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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

C071541

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos. JD231036,  
JD231037)

Plaintiff and Respondent,

v.

E. P.,

Defendant and Appellant.

Appellant E.P., the mother of minors E.M. and A.M., appeals from the orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 395, 366.26; undesignated references are to the Welfare and Institutions Code.) She contends the juvenile court should have applied the beneficial parent/child relationship exception to terminating parental rights. We affirm.

**BACKGROUND**

In June 2010 mother tested positive for methamphetamine at the shelter where she lived. As required by the shelter, she entered a treatment program. A social worker from

the Sacramento County Department of Health and Human Services (DHHS) was assigned to her for informal supervision. Mother was discharged from the treatment program in July 2010 after testing positive for methamphetamine. Later, she failed to follow through with a referral for residential drug treatment and tested positive for methamphetamine and cocaine on multiple occasions. In August 2010 she was admitted to a mental health hospital for two weeks after she reported suicidal thoughts. She was hospitalized a second time in September 2010 after making suicidal comments. She left a residential drug treatment placement later that month. In October 2010 mother told the social worker she was not going back to treatment and would place the minors with the paternal grandfather.

DHHS filed dependency petitions in October 2010, alleging jurisdiction over the minors based on mother's substance abuse and mental health problems. (§ 300, subd. (b).) The juvenile court detained the minors later that month, placing them with the paternal aunt although they stayed at the paternal grandfather's house during the daytime. The minor's father was deceased.

The November 2010 jurisdiction/disposition report noted that mother reported being diagnosed with bipolar disorder, manic depressive disorder, and a severe case of anxiety. She began using drugs when she was 19, quit in 2007, and started using again in January 2010. Her drug of choice was methamphetamine.

E.M. (born in 2005) told the social worker, "my mom is nicer to me now but she was not nice before." He explained that mother "whopped [him]" on the hand with a belt when he got in trouble for not listening. Asked if he would eventually like to live with his mother, E.M. said "yes." In March 2010 E.M. was hospitalized as a danger to himself for running into the street while the family lived in a homeless shelter. He was diagnosed with schizophrenia and referred to mental health services, where the diagnosis was changed to adjustment disorder with mixed disturbance of emotions and conduct.

A.M. (born in 2004) appeared shy and uninterested in speaking to the social worker. He was unwilling or unable to say what he liked or did not like about having lived with mother.

The paternal grandfather told the social worker he cared for the minors between August and October 2010. While in his care, the minors often cried in their beds before going to sleep, telling him they wanted to live with their mother. He was previously approved for voluntary placement, but the minors were removed from his care based on his 47-year-old criminal convictions. The paternal aunt reported that both children adjusted well to placement in her home.

In November 2010 the juvenile court sustained the petitions and ordered services for mother. In March 2011 the minors were placed with the paternal grandfather and his live-in girlfriend.

According to an April 2011 report, the minors appeared to be very comfortable and happy in the paternal grandfather's home. They continuously expressed their desire to live at home with the paternal grandfather and his girlfriend. The minors were developmentally and academically on track. The minors attended counseling for one hour a week to address grief and loss resulting from out-of-home placement and being separated from mother.

Mother's visits with the minors were consistent and went smoothly. The children and mother were extremely happy to see one another. E.M. stated he really enjoyed the visits with mother. A.M. hoped to live with mother again soon.

In June 2011 the social worker learned mother had numerous positive tests for methamphetamine, missed several meetings with her recovery specialist, and failed to attend any of her support groups. In an August 2011 interview mother admitted she was still regularly using methamphetamine.

The paternal grandfather and his girlfriend were initially open to guardianship but later indicated they were too old to provide the boys with the care they needed. They

asked DHHS to look for an adoptive home that would consider allowing them to remain involved in the minors' lives as true grandparents. A potential adoptive home was found in September 2011.

By the time of the October 2011 status review report the minors had successfully completed counseling, having been discharged from treatment in August 2011. They had no behavioral issues, and the report recommended moving them to an adoptive home with a permanent plan of adoption and termination of parental rights. The juvenile court adopted the findings set forth in the report and, on October 17, 2011, terminated services and set a section 366.26 hearing.

In the February 2012 selection and implementation report, DHHS reported mother's visits had been reduced to twice a month. Visits continued to be appropriate and the minors looked forward to them. The minors also had phone contact with mother once or twice a week.

E.M. was developmentally on track but had frequent and intense tantrums when he did not get his way. A.M. was also on track developmentally but frequently expressed guilt over not being with mother to care for her. He would become irritable or withdrawn when his requests that mother visit the caretakers' home were denied. A.M. was either unwilling or unable to accept that future contact with mother would be limited. He also demonstrated parentified behavior, specifically trying to answer all questions and excusing or minimizing E.M.'s behavioral problems. The minors' problems were brought to their counselor's attention.

