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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K.N. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.N.,

Defendant and Appellant.

D061258

(Super. Ct. No. J515214A-B)

APPEAL from orders of the Superior Court of San Diego County, Ronald F.

Frazier, Judge. Affirmed.

A.N. appeals juvenile court orders terminating her parental rights to her daughters, K.N. and W.N., and referring the matter for adoption. She contends substantial evidence does not support the court's finding the beneficial parent-child relationship exception to adoption and termination of parental rights of Welfare and Institutions Code section

366.26, subdivision (c)(1)(B)(i)¹ did not apply. She argues K.N. and W.N. are bonded with her and the benefits of continuing their relationships outweigh the benefits of adoption. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

A.N. gave birth to W.N. in 2001 and to K.N. in 2003. In December 2003, the court took jurisdiction over two-month-old K.N. based on her nonorganic failure to thrive. The parents participated in their reunification plans and, at the 12-month hearing in December 2004, the court returned K.N. to their care and terminated jurisdiction.

In November 2004, A.N. gave birth to twin boys. The boys are not subjects of this appeal.

Between September 2005 and July 2009, the San Diego County Health and Human Services Agency (the Agency) received numerous referrals involving the four children. The referrals concerned a lack of supervision, several instances of K.N. masturbating in public, the twins setting fires and W.N. witnessing domestic violence between her parents. Both girls were often tardy to school and did not turn in homework assignments. In 2007 through August 2009, the family participated in voluntary case plans.

In August 2009, the Agency petitioned on behalf of the children under section 300, subdivision (b) based on neglect and inadequate supervision. The court found the

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

allegations of the petitions true, ordered the children placed in foster care and ordered reunification services for the parents.

A.N. visited and called the children, but she appeared to have little control over them. The psychologist who evaluated her diagnosed a parent-child relationship problem. He reported she may not feel an emotional closeness with her children or may not be able to observe or understand their feelings.

A.N. participated in her services plan. In August 2010, she began unsupervised visits and, in December, the children were placed with her for a 60-day trial visit. At the 18-month review hearing in February 2011, the court ordered the children placed with her.

In February 2011, the social worker reported there had been reports that K.N. was masturbating at school and said one of the six-year-old twins had had sex with her. The social worker counseled A.N. to not allow the boys and girls to be in each other's rooms and to put locks on the doors, and the court ordered her not to leave the girls alone with the boys. However, A.N. did not appear to follow these directives and problems continued. One of the services workers reported that when she had been in the home, A.N. had had an extremely sexual telephone conversation with her boyfriend, which all of the children could hear.

In May 2011, the girls' attorney petitioned under section 388 asking that they be removed from A.N.'s home. The court ordered them detained with their aunt in Nevada (the aunt). The Agency then petitioned under section 387, alleging A.N. was no longer able to provide adequate care and requesting the girls be placed in relative care. One of

the twins said he watched the other try to have sex with K.N. That twin described having sex with K.N. K.N. described incidents of touching. The court dismissed the section 388 petitions and set a hearing on the section 387 petitions.

For the hearings, the social worker reported that when the girls were first placed with the aunt, A.N. called them every day, but then her calls became less frequent. She forgot W.N.'s birthday and had to be reminded of K.N.'s birthday. She visited during the Christmas holiday in 2011 after not seeing the girls for six months. K.N. was not allowed to attend one activity because she had begun masturbating in the common area of the home that day, after not engaging in this behavior for several months, and she had more incidents of inappropriate sexual behavior over the next week. K.N. cried when A.N. left, but stopped when she got in the car. W.N. enjoyed the visit. The social worker opined A.N.'s relationship with the girls was peripheral, and she was not able to make her connection to them a priority. The girls were thriving in the aunt's home. The social worker said the girls were adoptable and recommended termination of parental rights and adoption.

A.N. testified she had visited the children once after they were placed with the aunt and did not have the financial resources to visit more often. She said she called them four times each week and asked them about school, their behavior and how they were adjusting, and that K.N. shared her problems with her. She did not think visits between the girls and the boys needed to be supervised and did not believe K.N. had been abused by her brother.

The court found the girls were likely to be adopted if parental rights were terminated and none of the exceptions to termination of parental rights and adoption were present. It found a parent-child bond did exist, but the benefits of adoption outweighed the benefits of maintaining that bond. It terminated parental rights and referred the matter for adoption.

DISCUSSION

A.N. contends substantial evidence does not support the court's finding the beneficial parent-child relationship exception to adoption and termination of parental rights did not apply. She argues K.N. and W.N. are bonded to her and the benefit of continuing their relationships outweighs the benefits of adoption.

A. *Legal Authority*

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show that termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted that "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception." In interpreting the meaning

of "benefit" in section 366.26, subdivision (c)(1)(B)(i), this court stated in *In re Autumn H.*, at page 575:

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' 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 reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

B. *Application*

Although A.N. had regular visitation and contact with the girls, she did not show she fulfilled a parental role or had parent-child relationships with them that were so beneficial that terminating her parental rights would greatly harm them.

The social worker reported A.N. continued to be unable to supervise the children adequately. Extensive services were offered and put into place, but A.N. appeared to ignore the children, allowing them to do whatever they wished and expecting W.N. to take care of them. The boys set several fires in the home using A.N.'s lighters. The children said A.N. was either on the computer, making dinner, smoking outside or taking a nap at these times. The girls were often late to school or did not attend, and A.N. appeared not to be at all concerned with their school progress. Police were called to the

home several times after neighbors complained about A.N. not supervising the children, and on the day they were detained, eight-year-old W.N. had tried to get her brothers to come home when they went down the street with two sharp knives they had gotten from the bottom kitchen drawer.

K.N. continued to engage in public masturbation, and the children reported sexual activities between them. A.N. appeared to be aware of this behavior, but made little effort to control it and did not follow directions to not allow the children to have unsupervised contact with each other.

The social worker reported that when A.N. visited the children at Polinsky Children's Center, she appeared not to know how to supervise or to interact with them, and the social worker had to intervene and redirect the children several times. One of the children's relatives also described how A.N. did not interact with the children during a visit. Soon after the girls were placed with the aunt, they appeared to have adjusted well to not living with A.N., and A.N.'s telephone calls to them became less frequent over time.

When the subject of adoption was discussed with the girls, W.N. cried and K.N. did not appear to understand what adoption meant. The girls, however, were thriving in the aunt's care, and the aunt was providing a stable and structured home for them. They had known the aunt all of their lives, and the social worker opined the girls and the aunt had a bonded relationship. The court carefully weighed the benefits of maintaining the parent-child relationships against the benefits of adoption and found the benefits of adoption clearly outweighed the parent-child bond. The court's finding is well supported.

Substantial evidence supports the court's finding the parent-child relationship exception to termination of parental rights and adoption of section 366.26, subdivision (c)(1)(B)(i) did not apply.

DISPOSITION

The orders are affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.