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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

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

C076435

EL DORADO COUNTY DEPARTMENT OF
HUMAN SERVICES,

(Super. Ct. No.
SDP20130031)

Plaintiff and Respondent,

v.

J.C. et al.,

Defendants and Appellants.

Mother and father appeal from the juvenile court's order terminating their parental rights to A.C. (the minor).¹ They contend the juvenile court lacked substantial evidence to support its finding that the beneficial relationship exception to adoption did not apply. Disagreeing, we affirm.

BACKGROUND

This is the second dependency proceeding for the minor, who was born positive for OxyContin and oxymorphone in May 2009. The juvenile court assumed jurisdiction over the minor shortly after her birth, and the parents received voluntary family maintenance services until January 2010. The minor lived for at least the first year of her life together with her parents in the home of her paternal grandparents.² The three then moved in with the maternal grandparents and later moved to the Lake Tahoe area.

Pretrial Proceedings in Current Case

In June 2013, the barely four-year-old minor tested positive for methamphetamine and marijuana. Both parents admitted relapsing on heroin. Accordingly, the trial court ordered the minor detained on July 26, 2013; she was placed with her paternal grandparents and her parents were given supervised visitation.

At the interim hearing in November, the El Dorado County Health and Human Services Agency, Child Welfare Division (Agency) moved to terminate reunification services because the parents failed to engage in any services or make any progress. The juvenile court, however, continued services for the parents, set a hearing in December, and admonished the parents that if they had not engaged in services by December, the

¹ Mother's notice of appeal misdates the order terminating parental rights as April 9, 2014. The date of that order was actually April 16, 2014. We will construe mother's appeal as if from the court's April 16, 2014, order terminating parental rights. (Cal. Rules of Court, rule 8.100.)

² While mother reported that they were with the paternal grandparents for a year after the minor was first detained, the grandmother and social worker reported that the minor was with her paternal grandparents for the first two years of her life.

court was prepared to terminate their parental rights. At the hearing in December, the parents waived further services and the court scheduled a Welfare and Institutions Code section 366.26 hearing.³ Before the section 366.26 hearing in April, the Agency recommended termination of parental rights to free the minor for adoption; the Agency also identified the paternal grandparents as the minor's prospective adoptive parents. Mother objected and the juvenile court set the matter for trial.

The Agency filed two reports prior to the April hearing: one on March 18, 2014, containing its adoption assessment and recommendation for the permanent plan; and an addendum report on April 9, 2014, addressing the allegation that the paternal grandparents were allowing contact between the minor and her parents that was not authorized by the court. The juvenile court reviewed these reports and admitted them as evidence at the section 366.26 trial.

In its initial report, the Agency noted that the minor had a "loving and positive attachment" to her paternal grandparents. Based on the social worker's observations, the minor was "happy, loved, [and] blossoming" in the paternal grandparents' home. On the other hand, the Agency noted, mother and father failed to participate in services and showed no intention of addressing the issues that twice brought the minor before the juvenile court. As a result of the parents' ongoing substance abuse, the minor was repeatedly placed in jeopardy and, until now, had lacked stability in her young life. Moreover, the social worker assigned to the family observed both parents struggling to engage with the minor during their visits.

In its addendum report, the Agency reaffirmed that the minor was "simply thriving" in the paternal grandparents' home and the assigned social worker "remain[ed] impressed with the healthy home environment provided by the paternal grandparents and

³ Further undesignated statutory references are to the Welfare and Institutions Code.

their commitment to do what is in [the minor's] best interests” When asked, the paternal grandparents “affirmed that they were tired of the chronic neglect of [the minor] and they believed she needed to be adopted by them so they could have control over the influences in her life.” The Agency agreed.

Section 366.26 Trial

At the section 366.26 trial, mother testified that she opposed adoption because, “I do not want to lose my rights to my daughter. I want to have her back.” She added that she believed guardianship was a better plan because it would give her a chance to get her daughter back. She reiterated her motivation on cross-examination: “[T]he actions I’m taking to improve myself to be a better mom so I can gain custody of her back so she can be like all of the other kids she wants to be like and live with her parents [¶] . . . [¶] [S]he can’t [live with me] today but if only guardianship, it doesn’t mean she can’t later on down the line when I prove myself to the judge or you guys or whatever I need to do.”

When asked about the quality of her relationship with the minor, mother testified about playing with her daughter and interacting with her during visits supervised by the paternal grandparents, and visits to the minor at the grandparents’ house. When asked what she “brought” to the relationship with her daughter, other than playing, mother said, “I brought myself. I brought her mom, the mom that she wanted to see, that she expected to see, that she deserves to see.” Mother also testified that she believed the minor would be “devastated” if she never came around again; mother believed the minor loved her grandparents, but she would not forget her parents.

The minor’s paternal grandfather testified that, based on his observations, mother and the minor “love each other very much. You know, they play well together. They-- they are good playmates.” He also believed that the minor was “very attached to her mother,” that the minor “knows that’s her mother.” He described the minor’s excitement surrounding mother’s visits, “she’s always looking forward to the next one” But, when asked about the effect terminating her mother’s rights would have on the minor, he

answered: “I don’t think the impact would be huge. She hasn’t been her mother now for about ten months. We’ve served as her parents for about ten months, and she seems to be doing okay with it. She’s pretty much, in my opinion, she’s thriving in our home. She’s happy here. You know, we provide a good stable environment for her. . . .”

