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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re STEPHANIE D. et al., Persons
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

STEVEN D. et al.,

Defendants and Appellants.

D061241

(Super. Ct. No. SJ12253A-C)

APPEALS from a judgment of the Superior Court of San Diego County, Carol Isackson, Judge. Affirmed.

Y.C. appeals a juvenile court judgment terminating her parental rights to her daughters, Y.C. (young Y.C.) and Stephanie D., and her son, Seth D., and choosing adoption as the appropriate permanent plans. (Welf. & Inst. Code, § 366.26.)¹ Y.C.

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

challenges the sufficiency of the evidence to support the court's finding that the beneficial parent-child relationship exception to the adoption preference (§ 366.26, subd. (c)(1)(B)(i)) is inapplicable. Steven D., the father of Stephanie and Seth, also appeals. He contends that if Y.C.'s parental rights are reinstated his must be reinstated as well. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND²

The parents, who are unmarried, have a history of domestic violence, drug abuse, criminal conduct and child protective services intervention. Between June 2005 and August 2006, young Y.C., who was born in 2001, and Stephanie, who was born in 2003, were dependents of the juvenile court in Kern County because of general neglect. Steven had cultivated marijuana in the home within the children's reach and Y.C. failed to protect them. The children were returned to Y.C. after she participated in drug treatment and other services, on the condition that Steven remain out of the home. Y.C. alleged she was separated from him.

In 2007, however, Steven was convicted of assault with a deadly weapon and spousal abuse against Y.C. In 2008, Seth was born.

In October 2009 the family was living on a boat in the San Diego area. The San Diego County Health and Human Services Agency (the Agency) took the children into protective custody after Y.C. called 911 and reported a domestic violence incident between her and Steven. Further, Stephanie reported seeing her parents hit one another,

² To avoid repetition, we address the facts pertaining to the parent-child beneficial relationship exception in the following discussion section.

and ongoing domestic violence. The parents were in violation of a three-year "no negative contact" restraining order issued in 2007. The Agency filed petitions on behalf of the children under section 300, subdivision (b). The children were detained with Y.C. on the condition Steven not reside in the home. Y.C. had allegedly terminated contact with Steven and filed for a restraining order against him.

In February 2010, however, the Agency learned the parents remained together and continued to engage in domestic violence. Further, the Agency was concerned the parents were abusing drugs based on items seen at an apartment they had shared before being kicked out. Y.C. was out of contact with the Agency, and she had completed only four of 10 parenting classes. The Agency filed a supplemental petition (§ 387) requesting removal of the children from Y.C. when her whereabouts were ascertained.

In March 2010 the family was found in Santa Barbara residing on a boat. The Agency removed the children from Y.C. and placed them together in foster care in San Diego. The parents remained in Santa Barbara and, in May 2010, the San Diego County Superior Court sustained the section 387 petition and transferred the dependency case to Santa Barbara County. That court, however, did not accept the case and transferred it back to San Diego. In June 2010 Y.C. moved back to San Diego. She claimed Steven remained in Santa Barbara. In July 2010 the court ordered the children removed from Y.C.'s care.

In its October 2010 six-month review report, the Agency recommended additional services for Y.C. and the termination of Steven's services. Y.C. was beginning to address protective issues, but she denied any physical violence had occurred. She was

experiencing "anxiety and mood instability," and the Agency recommended a psychological evaluation.

In November 2010 the parents were arrested for robbery and other counts. Y.C. entered a Rite Aid store, scooped up several items of clothing and ran out of the store. Steven was waiting at the curb with his car engine running. An officer chased Y.C., and Steven got out of the car and shoved the officer. Y.C. jumped into the car and began driving slowly away, and Steven jumped into the car. Y.C. attempted to strike the officer with the car. Y.C. was jailed and unable to participate in services.

The six-month review hearing was held in late January 2011. The Agency recommended the termination of reunification services for both parents and the scheduling of a permanency planning hearing under section 366.26. Y.C., but not Steven, had been released from jail. Y.C. told the social worker she had done nothing wrong by maintaining contact with Steven. The court terminated Steven's reunification services but extended Y.C.'s services.

In May 2011 Y.C. was again arrested for robbery and incarcerated. She went into a Walmart store with Steven, placed some "hygiene items" in a bag and walked out. A loss prevention agent confronted her and demanded the bag. She pushed him away and yelled, at which point Steven struck the agent. The agent got the bag and the parents fled. Y.C.'s identification, however, was inside the bag.

At the 12-month review hearing in June 2011, the court terminated Y.C.'s reunification services and scheduled a section 366.26 hearing. Y.C. admitted to the

social worker that she had been using methamphetamines. In July 2011 the children were placed together with a maternal aunt, her two children and the aunt's fiance.

In its assessment report, the Agency recommended the termination of parental rights and adoption as the preferred permanent plans.³ The report describes the children as beautiful, adorable, healthy, smart and developmentally on track. It was likely their relative caregivers would adopt them and, if not, there were two prospective adoptive families in San Diego County open to adopting the three children, and 17 families outside the county or state willing to do the same. Further, there were numerous families willing to adopt the children individually.

During a contested hearing in January 2012, the court found by clear and convincing evidence that the children are adoptable and none of the statutory exceptions to adoption is applicable. The court terminated parental rights and found adoption is in the children's best interests.

DISCUSSION

Y.C. challenges the sufficiency of the evidence to support the juvenile court's finding the beneficial parent-child relationship to the adoption preference is inapplicable. "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*))

³ The children's trial attorney agreed with the Agency's recommendations. Their appellate attorney takes the same position.