The minors were placed in home study with the prospective adoptive parents, a psychiatrist serving in the armed forces and a stay-at-home mother. They were attached to the children but did not feel they could effectively manage the minors' behavioral problems. In addition, they stated the minors were deeply connected with mother and the paternal grandfather, and any future military-related moves would disrupt the minors' relationship with those family members.

The paternal aunt was referred for possible adoptive placement. She had maintained a close relationship with the minors since their birth and was willing to adopt them. While the minors were in the paternal grandfather's care, she provided respite care nearly every weekend and maintained phone contact with them during the week.

The minors were developmentally appropriate. The social worker believed that their behavioral problems were likely related to being placed with nonfamily members.

At hearings in February and June 2012 the minors' counsel asked DHHS to report on mother's visitation with the minors so counsel could better assess whether adoption or guardianship was in the minors' best interests. The juvenile court continued the section 366.26 hearing to allow DHHS to prepare an addendum report addressing the issue.

The June 2012 addendum report indicated the minors had been placed with the paternal aunt. The paternal aunt joined with the minors' "previous caretakers" to celebrate Easter with the boys, displaying her understanding of the relationships that were important to them. The minors had not displayed any significant negative behaviors since the change of placement.

A second addendum report addressed mother's visits with the minors and the appropriate permanent plan. Mother's visits remained consistent. Told the minors were being moved to the paternal aunt, mother replied she was glad they were going to family. Mother asked the boys for hugs, and they responded eagerly. The minors took a great deal of emotional responsibility toward mother; they became overly worried about her when she spoke of her physical pain. The minors did not display any negative behaviors when the most recent visit ended or when they returned to the paternal aunt's home. The social worker found mother was appropriate at visits and the minors enjoyed them. DHHS recommended adoption as being in the minors' best interests.

No witnesses were called at the section 366.26 hearing. The juvenile court terminated parental rights and ordered a permanent plan of adoption.

## DISCUSSION

Mother contends the juvenile court erred in declining 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 (*Jasmine D.*).

When the juvenile court rejects an exception to adoption, we review the court’s finding deferentially. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [whether standard of review deemed substantial evidence or abuse of discretion, broad deference to lower court required]; *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [abuse of discretion]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*) [substantial evidence].)

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.” (*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.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Mother relies on the minors' initial reaction to their separation, when they cried themselves to sleep after she voluntarily placed them in the paternal grandfather's care. She notes her visits with the minors were consistent and “went very smoothly.” In addition, she points out that the six- and 12-month reports both related the minors' continuing strong bond with mother, as shown by E.M.'s statement that he really enjoyed the visits and A.M.'s hope to live with her again. She asserts the minors' behavior deteriorated when visits were reduced and they were placed with nonrelatives. Finally, she claims that the statement from the former prospective adoptive parent, a psychiatrist, that the minors had a strong bond with mother should be considered “very similar to a bonding study in importance.”

While the minors were distressed over their separation from mother, most of that took place before the dependency, when mother voluntarily placed them with the paternal grandfather. What difficulties the minors had during the dependency were not substantial and were largely resolved through counseling. While the minors did display increased behavioral problems after visits were reduced, the report concluded they were likely associated with placement with a nonrelative. This conclusion was vindicated when the minors' behavior improved after placement with the paternal aunt. There is no indication that the statement from the former prospective adoptive parent was intended as an expert opinion, and the summary conclusion expressed by him in no way resembled a bonding study. Finally, the minors showed no negative behaviors following the conclusion of the last visit with mother.

The minors were placed with a person whom they have known their entire lives, the paternal aunt. The paternal aunt in turn has demonstrated a commitment to maintain the minors' contact with another significant person in their lives, the paternal grandfather. While the minors loved their mother very much, mother did not carry her burden of showing that the minors would be greatly harmed by severing the parent/child relationship.<sup>1</sup> Mother has shown no error in the juvenile court's ruling on the beneficial parent/child relationship exception to terminating parental rights.<sup>2</sup>

**DISPOSITION**

The judgments (orders) are affirmed.

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

We concur:

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

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<sup>1</sup> We also note that mother's references to the allegedly "limited" nature of the social worker's reports are of no consequence. Mother does not contend the reports were legally inadequate. Her only contention is that an exception to adoption should have been applied by the juvenile court. Since she bears the burden of proving that exception to the juvenile court, any alleged deficiencies in the social worker's reports are of no consequence.

<sup>2</sup> Since mother did not carry her burden of showing that the minors would be greatly harmed by terminating parental rights, we need not determine whether any promises made in the juvenile court that mother would have continued contact with the minors were illusory.