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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re P.M. et al., Persons Coming Under the Juvenile Court Law.

YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

Gary M. et al.,

Defendants and Appellants.

C070906

(Super. Ct. Nos. JV09516, JV09517, JV09518, JV09519, JV09520)

Appellants S.C., the mother, and Gary M., the father of the minors K.C., P.M., G.M., T.M., and A.M. (the minors), appeal from the juvenile court’s orders terminating their parental rights. (Welf. & Inst. Code, §§ 396, 366.26; unless otherwise noted, all statutory references that follow are to the Welfare and Institutions Code.) They contend the juvenile court should have applied the beneficial parent/child relationship exception to terminating parental rights. We affirm the orders of the juvenile court.

FACTS AND PROCEEDINGS

On October 21, 2009, the minors were taken into protective custody when mother was arrested on outstanding warrants. K.C. was born in June 2002, P.M. in January 2004, G.M. in July 2007, T.M. in July 2008, and A.M. in April 2009. During the drive to the foster family agency, K.C. and P.M. related being physically and mentally abused by father, as well as domestic violence between mother and father. The minors were able to describe the sources of the various burns, scratches, bruises, and scars on their body.

K.C. and P.M. related physical abuse by mother during an October 26, 2009, doctor's appointment. The social worker described the two children as having "bruises from head to toe." The children were initially guarded about the sources of their injuries, but nonetheless spontaneously reported them. Towards the end of the interview, P.M. crawled into the social worker's lap into a fetal position, blocking out further questions.

The Yolo County Department of Employment and Social Services (DESS) filed dependency petitions on October 21, 2009, alleging jurisdiction over the minors pursuant to section 300, subdivision (b). The petitions alleged that: (1) mother had untreated bipolar disorder, believing that five of her seven children had been molested, and frequently questioned the children about the alleged molestations (mother has two children from another relationship who live with their father and are not parties to this dependency); (2) mother failed to protect the minors from physical abuse by father; (3) mother had a lengthy history of substance abuse, which led to the prior removal of K.C. and P.M. from her care; (4) mother had at least 15 addresses since January 2004, excluding incarcerations and shelters; (5) mother failed to insure that K.C. attends school; (6) mother and father had an extensive, documented history of domestic violence; (7) father had a history of substance abuse; (8) father had nine different addresses since January 2004, excluding incarcerations; and (9) father did not insure that P.M. attended school.

The minors were detained on October 26, 2009.

DESS reported an incident at mother's visit with the minors on November 4, 2009. When mother changed 16-month-old T.M.'s diaper during the visit, she declared that the child's vagina "did not look right," and claimed T.M. had been molested in foster care. Neither the paramedics nor law enforcement could find evidence of sexual abuse; a subsequent medical examination likewise found no evidence of abuse. Mother, who was hysterical and making rampant allegations, was allowed to stay for the remainder of the visit while T.M. was taken to the hospital for a medical examination. K.C. and P.M. were most upset by the incident, feeling very sad for their mother and hoping she would not go back to jail. When P.M. said that was how their mommy was, K.C. replied that it was all their fault and started to cry.

A December 2, 2009, quarterly report described K.C. as emotionally traumatized. He expressed daily how he wants to return to his foster mother.

The juvenile court sustained the allegations at a March 2, 2010, jurisdiction hearing.

The April 1, 2010, disposition report related that mother could be engaging and enthusiastic with the minors on her visits. Visits were supervised in light of her mental health, and the two older children, K.C. and P.M., were hypervigilant and concerned about their mother's mental health and welfare. If mother was late, they became tearful and concerned she had been harmed. They spoke of her being arrested or failing to pay her bail bondsmen. K.C. and P.M. told the social worker they "know how to handle her when she's all crazy and stuff."

The juvenile court bypassed services pursuant to section 361.5, subdivision (b)(6) at the April 2010 disposition hearing.

A July 2010 quarterly report related that P.M. struggled between liking her placement and her loyalty to mother. P.M. cried when told about the social worker's

recommendation of adoption. P.M. had many questions, including whether mother could move into the foster home so that the foster mother could also take care of mother.

