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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.S. et al., Persons Coming
Under the Juvenile Court Law.

C069114

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos.
JD227267, JD227268)

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

Christine S., mother of the minors, appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)¹ Mother contends both the beneficial parental relationship and sibling exceptions applied

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

and termination of her parental rights was detrimental to the minors. We shall affirm.

FACTUAL BACKGROUND

In 2008, the two minors—A.S., then two months old, and T.S., then one year old—were removed from mother due to severe physical injury inflicted on A.S. After 18 months of services, the minors were returned to mother and the dependency was terminated in January 2010.

In May 2010, A.S., now two years old, was hospitalized with severe trauma inflicted by the maternal grandmother, who admitted causing the earlier injury. As a result of her injuries, A.S. needed intensive rehabilitation therapy, physical and occupational therapy, nursing and neuropsychology. The minors were detained.² The Cherokee Nation intervened, having been notified of the proceedings pursuant to the Indian Child Welfare Act of 1978. (25 U.S.C. § 1901 et seq.) The juvenile court sustained the petitions, as amended, in October 2010. After a contested hearing, the court denied services to mother and the fathers of A.S. and T.S. and set a section 366.26 hearing for each of them.

The report filed in July 2011 for the section 366.26 hearing stated both minors were now healthy. A.S. was developmentally on track and T.S. was receiving speech therapy

² A third minor, one-year-old J.S., was also detained but is not a subject of this appeal because her father was offered services.

to deal with impaired language skills, which were a symptom of her autism. There were no behavioral concerns for either child and T.S.'s educational needs were being supported by an aide. All three siblings were living in the same home. A.S. had a positive bond to her sisters while T.S. did not. The current care provider was willing to adopt the minors, but deferred to relatives who were also willing to do so. A maternal aunt in Oregon, who developed a relationship with A.S. during her first hospitalization in 2008, wanted to provide a home for both A.S. and J.S. The maternal great-aunt in Arizona, who had a background as a school psychologist and who could meet the needs of an autistic child, wanted to adopt T.S. The report stated that the tribe supported the relative placements and the placements would be in the minors' best interests. The report concluded the minors were generally adoptable and, while T.S. would be separated from her half siblings, she would be placed with a relative who could meet her special needs. The report recognized that A.S. had a bond with her older sister but it would not be detrimental to separate the minors. The report said A.S. viewed mother as a friendly visitor and that T.S.'s autism impaired her ability to show a bond to anyone, including mother. The tribe and the Indian expert concurred with the proposed placements and the social worker's recommendations.

At the hearing, the family service worker who supervised visits testified that the minors visited mother weekly and were happy to see her. The minors were physically affectionate with

mother, called her "mom" and did not want to leave when visits ended. The worker clarified that, more often than not, A.S. and T.S. showed distress when the visits ended but the distress resolved when mother gave them treats.

Mother testified that she felt the minors were bonded to her and it would be detrimental to them to sever the parental ties. She said that she brought treats for the end of the visit to distract the minors and keep them from being upset. Mother further testified that A.S. and T.S. were very close and A.S. was "kind of a big sister" to T.S. and protective of her even though T.S. did not pay much attention to her.

The social worker testified that information in the report about visits and the sibling bond was based on accounts from the current caretaker who had participated in visits. The social worker stated it would not be detrimental to separate T.S. from her half siblings as she did not show concern if they were not present; however A.S. would have to be gradually transitioned to a new home because she was bonded to T.S.

The parties argued the applicability of the parental relationship and sibling exceptions to adoption. The court agreed that the minors knew mother and visits were pleasant. Further, it was evident that there was a relationship between A.S. and T.S. and it would be difficult for A.S. if the two were separated. The court found the minors generally adoptable and that they would be adopted by relatives. The court also found that neither the evidence of benefit to the minors from

continued contact with mother nor the evidence of a sibling bond was sufficient to overcome the benefits to each minor of permanence offered by adoption. The court terminated mother's parental rights.

DISCUSSION

Mother contends parental rights should not have been terminated because the evidence showed it would be detrimental to the minors because the beneficial parental relationship and sibling exceptions to adoption were established. We disagree.

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.]" [Citations.] 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 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.)

The primary exceptions, i.e., benefit from continued contact with the parent and interference with a sibling relationship, each require the party to establish a factual predicate and the court to weigh the evidence. Substantial evidence must support the factual predicate of the exception, but the court exercises its discretion in the weighing process. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

I. Beneficial Parental Relationship Exception

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 Beatrice M.* (1994)
29 Cal.App.4th 1411, 1419; see *In re Teneka W.* (1995)
37 Cal.App.4th 721, 728-729; *In re Brian B.* (1991) 2 Cal.App.4th
904, 924.)

There was conflicting evidence on whether a significant, positive emotional attachment existed between mother and the minors. The court evidently found there was some attachment even as to T.S. However, both minors had been removed from mother's care twice and A.S. had suffered horrible injuries in mother's care. Both minors were entitled to a permanent, stable home where their needs would be met. The level of attachment each minor showed towards mother did not outweigh the benefit each would gain in a permanent, secure home. The juvenile court properly concluded the beneficial parental relationship exception had not been established.

II. Sibling Exception

A second circumstance under which termination of parental rights would be detrimental is when "[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).)

The court must consider the interests of the adoptive child, not the siblings, in determining whether termination would be detrimental to the adoptive child. (*In re Celine R.* (2003) 31 Cal.4th 45, 49-50; *In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.)

"To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

The minors certainly had shared experiences during the course of their young lives. However, as to T.S., the shared experiences could not translate into a close or strong bond due to her autism disorder. According to the current caretaker, T.S. showed no concern when A.S. was not present and did not pay much attention to her even when A.S. was acting in a protective capacity. The evidence did not establish a sibling bond exception as to T.S. A.S. did have a bond to T.S., marked by caring and protectiveness. However, A.S. needed a safe and stable home. The social worker recognized there would be some

detriment in separating the two minors and that a transition period would be required. Nonetheless, the evidence does not show there would be long-term detriment and any short-term detriment would be outweighed by the benefit to A.S. of a permanent, safe and stable home.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ BUTZ _____, J.

We concur:

_____ NICHOLSON _____, Acting P. J.

_____ DUARTE _____, J.