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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re LILIAN E., a Person Coming Under
the Juvenile Court Law.

C068917

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

(Super. Ct. No.
J30965)

Plaintiff and Respondent,

v.

RUTH W.,

Defendant and Appellant.

Ruth W., mother of the minor, appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395 [further undesignated statutory references are to the Welfare and Institutions Code].) Appellant contends the juvenile court erred in failing to apply the benefit exception to avoid termination of parental rights. We affirm.

FACTS

In February 2004 two-year-old Lilian E. (the minor) was first removed from parental custody because of substance abuse,

domestic violence, and child endangerment issues. Appellant successfully reunified with the minor, who was returned to appellant's custody in May 2006, and the first dependency was terminated.

In March 2009 the minor, now seven years old, was again removed from appellant's custody because of substance abuse and the dangerous conditions in the home.¹ The juvenile court ordered reunification services for appellant and continued those services at the six- and 12-month review hearings.

The review report in November 2011, for the 18-month review hearing, recommended terminating services. Appellant had been in custody for a year and was released to a sober living facility. Appellant maintained written contact with the minor while in prison and participated in weekly visits when released. While the minor was doing well in foster care and was clearly attached to her care providers, she had conflicting loyalties and continued to demonstrate parentified behavior relating to appellant. The minor felt she needed to care for appellant to ensure appellant was stable and taking her medicine; the minor was not able to put her own needs ahead of appellant's. The minor had been in the same placement for 18 months. The report said that appellant had participated in services but remained impulsive and had yet to demonstrate stability outside a highly structured setting. The minor felt responsible for appellant's

¹ The minor's half brother and stepsister were also removed but are not subjects of this appeal.

happiness and worried about not being available to appellant to ensure her safety. The social worker did not believe that appellant was able to maintain a parenting role toward the minor. The court terminated services and set a section 366.26 hearing.

The adoption assessment from the California Department of Social Services (CDSS) concluded the minor was adoptable, that termination of parental rights would not be detrimental, and that the current caretakers wished to adopt her. As a result of the two dependencies, the minor had spent nearly half her life in foster care. The assessment stated the minor was healthy, developmentally on target, and needed no special services. She did well in school and was mentally and emotionally stable, although there were concerns about her parentified behavior and her need to make sure that appellant was safe and well. CDSS recommended therapy for the minor. The assessment further stated that the minor was guarded about discussing adoption and did not want to make appellant sad, but had many reasons why she should stay in her current home. Appellant had regular supervised visits with the minor. The assessment stated that the current caretakers had tried to be open with appellant, but appellant needed to recognize clear boundaries and understand that if parental rights were terminated, her relationship with the minor would change. CDSS recommended limiting contact until appellant clearly understood the changed relationship. By the time of the assessment, the minor had been in the current placement two years and had a significant relationship with her

caretakers. CDSS concluded removing the minor from their care would be detrimental.

The social worker's report for the section 366.26 hearing concurred with the CDSS assessment and noted that the minor was thriving in her current home. Visits were currently twice a month and remained positive.

At the contested section 366.26 hearing the social worker testified the minor and appellant were comfortable together and the minor was close to appellant. However the minor looked to her foster mother for mentoring and support. The social worker said it was difficult to assess the harm to the minor if she were to have no contact with appellant because she was also involved in her life with the adoptive family. The social worker thought the minor would do well without the contact but could not be sure. The social worker described an incident at a recent visit where appellant behaved inappropriately by attempting to show the minor how to conceal from her foster mother telephone conversations with appellant. The matter was resolved by a discussion between appellant, the foster mother, and the foster agency social worker.

The CDSS adoptions specialist testified that it would be difficult for the minor if contact with appellant was cut off, but that the minor got emotional security from her foster family and she "would eventually be okay." The adoptions specialist said the minor loved both appellant and her foster mother and did not want to cause anyone emotional upset. However, in the adoptions specialist's opinion, the foster parents were the

minor's psychological parents and the benefit exception did not apply because the minor's relationship with appellant did not outweigh the benefit to the minor of permanence and stability.

The foster mother testified that continued contact between the minor and appellant was in the minor's best interests but that appellant had to be supportive of the changing parental roles. She believed adoption was the more stable alternative for the minor and noted that when appellant was in state prison the minor did fine without seeing her.

Appellant testified that she and the minor were close and believed the minor would be devastated if contact between them ceased. Appellant said that the best place for the minor right now was with the foster parents, but she felt that guardianship was a better permanent plan. She acknowledged that she had no visits with the minor during the time she was in state prison and that the minor had not had any psychological problems during that time.

The court, focusing on the minor, concluded that adoption was the better option to provide permanence and stability. The court found the benefit exception was not proven and followed the recommendation to terminate parental rights and select adoption as the permanent plan.

DISCUSSION

Appellant argues the court erred in terminating parental rights because the evidence showed that the benefit exception applied.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several "possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.*" If the court finds the child is adoptable, it must terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368, citations omitted.) There are only limited circumstances which permit the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) The party claiming the exception has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; Cal. Rules of Court, rule 5.725(e)(3); Evid. Code, § 500.)

Termination of parental rights can be found to be detrimental to the minor if: "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The benefit to the child must promote "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.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

The evidence showed that the minor and appellant had a close relationship, but one marred by the minor's excessive concern about appellant's ability to stay safe and well if the minor was unable to help her do so and by appellant's unwillingness to maintain appropriate boundaries. Thus, while the emotional attachment between the two was significant, it was not entirely positive. Moreover, there was conflicting evidence on the issue of whether severing the relationship would greatly harm the minor. Appellant testified the minor would be devastated. However, the minor had done very well without visits when appellant was in state prison, and both the social worker and the adoptions specialist believed that the minor would not suffer long-term detriment from termination of parental rights because the foster family had provided, and would continue to provide, support and emotional security. The court resolved the conflicting evidence adversely to appellant.

There was no error in the order terminating appellant's parental rights.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ RAYE _____, P. J.

We concur:

_____ BLEASE _____, J.

_____ HULL _____, J.