

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BREANNA S., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DEANNA S. et al.,

Defendants and Appellants.

D060731

(Super. Ct. No. J517-623)

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

Deanna S. and Richard E., the parents of Breanna S., appeal the judgment terminating their parental rights under Welfare and Institutions Code,¹ section 366.26. Deanna contends that the juvenile court erred by not applying the beneficial parent-child

¹ Statutory references are to the Welfare and Institutions Code.

relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)). Richard, who has been incarcerated throughout these proceedings, joins Deanna's argument. (Cal. Rules of Court, rule 8.200(a)(5).)²

FACTS

On September 22, 2009, Deanna, who was on probation for a prior theft, was arrested for stealing a stroller at Sea World. One-year-old Breanna was with Deanna when she was arrested. Authorities took Breanna to Polinsky Children's Center. A routine urine test administered at Polinsky was positive for cocaine.

On September 25, the San Diego County Health and Human Services Agency (Agency) filed a dependency petition on behalf of Breanna, alleging that she was at a substantial risk of harm as a result of her parents' failure to adequately supervise her. (§ 300, subd. (b).) The juvenile court sustained the petition, and placed Breanna in a licensed foster home.

Deanna was sentenced to prison, but was allowed to serve her sentence at the Family Foundations program, a one-year residential treatment program for female offenders and their children under the age of six years. Deanna entered Family Foundations on December 17. The following month, Agency placed Breanna with Deanna at Family Foundations. Family Foundations initially reported that Deanna and Breanna were doing well.

² Agency failed to file a timely brief in this appeal. We decide this appeal on the basis of the record and Deanna's opening brief.

At the six-month review hearing on May 24, 2010, the court extended Deanna's services for another six months.

On July 28, Agency filed a supplemental petition after Family Foundations discharged Deanna for non-compliant behavior and she was sent to the California Institute for Women to complete her sentence. (§ 387.) The juvenile court sustained the petition and placed Breanna in the same foster home where she had resided earlier in the proceedings.

On September 11, Deanna was released from prison and entered Providence Place, a long-term residential treatment facility for female parolees and their dependent children. Agency helped facilitate Deanna's admission to Providence Place. Breanna began visiting Deanna at Providence Place. One staff counselor characterized the interaction between daughter and mother as "wonderful." The following month, the juvenile court extended Deanna's services for another six months, and Agency allowed Breanna to begin a 60-day trial visit with Deanna.

Breanna continued to live with her mother at Providence Place until February 22, 2011, when Deanna was arrested for shoplifting at Kmart. Deanna had checked out of the facility with Breanna, supposedly to go to a WIC appointment. Agency placed Breanna in the same foster home.

Deanna pleaded guilty to petty theft and was placed on probation for three years. On March 24, Deanna enrolled in Serenity House, an inpatient treatment program. This time, Agency did not place Breanna with Deanna at Serenity House. Instead, Breanna remained in foster care.

At the contested 18-month review hearing on May 12, the juvenile court terminated Deanna's services and set a section 366.26 hearing.

On June 21, Deanna was arrested for theft, being under the influence of a controlled substance and driving on a suspended license. Deanna entered a negotiated guilty plea to possession of drugs in exchange for being granted Proposition 36 probation.

Between her release from jail on July 7 and the contested section 366.26 hearing on September 9, 2011, the social worker supervised seven visits between Breanna and Deanna.

At the section 366.26 hearing, the juvenile court found that it was likely that Breanna would be adopted if parental rights were terminated, and that adoption was in the child's best interests. Further, the court found that Deanna had not shown that any statutory exception to adoption applied. The court terminated parental rights and identified adoption as Breanna's permanent plan.

DISCUSSION

Deanna contends that the juvenile court erred by not applying the beneficial parent-child relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)). The contention is without merit.

Adoption is the permanent plan preferred by the Legislature. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) At the selection and implementation hearing, the juvenile court must terminate parental rights if the child is likely to be adopted within a reasonable time unless one of the statutory exceptions applies. (§ 366.26, subd. (c)(1).) The parent bears the burden to establish by a preponderance of the evidence that an

exception to the statutory preference for adoption applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The exception applies only if both prongs are met.