K.C. also struggled when the social worker told him he may be adopted. He wanted to return home so long as father was not there. If he could not go home, he would like to stay with the foster family. Sometimes he called the foster mother “mom.”

The August 11, 2010, section 366.26 report noted K.C. and P.M. recognized mother had significant mental health issues. They both showed parentified and vigilant behavior. When asked about adoption, K.C. responded “good.” K.C. described adoption as being able to live with his current caretakers “forever and ever.” P.M. said she would like to be adopted by her current caretakers. To P.M., adoption meant living with her caretakers “forever until I am 30 or 40 years old.” The other children were too young to make statements regarding adoption.

Mother filed a section 388 petition seeking reunification services on September 2, 2010. In support of her petition, mother noted she was in phase 2 of a dual diagnosis treatment program, had no positive tests since entering in February 2010, and was stable on her mental health medications. She was living in a clean and sober environment at the Salvation Army Center of Hope. Among the attachments was a letter given to her by K.C. at a recent visit. The letter states: “I love you mom. I’m doing good. I love ucle Mice. Pleys get us out of the foster home. Don’t cry ever.” Hearts, balloons, and the word “wow” were at the bottom of the letter.

At a contested hearing on the section 388 petition, the executive director for the foster family agency testified that the minors loved their mother. Even the smaller children who could not verbalize lit up when they saw mother. The minors wanted to return home, but if not, they wanted to remain in their foster homes. They wanted mother to get help and father to keep away. According to the social worker, the children expressed fear that mother would behave as she had previously. They wanted her to live with them at the foster home and be taken care of.

The juvenile court granted the petition.

On January 3, 2011, DESS filed a section 388 petition to terminate mother's services based on her behaviors, including accusing the younger children's foster parents of starving the children and molesting T.M. The petition also alleged that mother accused K.C.'s and P.M.'s foster father of stalking her. Mother was also rough and verbally abusive with the minors, and told them they may not be able to visit any more.

A report on the section 388 petition related an incident during one visit in November 2010. The social worker briefly stepped away and returned to find mother crying on the floor with K.C. and T.M. hugging her. Asked what happened, mother said it was her deceased mother's birthday. During snacks, mother had the minors sing "Happy Birthday" to their deceased grandmother. As the visit became more chaotic, the social worker had to keep redirecting mother.

The juvenile court denied DESS's petition on March 7, 2011.

Dr. Jayson Wilkenfield conducted a psychological evaluation of mother on March 29, 2011. He diagnosed mother with bipolar disorder and a mixed personality disorder with prominent narcissistic and borderline personality traits. Mother could not benefit from services, and returning the minors to her custody would place them at risk.

An April 2011 status review report noted K.C. had a caring relationship with mother, but was seen trying to co-parent the other children, being very emotional when not receiving the attention he feels due, mediating arguments between the other children, and being very vocal of his observations about mother. K.C. would tell mother to pull up her pants and that her shirt was too small when her clothing was inappropriate for visitation. When mother asks if he is upset because he can't go home with her, K.C. would reply "no."

When asked about his feelings for the future, K.C. said he would most like for mother to move into the foster home so that he could know she was "doing good." He would not return home to mother unless she was able to "pass the test." Asked to draw

his family, K.C. drew a picture of P.M., his foster brother, foster father, and “mom,” who he identified as his foster mother.

When P.M. was asked to draw a picture of her family, she drew herself, “mom,” and “dad.” Asked to identify mom and dad, she replied “mom and dad.” Mother had told P.M. that she got new carpet, bedding, furniture, and a television, and it would all be for nothing if her children did not return. P.M. told the social worker she did not want to go to mother’s home right now, “but I love my mommy and I don’t want it to be for nothing.” P.M. wrote a letter to the juvenile court; when the social worker placed it in a folder, P.M. took it back, made a scribble and began to poke holes in the paper. The letter stated in part: “Can I please go home please judge can I please go home with my mom please please.” The letter also declared: “My mom do[]se good things please I will do anything.” The social worker recommended continued therapy for P.M. to address her internal conflicts regarding mother.

