Filed 6/13/12 In re B.P. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 B.P. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. KIM P., Defendant and Appellant.	D060865 (Super. Ct. No. J517543A-B)

APPEAL from findings and orders of the Superior Court of San Diego County, Peter Fagan, Referee. Affirmed.

Kim P. appeals findings and orders terminating her parental rights to her children, B.P. and K.P., under Welfare and Institutions Code section 366.26.[1] She contends the court erred when it found that she did not maintain regular visitation and contact with the

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

children and the children would not benefit from continuing the parent/child relationship with her. We affirm the findings and orders.

FACTUAL AND PROCEDURAL BACKGROUND

Kim P. is the mother of five children.[2] Her two youngest children, B.P., now 14 years old, and K.P., now nine years old, are the subjects of this appeal. In September 2009, B.P. and K.P. (together children) were adjudicated dependents of the juvenile court after they were in a car accident with their mother, Kim, who was driving. She had a blood alcohol level of 0.23. B.P. sustained facial injuries. K.P. complained of body pain the next day. Kim was arrested on charges of driving under the influence (DUI), child cruelty and grand theft.

Kim has a history of chronic depression and other mental health conditions. Family members said she had an alcohol problem that affected her ability to care for herself and her children. Her criminal history dated from 2000 and included two other DUI arrests. In 2000 and 2001, the San Diego County Health and Human Services Agency (Agency) substantiated child welfare referrals alleging B.P. was receiving inadequate care due to Kim's mental health condition and alcohol abuse. Child welfare investigators were unable to confirm or refute reports of inadequate care of B.P. and K.P. in 2005, 2006 and 2007.

The juvenile court placed the children in the care of a maternal aunt and ordered a plan of family reunification services, including supervised visitation services, parenting

---

2 The children's father, H.R., does not appeal.

education, individual therapy, substance abuse treatment, and mental health evaluation and monitoring. As a condition of probation, Kim was required to complete a 52-week parenting education program, a DUI program and random drug testing.

At the six-month review hearing, the Agency reported that Kim was participating in SARMS and a 52-week parenting education program, and had started participating in individual therapy. The maternal aunt reported that Kim's visitation with the children was inconsistent and of poor quality.

In reports prepared in August 2010 for the 12-month review hearing, the social worker said Kim had stopped attending the 52-week parenting education program because of financial problems, but was otherwise in compliance with probation requirements and her case plan. She visited the children twice a week at a visitation center. Two visits were cancelled because of the children's activities, and Kim missed three other visits because of illness.

In July 2010, the children's aunt reported that she was overwhelmed by caring for the children, her biological children and her mother, who was ill. The Agency evaluated Mr. and Mrs. S. (the S.'s) for placement. The S.'s had been mentoring the children since November 2009. They visited the children at least three times a week, helped them with school work, took them to church and other activities. The children enjoyed spending time with the S.'s, including overnight and weekend visits. The Agency placed the children with the S.'s in December 2010.

Kim was incarcerated for probation violations from December 16, 2010 to July 27, 2011. During this time, Kim telephoned the children approximately twice a month. Kim

was depressed and her telephone calls were difficult for the children. Although visitation was permitted at the facility and the children wanted to visit their mother, Kim did not include the children on her visitor list. As a result, they were not able to visit her.

In March 2011 the juvenile court terminated reunification services and set a hearing under section 366.26. In reports prepared for the section 366.26 hearing, the social worker stated that the children were generally and specifically adoptable. The S.'s loved the children and were in the process of completing an adoptive home study. The children were doing well in their care.

The social worker discussed the concept of adoption with B.P. on three occasions. When she first asked B.P. if he would like the S.'s to adopt him, he said "yes." During another conversation, when the social worker asked B.P. where he would like to live, he replied "Hawaii." Later, the social worker asked how he would feel if the S.'s adopted him and he grew up in their home. B.P. said, "That would be good." The social worker spoke to K.P. about adoption on two occasions but he did not appear to understand the concept.

The social worker reported that Kim saw her children in December 2010 at their grandmother's funeral. The children did not respond positively to her attempts to interact with them. When she spoke to the children during her incarceration, Kim focused on her feelings of depression and sadness instead of asking about their well-being. After she was released from custody, Kim visited the children four times prior to the section 366.26 hearing. Kim and the children enjoyed the visits. However, the children avoided Kim's displays of physical affection.

The social worker said the children's relationships with Kim did not appear to be positive and beneficial for them. Because of their parents' mental health conditions and substance abuse, the children had a chaotic childhood. Kim had a history of suicide attempts, violent outbursts and chronic depression. She had been absent from their lives for eight months. The social worker believed the benefits of adoption outweighed any detriment to the children from terminating parental rights.

The Agency's reports were admitted in evidence at the section 366.26 hearing, which was held on September 6, 2011. Kim did not present any affirmative evidence. The juvenile court found that Kim did not maintain regular visitation with the children and the children would not benefit from continuing the parent/child relationship, and terminated parental rights.

DISCUSSION

A

The Parties' Contentions

Kim contends the juvenile court erred when it found she did not maintain regular visitation and contact with the children. She argues the evidence established the children had a beneficial relationship with her and maintaining the parent-child relationship outweighs the benefits of adoption. Kim also asserts the visitation center's reports on the quality of her interactions with the children are more credible than the reports about visitation by the S.'s and the children's aunt.

B

Legal Framework

At a permanency plan hearing under section 366.26, the court may order one of three alternatives: adoption, guardianship, or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) If the dependent child is adoptable, there is a strong preference for adoption over alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809.)

