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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

EMILY U.,

Defendant and Appellant.

D060611

(Super. Ct. No. J517685A-B)

APPEAL from a judgment of the Superior Court of San Diego County, Peter Fagan, Juvenile Court Referee. Affirmed.

Emily U. appeals the judgment terminating her parental rights to her daughter, T.S. and her son, Patrick S. (together, the children). Emily contends that the court erred in declining to apply the beneficial relationship exception to termination of her parental rights (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).¹ We affirm the judgment.

¹ All further statutory references are to the Welfare and Institutions Code.

BACKGROUND

In December 2009, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions on behalf of four-year-old T.S. and three-year-old Patrick. The petition alleged that on December 9, Emily tested positive for methamphetamine and marijuana. She admitted having smoked methamphetamine that day. Emily cared for the children while under the influence of methamphetamine. The Agency had offered Emily voluntary services since August.

The children were detained with the paternal grandmother. In January 2010, the court made true findings on the petitions and ordered the children placed with the paternal grandmother. At the 12-month review hearing in March 2011, the court terminated Emily's reunification services and set a section 366.26 hearing. In August the court terminated parental rights.

*The Court Did Not Err in Refusing to Apply
the Beneficial Relationship Exception
to Termination of Emily's Parental Rights*

If a dependent child is adoptable,² the juvenile court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) One such exception exists if "[t]he parent [has] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child

² Emily does not contest the juvenile court's finding that the children were adoptable.

to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Whether this type of relationship exists is determined by taking into consideration "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. . . ." (*Id.* at p. 576.)

The court found that Emily's "visits ha[d] not been very consistent." The court "acknowledge[d] [Emily's counsel]'s statement that the children do recognize who their mother is," but noted that the law favors stability for children. The court concluded that termination of parental rights would not be detrimental to the children. Examining the evidence in the light most favorable to the judgment (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576), we conclude that there is substantial evidence supporting the juvenile court's conclusion.

Emily contends that she maintained regular visitation and contact and shared a bond with the children. Even assuming, for purposes of this opinion, that this contention is correct, we conclude that there is substantial evidence to support the juvenile court's conclusion that any detriment to the children resulting from termination of parental rights did not outweigh the benefits that they would gain through adoption. (*In re Autumn H., supra*, 27 Cal.App.4th at pp. 576-577.)

At the time of the section 366.26 hearing, T.S. was five and one-half years old and Patrick was four and one-half years old. They had been out of Emily's care for more than one and one-half years and had lived with the paternal grandmother during that time.

They had also lived with the paternal grandmother from August to October 2009, during Emily's voluntary case. Additionally, the children had been out of Emily's care briefly in May, when she was hospitalized after using methamphetamine. At that time, Emily admitted hitting the children. There was evidence that Emily's boyfriends had abused the children, as well.

Emily usually telephoned the children once or twice a week. Her visits were always supervised. Early in the case, she told the children that they did not have to listen to the paternal grandmother and, despite the social worker's admonishment, told the children to call the paternal grandmother by her first name, rather than "Mom or Grandmother." At one visit, the monitor had to remind Emily not to whisper to the children. Nevertheless, the social worker described Emily's visits with the children as "productive and engaging" and observed a strong bond between them. Emily greeted the children with hugs and kisses and said goodbye to them the same way. The children were usually happy to see Emily, and they had a great time together. Emily brought food and toys to visits. She sometimes redirected the children when they misbehaved or made inappropriate comments, but other times was unable to manage their behavior.

Emily was more affectionate with T.S. than with Patrick, which caused Patrick to act out. Patrick sometimes refused to talk to Emily when she telephoned and sometimes refused to attend visits unless the paternal grandmother accompanied him. T.S. said she wanted the paternal grandmother to be her "real mom" and wanted Emily to be her "play mom." The paternal grandmother reported that T.S. had "said that she was getting tired of waiting and [Emily] 'promising and promising' that they [would] be together."

The children's behavioral problems (tantrums, biting, scratching, kicking and hitting) had improved dramatically during their placement with the paternal grandmother. The children's aggressive behavior increased in frequency after visits with Emily, and their behavior improved during periods when there were fewer visits.

Emily had repeatedly failed in drug treatment programs. Her life remained unstable. Just two months before the section 366.26 hearing, Emily was arrested and jailed on charges that included driving with a suspended license, her second such arrest during this case. In the seven weeks before the hearing, she participated in only three visits, although she had the opportunity to have eight visits. During that time, Emily cancelled a visit, explaining that she had to attend an intake interview for a rehabilitation program. When the social worker called the program to verify Emily's statement, program personnel told the social worker that there was no record in Emily's name.

The paternal grandmother was taking excellent care of the children and was committed to adopting them. The children needed the stability and safety that the paternal grandmother provided. The children's awareness that they might be returned to Emily had harmed their development and psychological health. The children viewed the paternal grandmother as a parent.

There is substantial evidence to support the conclusion that the children did not have "a substantial, positive emotional attachment" to Emily of the kind that would outweigh the well-being that the children would gain in a permanent, adoptive home. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) There is thus substantial evidence to support the court's finding that the beneficial relationship exception did not apply.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.