Mother continued to have weekly supervised visitation. As her behavior became more aggressive and unpredictable, visits were transferred to the child welfare office in West Sacramento so the visits could be safely supervised. Mother could not tolerate being redirected during visits. She lacked focus, structure, and the ability to follow through with discipline.

In February 2011, the social worker started visitation coaching with mother because visits had been in a constant state of chaos. When mother took advantage of the training, her visits improved. However, she was resistant to full participation and failed to address the minors’ individual needs.

Mother continued to behave in much the same manner as she has since the onset of the dependency. She continued to make unfounded accusations of sexual abuse against her children. Mother still minimized the abuse inflicted on the minors from father, and denies ever abusing the minors in spite of repeated reports of abuse from K.C. and P.M. She has made statements such as she would prefer her children to be gone like

her deceased cousin rather than in foster care. She has also said that she wants to kill one of the foster fathers.

In May 2011, mother was the subject of a psychological report from Donald Siggins, Ed.D. Dr. Siggins and mother's therapist disagreed with Dr. Wilkenfield's diagnosis of bipolar disorder. The therapist diagnosed mother with post traumatic distress disorder (PTSD) and substance abuse problems, while the report diagnosed mother with depression, psychotic disorder not otherwise specified, PTSD, and poly-substance dependence. The report concluded that mother would continue to benefit from the treatment plan ordered by the juvenile court.

At the August 2011 six-month review hearing, Dr. Siggins testified about the strong bond between mother and the minors. He thought that severing the bond would cause some problems for the minors in the future. He believed the minors would be safe if returned to mother.

K.C. testified that he would like to see mother more often, but also said he wanted to see her "the same amount." He would live with mother if she did not spank him. He would feel safe with mother now as she "hasn't whopped people." He wanted to live with mother and his siblings. However, K.C. also testified that he wanted to live with his foster parents. When later asked if he wanted to live with mother, he replied "I don't know that question." K.C. did not know how he felt and did not want to decide where he would live.

P.M. did not like to live with mother because "she whoops the kids and sometimes she smokes in the house." She would feel scared if she lived with mother even though mother did not abuse her on visits. Mother would hit her on any part of her body, using a belt with diamonds on it.

The juvenile court terminated services and set a section 366.26 hearing.

The January 2012 section 366.26 report stated that the minors' foster parents wanted to adopt them. K.C. and P.M. both expressed their desire to be adopted by their

prospective adoptive parents. They wanted to change their names, but did not want to hurt mother's feelings by telling her this. They understood adoption was "forever," and planned on living with the prospective adoptive parents until they were adults.

According to the December 2011 adoption assessment, while the minors generally enjoyed visits with mother, their caregivers reported they displayed stomach aches and aggressive behaviors for a day or two after the visits. Visits were decreased to twice a month starting in November. The minors' anxious behaviors diminished when visits were decreased.

Dr. Siggins submitted a bonding assessment in March 2012. The assessment concluded that since much of the minors' bond with mother had transferred to their prospective adoptive parents, severing their bonds with mother "will not, more than likely, be detrimental to the children."

At a contested section 366.26 hearing, the minors' social worker testified that P.M.'s wish was to go home. P.M. said that she loved her mother. When asked about the good things in his life, K.C. spoke primarily about things related to his foster placement. The minors were sad to leave mother at the end of a January 2012 visit. According to another social worker, K.C. and P.M. were excited but a little anxious about adoption.

Mother testified that she had a very special and close relationship with her children.

The juvenile court rejected the beneficial parent/child exception to adoption and terminated parental rights.

DISCUSSION

The parents contend the juvenile court erred in failing to apply the beneficial parent/child relationship exception to adoption. We disagree.

At a hearing under section 366.26, if the juvenile court finds by clear and convincing evidence that a minor is likely to be adopted, the court must terminate

parental rights and order the minor placed for adoption unless “[t]he court finds a compelling reason for determining that termination would be detrimental” due to one of the statutorily enumerated exceptions. (§ 366.26, subd. (c)(1)(B).)