If the court determines that the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*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."

" '[B]enefit from continuing the . . . relationship' " means "the [parent-child] 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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*) Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, "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." (*Ibid.*)

C

Standard of Review

To the extent Kim asks us to give greater weight to the visitation center reports about the quality of her interactions with the children than on other observers' reports about the visits, we reiterate that this court does not substitute its judgment for that of the trial court. (*In re Michael G*. (2012) 203 Cal.App.4th 580, 584 (*Michael G*.).) Instead, we determine whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and construing all legitimate and reasonable inferences to support the trial court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) We do not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. (*Michael G*., *supra*, at p. 589.) If there is substantial evidence supporting the court's ruling, we must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c). (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

D

There Is Substantial Evidence to Support the Court's Findings that Termination of Parental Rights Would Not Be Detrimental to the Children

The juvenile court found that Kim did not maintain regular visitation and contact with B.P. and K.P. and they would not benefit from continuing the parent/child relationships. (§ 366.26, subd. (c)(1)(B)(i); *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The findings are supported by the record.

The record shows that from September 2009 to January 2010, Kim visited the children approximately twice a month. Those visits typically occurred by chance when Kim stopped by the maternal grandparents' home while the aunt and children were there. During a December 2009 visit, Kim greeted the children but did not interact with them until she said goodbye. Kim did not telephone the children during this period. Because of the aunt's reports about Kim's minimal visitation and contact with the children, the Agency arranged for visitation to take place at a visitation center.

The first visit at the center occurred on February 11, 2010. Kim and the children were excited to see each other and exchanged hugs and kisses. The record shows that Kim regularly visited the children from February through August 2010, and their visits were generally positive. In December the Agency referred Kim for in-home services, including parent-child interaction therapy. Kim was arrested before the services were initiated.

After her arrest, Kim saw the children in late December at their grandmother's funeral. K.P. pushed her away when she attempted to hug him. B.P. had only minimal

interaction with her. Although the children expressed an interest in visiting her in jail, and the facility permitted weekend visitation, Kim did not see the children again until August 2011. She spoke to them by telephone approximately twice a month, but the contact upset the children. Kim spoke about her unhappiness and depression instead of showing interest in the children's welfare and activities, and yelled at or disparaged the S.'s. The record shows that the four visits Kim had with the children after her release in July were pleasant and enjoyable for her and the children. However, the children avoided her attempts to be physically affectionate with them.

The record shows that Kim did not maintain regular visitation and contact with the children for at least 14, and perhaps 17,[3] of the 24 months of the dependency proceedings. During that period, she was able to arrange visits with the children but did not do so. Her minimal telephone contact was of little benefit to the children, if not detrimental to them. Sporadic visitation is insufficient to satisfy the first prong of the parent/child beneficial relationship exception. (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) There is substantial evidence to support the juvenile court's

---

3 The record is silent concerning Kim's visitation with the children in September, October, November and early December. The 12-month status review report, which included the visitation logs, was filed in August. The next report, which was prepared for the children's change of placement, was filed after Kim's arrest and noted only that Kim had supervised visitation with the children and further visitation arrangements had not yet been made. Because our review is for substantial evidence, the omission of visitation records during this relatively brief time period is not determinative of the outcome of this appeal.

finding that Kim did not maintain regular visitation and contact with the children, and the exception to termination of parental rights fails on the first prong of the statute.

Even were Kim to prevail on her argument that she maintained regular visitation and contact with the children, there is substantial evidence to support the finding the parent/child relationship did not promote the children's well-being to such a degree as to outweigh the well-being they would gain in a permanent home with their caregivers. (§ 366.26, subd. (c)(1)(B)(i); *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The exception fails on the second prong of the statute.

The record shows that B.P. and K.P. had been raised in a chaotic environment. Kim had a history of attempted suicide, violent outbursts and chronic depression. The children's father also had mental health and substance abuse issues. The parents neglected the children's basic needs for stability and consistent care, and were not able to ameliorate or resolve the problems that led to the children's dependency proceedings. During the 24-month proceedings, Kim was not able to focus on the children's needs. There were significant periods in which she did not visit them or remain in meaningful contact with them. The social worker, who met regularly with the children, did not believe that Kim had a nurturing, beneficial parent/child relationship with the children.

Significantly, 13-year old B.P. wanted to be adopted by the S.'s. A child age 12 years or older must consent to his or her adoption. (§ 366.26, subd. (c)(1)(B)(ii).) The fact B.P. understood the concept of adoption and consented to it constitutes substantial evidence that termination of parental rights would not be detrimental to him.

Kim also contends termination would be detrimental to the children because they would lose the benefit of their relationship with their extended family. The record belies Kim's argument. The social worker said the S.'s did "an excellent job" of maintaining the children's relationship with their relatives, and facilitated regular visits between the children and their aunts, uncles, cousins and grandparents.

The record shows that the S.'s provided the children with a stable, secure and loving home, and were dedicated to meeting their needs. Kim remained enmeshed in her own problems and was not able to strengthen her relationship with the children during their lengthy dependency proceedings. The juvenile court could reasonably conclude that the children did not have substantial, positive emotional attachments to her. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) The S.'s were establishing nurturing, loving and parental relationships with the children. The record supports the findings that B.P. and K.P. would not be greatly harmed by termination of parental rights and the beneficial parent/child relationship exception did not apply. (*Ibid.*; § 366.26, subd. (c)(1)(B).)

DISPOSITION

The findings and orders are affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.