

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(Sacramento)

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

C068954

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

(Super. Ct. No.
JD231027)

Plaintiff and Respondent,

v.

T. S.,

Defendant and Appellant.

T.S., mother of minor C.S., appeals from the juvenile court's orders terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395; undesignated statutory references are to the Welfare and Institutions Code.) She contends the juvenile court erred in concluding the beneficial relationship exception to termination of her parental rights did not apply. We affirm.

BACKGROUND

On September 10, 2010, the minor's parents, both intoxicated and neither with a valid driver's license, drove the

minor to a park and then engaged in domestic violence, resulting in injuries to mother, with the 20-month old minor in the car. The maternal grandfather came to the park and retrieved the minor. Mother was subsequently arrested on an outstanding warrant.

On October 1, 2010, the Sacramento County Department of Health and Human Services (DHHS) filed a section 300 petition on behalf of the minor, alleging the parents have a history of engaging in domestic violence in the presence of the minor and that mother has failed to protect the minor from father's known violent behavior. The petition further alleged that mother failed to reunify with the minor's two half siblings and her parental rights to both children had been terminated (one in May 2004 and the other in October 2008). Mother had engaged in domestic violence with, and failed to protect the half siblings from, her then boyfriend (who was the father of one of the half siblings).

On October 7, 2010, the minor was ordered detained and he remained placed with his grandfather, with whom he already had a bond. The combined jurisdiction and disposition hearing did not take place until March 2011. The juvenile court sustained the petition, as amended to allege mother's substance abuse and failure to complete court ordered drug diversion, and declared the minor a dependent child of the court. The juvenile court bypassed services for mother pursuant to section 361.5, subdivisions (b)(10), (b)(11), and (b)(13), and for father pursuant to section 361.5, subdivision (b)(13).

The selection and implementation report, filed June 20, 2011, recommended terminating parental rights and proceeding to adoption. The minor's parents were visiting two times a month and had been appropriate during visits. The family service worker who supervised the visits reported that the minor did not appear to have any difficulty separating from the parents. The minor continued to thrive in the care of his grandfather. He was in good health and developmentally on track. He had developed a strong bond and attachment to his grandfather, whom he calls "Papa," and was responding positively to his grandfather's guidance, directions, love, and nurturance. He had also been visiting his half siblings and extended family members. The grandfather was preparing to adopt the minor.¹ He had been approved by the Kinship Department and an adoption home study was under way. The minor was also generally adoptable, in light of his good health and age-appropriate development.

Mother opposed termination of parental rights and presented a letter to the juvenile court. In the letter, she wrote: "The way I bond with my son is by reading/writing with him, playing with him, saying his alphabets and 123's. Sitting and listen [sic] while he talks to me. I make sure I make it to every visit. I let him know that I love him. After each visit he cries to be with me. That makes me relize [sic] that I need to

¹ The grandfather indicated he would continue to allow mother supervised visits with the minor after adoption. He was not comfortable allowing father to visit due to father's violent tendencies.

do every thing [sic] better that is required of me to get him back and show him that I love him, and am going to do everything that I can for him. He knows that I'm mommy." She also wrote that she made a lot of mistakes in the past and intended to change for the future.

The juvenile court found the minor was generally adoptable and that no exceptions to adoption applied. Specifically, the juvenile court found that "[e]ven though the mother has a good relationship with her child, it's not a sufficient relationship that would outweigh the permanency received from adoption by his grandfather." The juvenile court then ordered parental rights terminated and ordered a permanent plan of adoption.

DISCUSSION

Appellant contends the juvenile court erred by finding that the beneficial parent-child relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. The court did not err.

The Beneficial Relationship Exception

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.)

There are only limited circumstances that permit the juvenile 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).) One such circumstance is when “[t]he 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 burden is on the parent to make such a showing. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372-1373.)

The phrase “benefit from continuing the relationship” found in the statute means 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. [¶] . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). A preference for permanent placements, which is afforded by adoption, is a vital component of the statutory scheme. (Cf. *In re Mark V.* (1986) 177 Cal.App.3d 754, 760-762.)