The parent has the burden of establishing an exception to termination of parental rights. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile court’s ruling declining to find an exception to adoption must be affirmed if it is supported by substantial evidence. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*In re Autumn H.*, at p. 576.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to adoption when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” However, a parent may not claim this exception “simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights.” (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1349.) 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.*, *supra*, 27 Cal.App.4th at p. 575.)

Whether this exception to adoption applies focuses on mother's relationship with K.C. and P.M. The remaining minors ranged in ages from slightly over two years to six months old when they were detained in October 2009. Having spent most of their young lives in foster care, mother does not have a sufficiently close relationship with G.M., T.M., or A.M. to support the exception to adoption.

The parents note K.C. and P.M., who were respectively seven and five years old when detained, had spent most of their lives with mother. They spent a total of four years in foster care, two and one-half years in the current dependency and one and one-half years in a previous dependency. K.C. was nine and P.M. was seven when parental rights were terminated.

The parents also claim K.C. and P.M. struggled with their separation from mother throughout the dependency. They note the December 2009 assessment which reported K.C. expressed daily wanting to return to mother. They also point out K.C.'s and P.M.'s initial ambivalence about adoption, as well as their letters expressing a desire to return to mother. In addition, they rely on Dr. Siggins's testimony at the six-month review hearing indicating they were well bonded with mother and severing the bond could cause problems for them in the future. Finally, they rely on mother's testimony at the section 366.26 hearing that K.C. was afraid at each visit that this visit would be his last, and he did not want to be adopted.

The parents' evidence shows no more than some ambivalence about adoption. The minors' letters are of little consequence; K.C.'s letter was written relatively early in the dependency, while P.M.'s was written after mother told her that she had acquired many household items which would go to waste if the children did not reunite with her. While K.C. and P.M. showed some loss due to separation from mother and a desire to

live with her, they were also afraid of returning to the home if mother behaved as she had before. By the time of the section 366.26 hearing, K.C. and P.M. favored adoption and were excited by it. Also, reducing their visits did not harm any of the minors, instead causing fewer of the problems associated with the visits' aftermath.

K.C.'s and P.M.'s statements regarding their desire to reunite with mother must be examined in the context of their age. At seven and nine years of age at the section 366.26 hearing, neither child was old enough to fully assess his or her best interests. Mother's relationship to the children before the dependency was extremely traumatic to them. They were the victims of considerable physical abuse from the father, and they made repeated statements that mother abused them as well. In spite of this, mother continued to minimize her role in harming her children. Mother's visits were a considerable source of problems throughout the dependency, marred by chaos, confrontational behavior, and frequent unfounded accusations of sexual abuse. Unsurprisingly, K.C. and P.M. demonstrated parentified behavior, and had informed social workers that they knew how to handle mother when she behaved irrationally. While training and close supervision alleviated some of these problems towards the end of the dependency, mother still resisted some of the social worker's suggestions, thus limiting its effectiveness.

The parents also make a claim related to the minor's siblings. The five children were placed in two separate foster homes. Visitation between the two sets of children occurred only during their visits with mother. The parents contend severing parental rights would thus sever this bond, and is thus an additional reason to apply the parent/child exception. This contention is relevant only to the sibling bond exception to adoption, which the parents do not assert on appeal. We therefore reject this contention. Since the juvenile court found the bonding assessment was inadmissible hearsay, we do not consider it in determining whether substantial evidence supports the juvenile court's orders.

Mother inflicted great harm to her children and denied any responsibility. At the hearing on mother's section 388 petition, the director of the foster family agency testified that P.M. told her that mother once put a leash on her neck and "hung me up" because P.M. had made a microwave burrito without her permission. When the director told P.M. that could not have happen, K.C. said "Yes, it did, because I had to get her down." Visits were a continuing source of potential trauma to the minors and required close supervision. At most, the minors had some ambivalence about their separation from mother, but nonetheless favored adoption. Reduced visits did not harm them, and reduced some acting out. Substantial evidence supports the juvenile court's finding that the parents failed to carry their burden of proving the exception to adoption.

DISPOSITION

The juvenile court's orders are affirmed.

_____ HULL _____, J.

We concur:

_____ RAYE _____, P. J.

_____ NICHOLSON _____, J.