Adoption is the Legislature's preferred permanent plan. (*Autumn H., supra*, 27 Cal.App.4th at p. 573.) At a section 366.26 hearing, the court must terminate parental rights and free the child for adoption if it determines by clear and convincing evidence the child is adoptable within a reasonable time, and the parents have not shown that termination of parental rights would be detrimental to the child under any of the statutory exceptions to adoption found in 366.26, subdivision (c)(1)(B)(i) through (vi). (*In re Asia L.* (2003) 107 Cal.App.4th 498, 510.) The beneficial parent-child relationship exception applies if the parent proves termination of parental rights would be detrimental to the child because 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).)

The Agency concedes Y.C. regularly visited the children except for periods of incarceration. Even if she satisfied the first prong of the test, however, substantial evidence supports the court's finding she did not satisfy the second prong.

To show a beneficial parent-child relationship, a parent must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . [Citation.] The relationship arises from day-to-day interactions, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*Autumn H., supra*, 27

Cal.App.4th at p. 575; see also *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [we clarified that given the limitations of visitation, day-to-day contact is not necessarily required].)

This court has interpreted the exception "to mean 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. In other words, the court balances that 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." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

We "tak[e] into account the many variables which affect a parent/child bond. The 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 are some of the variables which logically affect a parent/child bond." (*Autumn H., supra*, 27 Cal.App.4th at p. 576.)

The Agency agrees Y.C. was appropriate during visits and she and the children share affection and are "somewhat bonded." The parties stipulated that the previous foster mother would describe Y.C. as parental because she was concerned about the children's grades, played well with them and set up a "good reward system for Stephanie's behavior." They also stipulated that Y.C. would testify she raised the children from the time they were born until they were taken into protective custody, she

maintained a parental role with them through visitation and they recognized her as their mother.

Y.C., however, did not submit any bonding study or other evidence establishing that termination of the parent-child relationship would cause the children harm sufficient to overcome the adoption preference. When the children were taken into protective custody, Seth was only one year old. By the time of the section 366.26 hearing, he was a little over three years old. He was too young to make any statement about adoption, but in an addendum to the Agency's assessment report, the social worker wrote: "Seth is an adorable three[-]year[-]old boy. He has lived the majority of his young life out of his parents['] care. He calls his relative caretakers momma bear and poppa bear. He appears extremely[] relaxed and happy in the care of his relatives."

Young Y.C. was eight years old when these proceedings began, and almost 10 and one-half years old at the time of the section 366.26 hearing. Stephanie was almost six years old when the proceedings began, and eight years old when the section 366.26 hearing was held. In claiming detriment to them, Y.C. relies on the strength of the girls' relationship with her earlier in the proceedings. For instance, in March 2010, when the children were taken into protective custody for the second time in Santa Barbara, young Y.C. cried and said she wanted to go home, and asked, "[W]hy do you keep taking me from my mommy"? By July 2010, however, young Y.C. had adjusted to placement in a foster home and was actively participating in activities in the home.

Additionally, in a December 2011 addendum to the Agency's assessment report, the social worker explained she talked to the girls about adoption versus guardianship.

Young Y.C. understood that adoption meant she would live with her relative caretakers forever and be part of their family. Young Y.C. wanted to be adopted, because she feared that under a guardianship she may not be able to remain with her aunt. Young Y.C. had written her mother a letter stating she wanted to remain with her aunt. The social worker advised the court that young Y.C. loved her mother, but she "has seen the same cycles of domestic violence and substance abuse play[] out over her . . . life. She is asking for the stability that adoption can offer knowing that under a guardianship her mother may be able to reunify with her in the future."

Stephanie told the social worker the idea of adoption was "hard because I want to be with my mom and [aunt]." She stated a preference for living with her mother, but she knew that was not possible since her mother was in prison. If she could not live with her mother, she wanted to live with her aunt. The aunt reported that none of the children asked for their mother, cried for her or said they missed her. Stephanie only mentioned her mother "in stories from the past." All the children were "happy, healthy and doing well in their relative caregivers[] home," and the caregivers were dedicated to providing them with permanence and stability.

In its ruling, the court explained that the "parents . . . have had good visits, but good visits do not constitute a parental bond. It is simply not enough. Prolonged absences because of criminal activity have interfered with and destroyed any bond that was there at the point that the children first were removed from the parents years ago."

The court added that Seth had lived with Y.C. for only a year, and the girls "have been in and out [of the home] since 2005. Although they have spent significant periods

of time with the parents, each of those periods . . . have been violently disrupted -- and I mean violently in terms of the emotional impact on the children -- violently disrupted by the parents' domestic violence and illegal, antisocial behavior. [¶] The children themselves know, particularly [young Y.C.], that the parents cannot care for them. Stephanie wishes that the parents could care for her and is most verbal about the loss. But I think the two older children recognize that they have had more disappointment than support from the parents." In the court's view, the "children have become immune and have learned to deal with the absences of the parents."

Substantial evidence supports the court's finding that the beneficial parent-child exception to the adoption preference is inapplicable. The children deserve the permanence and stability of adoption. "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.)

Contrary to Y.C.'s assertion, the children's needs would not be just as easily satisfied through a guardianship. "Unlike adoption, other permanency options are not equivalent to the security of a permanent home." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 231.) " 'A guardianship is "not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature." [Citation.]' " (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1156.) Indeed, Y.C. told the maternal aunt that if a guardianship was ordered Y.C. would try to regain custody of the children. The Agency

noted "[t]his cycle would likely continue and the children's physical, mental and emotional health would continue to be damaged."⁴

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

IRION, J.

⁴ Our holding as to Y.C.'s appeal also defeats Steven's appeal. He contends that any reinstatement of her parental rights requires the reinstatement of his parental rights as well.