandparents, which would exist regardless of whether the court terminated parental rights); or (3) that the benefits of maintaining the relationship between the minors and their half siblings outweighed the benefits of legal permanence for the minors through adoption. These findings were clearly supported by the evidence and well within the court's discretion.

The minors, who were approximately 10 years older than the half siblings, had not lived in the same home with them since the dependency began. The minors had long wished to be adopted by the paternal grandparents, who were meeting the minors' needs. The minors never indicated that their desire for adoption depended on whether they could maintain their relationship with the half siblings. Given the minors' need for legal permanence, even if adoption caused substantial interference with the sibling relationship, the benefits of adoption clearly outweighed the benefits of maintaining that relationship.

Mother's contrary arguments depend partly on reweighing the evidence in her favor, which we may not do, and partly on citing other cases with different facts, which is not persuasive on appeal because each case turns on its own facts.

Mother has shown no error in the juvenile court's ruling as to the sibling relationship exception to adoption.

DISPOSITION

The order terminating parental rights is affirmed.

_____ ROBIE _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MURRAY _____, J.