Our standard of review is the substantial evidence test. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) We determine if there is substantial evidence, contradicted or uncontradicted, to support the conclusions of the juvenile court, resolving all conflicts favorably to the prevailing party, and drawing all legitimate inferences to uphold the lower court's ruling. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

There is no dispute that Deanna satisfied the first prong of section 366.26, subdivision (c)(1)(B)(i).

However, to establish a beneficial parent-child relationship, Deanna also had to show that Breanna would benefit from continuing her relationship with her mother. Such a showing requires more than frequent and loving contact, an emotional bond with the child, pleasant visits, or incidental benefit to the child. (*In re Derek W., supra*, 73 Cal.App.4th at p. 827.) To overcome the statutory preference for adoption, a parent must prove that he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment of the child to the parent. (*Ibid*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

In *In re Autumn H., supra*, 27 Cal.App.4th at page 575, this court explained that to come within the beneficial parent-child relationship exception to adoption, a parent must

show that the "relationship promotes 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." (Italics added.) The court must balance "the strength and quality of the . . . 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." (*Ibid.*) The court's balancing test must be performed on a case-by-case basis, taking into account variables such as "[t]he age of the child, the portion of the child's life spent in custody, the 'positive' or 'negative' effect of interaction between parent and child and the child's particular needs" (*Id.* at pp. 575-576.)

From the beginning of these proceedings, Deanna and Breanna have displayed a remarkable bond. One drug counselor described the interaction between mother and daughter as "wonderful." At one point in the case, a social worker testified that mother and daughter "have such a beautiful relationship" Further, Agency conceded that "it is unarguable that [Deanna] and Breanna have a strong emotional bond.

The existence of a strong bond between Breanna and Deanna was undoubtedly the reason that Agency continued to recommend that Deanna receive services well past the six-month date — "[t]he presumptive maximum term" for a parent's reunification services when the child was under the age of three years at the time of removal. (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) Despite Deanna's lack of success in her

treatment, as evidenced by her multiple discharges from treatment programs as well as her arrests, Agency continued to support reunification until the 18-month date, on the basis of the strength of the bond between mother and daughter. At that point, Agency concluded that reunification was unlikely given Deanna's demonstrated inability or unwillingness to comport herself in a manner that would allow the court to return Breanna to her care.

From our review of the record, it is evident that throughout the dependency, an unfortunate pattern developed that deprived Breanna of the stability that a young child needs. Deanna would enter a treatment program and do well initially; Agency would place Breanna with her mother; the program would discharge Deanna for misconduct; and Breanna would be returned to the foster home. After Deanna stole the stroller at Sea World, Breanna was in foster care for four months and then lived with Deanna at Family Foundations for six months. After Deanna was discharged from Family Foundations, Breanna spent three months in foster care and then four months with Deanna at Providence Place. After the Kmart shoplifting incident, Breanna was returned to the foster home, where she resided for six months until the section 366.26 hearing.

At the selection and implementation hearing, the juvenile court's foremost concern is the child's interest in stability and permanency. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) "The purpose of section 366.26 is to select a permanent plan for a child who cannot return home because reunification efforts have failed." (*Ibid.*) Deanna failed to correct the problems underlying Breanna's dependency in the 18 months allotted to her for reunification. Notwithstanding the strength of the bond between this

mother and daughter, Deanna did not establish that severing this bond in favor of "the security and sense of belonging" provided by an adoptive family would harm Breanna. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Simply put, the undeniable strong bond between Deanna and Breanna did not "outweigh the well-being [Breanna] would gain in a permanent home with new, adoptive parents." (*Ibid.*) A dependent child should not be made to wait indefinitely for her mother to become an adequate parent. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

There is substantial evidence to support the juvenile court's finding that none of the statutory exceptions to adoption, including section 366.26, subdivision (c)(1)(B)(i), applied in this case.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.