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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

C069096

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos.
JD230261, JD230262)

Plaintiff and Respondent,

v.

J.O.,

Defendant and Appellant.

J.O., mother of the minors, appeals from orders of the juvenile court denying her petitions for modification and terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 388, 395.)¹ Mother contends the juvenile court abused its discretion in denying the petitions for modification and erred in failing to apply the beneficial relationship exception to avoid termination of her parental rights. We shall affirm.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL BACKGROUND²

The minors, Ja.O., age five, and C.H., age two, were detained in October 2009 pending the jurisdictional and dispositional hearings on petitions that alleged the minors were at risk of physical harm due to parental substance abuse and domestic violence. Although there were prior referrals for abuse and neglect, the parents had not previously been subject to the jurisdiction of the juvenile court. The juvenile court sustained the petitions, adjudged the minors dependents and returned them to the custody of the mother.

The parents received 12 months of child welfare services, which included substance abuse treatment in several programs, Dependency Drug Court, a domestic violence program, parenting education and drug testing. The parents' participation in services was marred by repeated relapses and failures to complete programs.

In December 2010, the minors were detained on supplemental petitions (§ 387) that alleged the mother failed to benefit from services and continued to abuse drugs. The court reviewed the parents' ongoing incidents of substance abuse and domestic violence, behavioral problems of the older child, the quality of visitation, the length of services already received, the

² We grant mother's request for judicial notice of our prior appellate opinion and file in a related appeal, *J.O. v. Superior Court* (July 8, 2011, C067683), review denied and opinion ordered nonpublished September 14, 2011, S194892. (Evid. Code, §§ 452, 459.)

parents' failure to benefit from services and the minors' needs for permanence and stability and concluded there was not clear and convincing evidence that reunification was in the minors' best interests. The court denied further services for both parents and set a selection and implementation hearing.

The social worker's report filed in June 2011 for the section 366.26 hearing recommended a permanent plan of long-term foster care. The minors were placed with the paternal grandmother who was committed to C.H. but there was a question about her commitment to Ja.O. Thus, while the minors were generally adoptable, the social worker wanted the minors placed in long-term foster care with a reassessment for a guardianship placement in six months.

Shortly thereafter, the minors were removed from the paternal grandmother's home at her request, because she felt she could no longer care for them, and they were placed in a potential adoptive home.

In August 2011, mother filed petitions for modification (§ 388) seeking an order for return of the minors under a family maintenance program or an order for family reunification services. She alleged, as changed circumstances, that she had completed a residential treatment program, was living in transitional housing, had returned to work and was in an outpatient program. She further alleged the proposed change was in the minors' best interests because they were bonded to her.

The social worker filed an addendum in response to mother's petitions detailing mother's extensive substance abuse history and failure to maintain sobriety for any significant period of time, which culminated in multiple relapses in January and February of 2011. During that time, mother used heroin, methamphetamine, alcohol and THC. Throughout the dependency, mother had multiple safety plans and was referred to many programs that she did not complete. The addendum noted that mother was currently clean and living in a recovery home but questioned her ability to maintain sobriety in an independent setting. The addendum concluded the minors needed permanence and there was a prospective adoptive placement for them.

At the hearing in August 2011, the juvenile court first considered evidence on the petitions for modification. A counselor from mother's residential treatment program, Cornerstone, testified mother completed the program and was successful there. The counselor believed mother could maintain sobriety because she continued in treatment programs after she left Cornerstone. The counselor was not aware of the extent of mother's relapses prior to entering the residential treatment program.

The house manager of mother's transitional living residence testified mother had been in residence about four months, had been clean and sober and was doing more meetings than required. Mother could stay up to two years in the transitional living facility.

Mother's supervisor at work testified she first met mother in February 2011. Mother relapsed, then returned to work in May 2011. Mother was extremely dependable and there were no current concerns about her employment. Although mother did discuss the dependency case with her, mother did not say that she had used heroin, methamphetamine, marijuana and alcohol in January and February of 2011.