Standard of Review

Respondent notes a split of authority as to whether the substantial evidence or abuse of discretion standard applies in reviewing the juvenile court's rejection of exceptions to adoption. Appellant urges us to use the hybrid standard adopted in *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*).

The court in *Bailey J.* acknowledged the split of authority and reconciled the conflict by holding that both standards apply. The court concluded: "In our view, both standards of review come into play in evaluating a challenge to a juvenile court's determination as to whether the parental or sibling relationship exception to adoption applies in a particular case. Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination. Thus, as this court noted in *In re I.W.* (2009) 180 Cal.App.4th 1517, a challenge to a juvenile court's finding that there is no beneficial relationship amounts to a contention that the 'undisputed facts lead to only one conclusion.' (*In re I.W.*, at p. 1529.) Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed.

"The same is not true as to the other component of these adoption exceptions. The other component of both the parental relationship exception and the sibling relationship exception is the requirement that the juvenile court find that the existence of that relationship constitutes a '*compelling reason* for determining that termination would be detrimental.' (§ 366.26, subd. (c)(1)(B), italics added [by *Bailey J.*].) A juvenile court finding that the relationship is a '*compelling reason*' for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a '*quintessentially*' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.)

We will employ the *Bailey J.* approach, although we note "[t]he practical differences between the two standards of review are not significant. '[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge.'" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

Analysis

It is true that mother produced evidence that she had a good relationship with the minor, that visits were appropriate, that they played and read together, and that the minor knew her as "mommy." In fact, the juvenile court found they had a "good relationship." And mother visited regularly -- twice a month. But even "frequent and loving contact" is insufficient to establish the "benefit from continuing the relationship" (§ 366.26, former subd. (c)(1)(A), now subd. (c)(1)(B)(i)) contemplated by the statute (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 (*Beatrice M.*)). Instead, the relationship has to be "sufficiently strong that the child would suffer detriment from its termination." (*Ibid.*)

For mother to establish an exception to the preference for adoption, she needed to prove that the benefit to the minor from maintaining the parent-child relationship will promote his well-being to such a degree as to outweigh the well-being that he would gain in a permanent home with new, adoptive parents. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother did not meet her burden.

By the time of the hearing, the minor had spent the last third of his young life removed from mother's care and placed with his grandfather. The minor was "continu[ing] to thrive in the loving care of his grandfather." He had developed a strong bond and attachment to his grandfather, whom he calls "Papa," responding positively to the guidance, directions, love, and nurturance he has now been receiving. Thus, the minor was able

to develop an attachment to a caretaker other than mother and was adjusting well to placement out of her custody. He had also been visiting his half siblings and extended family members.

Mother emphasizes her letter to the juvenile court, wherein she reported that the minor cries when she leaves visits. Even if true, such evidence does not compel a finding that the minor's relationship with mother was "sufficiently strong that the child would suffer detriment from its termination" (*Beatrice M., supra*, 29 Cal.App.4th at p. 1418) or that it established a "*compelling reason* for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B), italics added). And, in any event, the social worker reported that the minor appeared to have no difficulty separating from mother (or father) after visits. We accept the social worker's report as true, since we resolve all conflicts in the evidence in favor of respondent and the juvenile court's order. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

Mother presented no other evidence that the minor's relationship with her was sufficiently substantial and positive such that the minor would be greatly harmed if the relationship were severed. On the other hand, the minor was thriving out of mother's custody.

The Legislature has, in effect, found the best interests of the minor to be served by permanence and stability afforded by adoption at this stage in the proceedings. (*In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799.) The juvenile court had to find an "exceptional situation existed to forego adoption,"

which it did not. (*Autumn H., supra*, 27 Cal.App.4th at p. 576.) Considering all the evidence, the juvenile court could properly conclude that any benefit of continuing the relationship with mother did not rise to the type of substantial, positive, and emotional attachment that would cause the minor great harm if severed, and did not outweigh the benefits of a stable and permanent home.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ RAYE _____, P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.