The paternal grandfather explained there was “a little confusion with [the minor] as to who the parent figure is right now” Nevertheless, when he explained to the minor that she would be living with them from now on and that he and her paternal grandmother would be mother and father, “[i]t seemed like she was fine with it. She didn’t react one way or the other. She didn’t, you know, get startled or upset about it or anything like that. [¶] . . . [¶] She didn’t seem to have a problem with it. [¶] . . . [¶] We are quite close to [the minor] She lived with us initially and, you know, she’s seen me and her grandmother a lot so she’s quite used to us too.”

He later agreed that it was more likely than not that mother and father would continue to relapse, get clean, and relapse again, and that he had witnessed that pattern in both. He said he wanted to adopt the minor because “she’s seen some things [in her parents’ care] that could be detrimental to her in the long run and have an impact on her personality and how she behaves in the future, and . . . in our home setting-- [¶] . . . [¶] there would not be that kind of monkey business going on” He went on to describe the parents’ interaction with the minor as being “somewhat altered” and “for the worse,” when the parents appeared to be under the influence.

The paternal grandfather also affirmed that although there would be some detriment to the minor in severing the parental relationship with mother, he believed it was in the minor’s best interest to be adopted and have the stability that adoption provides.

Ruling

The juvenile court found the minor both generally and specifically adoptable. In considering the beneficial relationship exception, the court found mother had regular and consistent contact with the minor, but that father, who had failed to present any evidence at the hearing, did not.

Next, the court acknowledged that severing the relationship between a parent and child “is going to cause some level of detriment to any child.” The court found there was a substantial bond between mother and the minor; nonetheless, the court also found that the benefit of permanency outweighed any detriment from severing that relationship.

In reaching its decision, the juvenile court relied on “the amount of time that [the minor] spent with her mother versus in other people’s care, [the minor’s] ability to continue to form attachments, and also the instability the Court has seen over time with [mother].” The court acknowledged mother’s newfound, apparent commitment to sobriety, but expressed concern that, historically, mother had not been able to maintain her sobriety. The court found it simply was “not fair” to the child for the court to “hope” mother could remain sober when, “at this point I don’t think I could find even that it’s more likely than not.”

The juvenile court further expressed its concern with mother’s “lack of insight” into her sobriety or how her drug use affected the minor. Accordingly, the court found it was in the minor’s best interest to “solidify” her circumstances now, when she was still young enough to form attachments, and allow her to fully establish a parental relationship with her paternal grandparents.

Mother and father appeal.

DISCUSSION

Mother contends the juvenile court erred in terminating her parental rights because mother visited the minor regularly and the minor would benefit from continuing the relationship with mother.⁴ We review for substantial evidence the juvenile court's finding that the parents did not establish a statutory exception to the termination of parental rights. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 825, 827.)

At the section 366.26 hearing, the juvenile court is required to select and implement one of four possible permanent plans for the children. The permanent plan preferred by the Legislature is adoption. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1416.) If a child is likely to be adopted, the court is directed to terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c)(1).) However, where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child,” such as where the sibling relationship or parent-child relationship exception applies, the court may avoid termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i), (v).)

Termination of parental rights may be detrimental to the minor when: “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).) Mother had the burden to show this statutory exception applied. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 826.) We review the evidence in the light most favorable to the prevailing party and indulge all legitimate and reasonable inferences to uphold the court's rulings. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

⁴ Father “adopts by reference” mother's opening brief and makes no independent argument as to why reversal is warranted.

Here, there was no dispute that mother maintained regular visitation and contact with the child. The juvenile court found the exception did not apply because, though the mother and child appeared to have a strong attachment, the benefit of maintaining the parent-child relationship did not outweigh the benefit of the permanency and stability the minor would receive through adoption.

For the exception to apply, 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.) However, 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.*, *supra*, 29 Cal.App.4th at pp. 1418-1419; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

Here, the minor had been living with her paternal grandparents, and visiting with her mother under their supervision, for nearly 10 months when parental rights were terminated. She had lived with these same grandparents for her first year to two years of life. Thus two to three of her nearly five years of life (at the time of the trial) had been spent in her paternal grandparents’ care.

There is no disputing that mother was consistent with her visitation, and there was evidence the child looked forward to her time with mother, but there was no evidence the child had any difficulty separating from mother after the visits. She was not upset at the prospect of living exclusively with her grandparents or having them serve as her parents.

The evidence was that the minor felt secure in her placement, and that continuing with her grandparents was in her best interests. There was absolutely no evidence that the minor would be greatly harmed by termination of parental rights. Thus, substantial evidence supports the juvenile court's finding that the parent-child relationship exception did not apply.

DISPOSITION

The order of the juvenile court is affirmed.

DUARTE, J.

We concur:

NICHOLSON, Acting P. J.

HOCH, J.