The visit supervisor testified the minors were excited to see mother at every visit. At the end of the visits they were ready to go and mother was appropriate in handling the end of visits. Generally, the minors fell asleep on the way home after visits.

The father testified that he opposed mother's petitions for modification as it was not in the minors' best interests.

The court extensively reviewed the history of the case and mother's periods of success and relapses in 2010 and 2011. The court noted that, although mother was sober at the time of the hearing, she had used multiple substances at the beginning of the year. She had been offered residential treatment before and refused it. The court found it hard to accept the prediction of the Cornerstone counselor, given the relatively short time mother was there and in the transitional living program. The court recognized that mother's ultimate success in sobriety would take time and said that the issue was whether the minors should have to wait for her to demonstrate long-term sobriety. The court concluded that it was not fair to the minors, who had

a right to live in a safe, permanent environment, to leave them in an uncertain placement hoping that mother would succeed. Given the long history of substance abuse and multiple relapses of increasing seriousness, the court concluded there was not a preponderance of evidence to support a finding of changed circumstances or that it was in the minors' best interests to grant the petitions for modification.

The court took evidence on the section 366.26 hearing issues, and agreed to consider the earlier testimony of the visit supervisor. Mother testified about her visits with the minors and that she felt bonded to them. She acknowledged she had relapses, but testified there had been quality time in between and that the minors told her they wanted to come back to her.

The court found the minors were generally adoptable. Further, there was no evidence of trauma from being separated from their parents. The court stated it could not find that the evidence of the bond the minors had with mother outweighed their needs for a stable home and terminated parental rights.

DISCUSSION

I. Section 388 Petitions

Mother argues the court abused its discretion in denying her petitions for modification.

A parent may bring a petition for modification of any order of the juvenile court pursuant to section 388 based on new

evidence or a showing of changed circumstances.³ "The parent requesting the change of order has the burden of establishing that the change is justified. [Citation.] The standard of proof is a preponderance of the evidence." (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) Determination of a petition to modify is committed to the sound discretion of the juvenile court and, absent a showing of a clear abuse of discretion, the decision of the juvenile court must be upheld. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) The best interests of the child are of paramount consideration when the petition is brought after termination of reunification services. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) In assessing the best interests of the child, the juvenile court looks not to the parent's interests in reunification but to the needs of the child for permanence and stability. (*Ibid.*; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

³ Section 388 provides, in part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . . [¶] . . . [¶] If it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held" (§ 388, subds. (a), (d).)

The court reviewed mother's lengthy history of substance abuse and concluded that circumstances had not changed despite her recent and relatively brief period of stability. Further, ordering more services for her was not in the minors' best interests because they had a right to permanence and a safe home. Mother, who had a long history of substance abuse, had not shown she was able to maintain sobriety outside a structured setting. Due to the nature of achieving sobriety and mother's past history of multiple relapses of increasing seriousness, the evidence did not show that mother, with additional services, could provide a stable, safe home for the minors in a reasonable period of time. There was no abuse of discretion in denying mother's petitions for modification.

II. Beneficial Relationship Exception

Mother contends the juvenile court erred in failing to apply the beneficial relationship exception to avoid termination of parental rights.

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.* [Citation.]" [Citation.] 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.) There are only limited circumstances that 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.)

One of the circumstances in which termination of parental rights would be detrimental to the minor is: "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.)

Although mother regularly visited the minors and there was a bond between them as shown by their excitement at seeing her, the minors were ready to go home at the end of visits and showed no trauma at being separated from mother. Accordingly, the evidence established that the strength and quality of the bond did not outweigh the benefit to the minors of permanence and stability offered by an adoptive home. The juvenile court did not err in finding the exception to the preference for adoption did not apply.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ BUTZ _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ NICHOLSON _____, J.