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

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

C077696

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos. JD230348,
JD230350)

Plaintiff and Respondent,

v.

T.G.,

Defendant and Appellant.

Appellant, T.G., mother of the minors, appeals from the juvenile court’s orders terminating her parental rights and freeing the minors for adoption. (Welf. & Inst. Code, §§ 366.26, 395.)¹ She contends the juvenile court erred by not considering the relative

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

caretaker exception to termination of parental rights. (§ 366.26, subd. (c)(1)(A).) Having failed to assert this exception in the juvenile court, she has forfeited the issue on appeal. The contention also fails on its merits. Accordingly, we affirm.

DISCUSSION

A recitation of the factual background of this case is unnecessary to the resolution of this appeal. Mother's sole contention is that the juvenile court erred by not considering the relative caretaker exception to termination of parental rights. The Sacramento County Department of Health and Human Services (the Department) contends mother forfeited her claim by failing to assert the applicability of the exception in the juvenile court. The Department also argues any failure to consider the exception was harmless. We agree with the Department.

At the selection and implementation hearing (§ 366.26), the juvenile court must choose one of the alternative permanent plans provided by statute. The Legislature's preference is for adoption. If the juvenile court finds a minor adoptable and no circumstances would make the termination of parental rights detrimental to the minor, the juvenile court must terminate parental rights. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) 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; see also Cal. Rules of Court, rule 5.725(d)(4).)

The juvenile court has no sua sponte duty to determine whether an exception to adoption applies. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.) Rather, the parent has the burden of affirmatively raising and proving an exception applies. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809; *In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

Here, mother's counsel entered a general objection to the finding of adoptability and to termination of parental rights. Counsel argued mother's position was the beneficial parental relationship exception to adoption applied. There was no mention of the relative caretaker exception to adoption, nor any argument that the caretaker was not

willing to adopt the minors. Thus, mother has forfeited this argument by failing to assert it in the juvenile court. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 291-292; *In re Erik P.* (2002) 104 Cal.App.4th 395, 403; *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)

Moreover, mother's claim the juvenile court erred in failing to consider the section 366.26, subdivision (c)(1)(A) relative caretaker exception to termination of parental rights also fails on its merits. Under that exception, if a child is living with a relative who is unwilling or unable to adopt because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but is nevertheless willing and capable of providing the child a permanent home, and removal of the child from the custody of the relative would be detrimental to the child's emotional well-being, a permanent plan other than adoption may be ordered. This exception is inapplicable here.

The Department assessed the minors as a specifically adoptable sibling set and recommended against removal from their relative caretaker's care. Although the minors' relative caretaker initially indicated she preferred guardianship because she did not want parental rights terminated, the social worker's addendum report states the caretaker "made a decision to pursue adoption of the girls in order to afford [them] the highest level of permanency in their lives." There was no evidence presented to the contrary and the juvenile court found the minors were likely to be adopted based on the information in the social worker's report. Thus, any failure of the juvenile court to make findings regarding the relative caretaker exception was harmless as the exception simply did not apply in this case.

DISPOSITION

The orders of the juvenile court are affirmed.

_____NICHOLSON_____, J.

We concur:

_____BLEASE_____, Acting P. J.

_____MURRAY_____, J.