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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

P.D.,

Defendant and Appellant.

D061816

(Super. Ct. No. SJ12304A-C)

APPEAL from orders of the Superior Court of San Diego County, Laura J. Birkmeyer,
Judge. Affirmed.

P.D. appeals juvenile court orders terminating her parental rights to her minor children, Malia I. and Noah I. (together, the minors), under Welfare and Institutions Code section 366.26.¹ P.D. challenges the sufficiency of the evidence to support the court's finding the sibling relationship exception to adoption did not apply to preclude terminating her parental rights. We affirm the orders.

¹ Statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2010, three-year-old Malia and two-year-old Noah became dependents of the juvenile court and were removed from parental custody based on findings P.D. had a mental illness that rendered her unable to provide regular care for the minors (§ 300, subd. (b)), and the minors were at substantial risk of harm because P.D. had subjected their 15-year-old half sister, Nina D., to serious physical abuse. (§ 300, subd. (j).) The court placed the minors in foster care and placed Nina, who was also declared a dependent, in another foster home.² The court ordered P.D. to participate in reunification services. The minors' case plans provided for weekly sibling visitation.

By the 12-month review hearing, P.D. had not yet addressed the issues that led to the minors' removal from her custody, including her mental illness. The court found the San Diego County Health and Human Services Agency had provided P.D. with reasonable services but she had not made substantive progress with her case plan, and there was no substantial probability of the minors' return within the next six months. The court terminated reunification services and set a hearing under section 366.26 to select and implement a permanent plan for the minors.

According to an assessment report, the minors were generally adoptable despite their traumatic history, multiple placements and behavior challenges. Six families in San Diego County with approved home studies were available to adopt a sibling group with the minors' characteristics and backgrounds. In the social worker's opinion, the minors did not have a

² P.D. raises no issues in this appeal with respect to Nina.

beneficial parent-child relationship with P.D., and the sibling relationship exception to adoption did not apply because the minors' relationship with Nina did not outweigh the benefits of adoption for them. Nina did not want to be adopted, she was doing well in her foster home and her caregiver was committed to having her remain there.

The social worker had considered placing the minors in the same foster home as Nina, but determined it was not in their best interests because they were doing exceptionally well in their current placement, their caregivers wanted to adopt them and they needed permanence that only adoption could provide. Noah had been in 12 placements and Malia had been in 13 placements. The disruptions in the minors' lives had caused them to have serious behavioral issues. Malia had sexualized behaviors, severe tantrums, an inability to express her feelings and she was unable to maintain healthy boundaries with adults and other children. Noah had severe tantrums, inflicted injuries on himself and tried to physically hurt others. The minors had made significant progress in their current foster home with caregivers who specialized in addressing these behaviors and were able to provide appropriate and consistent care and therapeutic interventions on the minors' behalf.

The minors and their caregivers were bonded with each other. Adoption would allow the minors to remain in this permanent, safe and stable environment, which was something they wanted. The caregivers said they wanted to maintain contact with the minors' birth relatives, especially Nina, as long as the relatives remained supportive of the minors' placement and visits were in the minors' best interests.

Nina was permitted to attend the minors' weekly supervised visits with P.D., but she sometimes had school and other activities that prevented her from going. She also was allowed to have visits without P.D. present, but she had attended only two in two months. The social

worker reported the minors liked visiting Nina, but they separated easily from her after visits and did not ask to see her between visits.

In February 2012, Nina filed a section 388 petition for modification, seeking to have the court place the minors with her in her foster home.³ The petition also requested the court select a permanent plan other than adoption for the minors because terminating parental rights would be detrimental to them.

According to an addendum report, Nina's caregiver, Clara C., was not willing to provide a permanent placement for the minors, but would accept legal guardianship. However, she had only one placement opening in her home.

A visit between the minors and Nina, supervised by the court-appointed special advocate (CASA), went well. The minors had no difficulty separating from Nina at the end of the visit. Nina gave Malia her telephone number and a relative's telephone number, and told Malia to call anytime. Nina also told the minors she would never see them again. This triggered disruptive behavior in Malia and caused her to fear being taken from her placement.

At the conclusion of another visit, Nina persisted in asking Noah for a hug, but he refused and began to have a tantrum. The minors separated easily from Nina. On another occasion, Noah was not interested in interacting with Nina or Malia, and he again refused to give Nina a hug. The minors had to be reminded to say goodbye to Nina at the end of the visit.

At the contested selection and implementation hearing, combined with a hearing on Nina's and P.D.'s modification petitions, the court considered the stipulated testimony of the CASA, who had been involved in the case for 18 months. She supervised visits between the

³ P.D. filed a similar section 388 petition that sought to have the minors placed with Nina.

minors and Nina once or twice a month. Visits were generally positive and loving, and Nina interacted appropriately with the minors. In the CASA's opinion, the minors' behaviors had dramatically improved since they were placed with their current caregivers.

The court considered the stipulated testimony of Stewart Holzman, a program manager at the San Diego Center for Children, who supervised six or seven visits between Nina and the minors. The minors were comfortable and playful with Nina. The minors did not react negatively when visits ended. Nina did not ask to visit the minors more frequently. The minors did not express any interest in living with family members, including Nina. When the minors were fearful or anxious, they asked for their caregivers.

According to the stipulated testimony of social worker Keisha Blair, Nina never asked for telephone contact with the minors, but Blair was willing to facilitate it. Blair intended to work with Nina and the minors' caregivers to facilitate more sibling contact. Blair said the minors' caregivers were committed to maintaining contact between the minors and Nina.

P.D. testified the minors lived with Nina for the first few years of their lives. Nina spent as much time with them as possible, and they had a close relationship.

Nina testified that before the minors were removed from parental custody, she lived with Malia for three years and Noah for two years. Nina had lived with her foster mother, Clara, for the past two years. Nina regularly visited the minors twice a week and enjoyed these visits. She was in the 11th grade and had extracurricular activities every day after school and on weekends. Nevertheless, seeing the minors was more important to her than participating in extracurricular activities. She wanted to be part of their childhood and wanted them to live with her in Clara's home because they needed to be raised with family. Nina did not want the

minors to be adopted because she did not want to lose the right to see or talk to them. She did not believe they were in a safe and loving placement.

The court considered the stipulated testimony of the minors. If called to testify, Noah would say Nina was his sister, he loved her and enjoyed visits with her. If called to testify, Malia would say Nina was her sister, she loved her, called her "Nene" and enjoyed visits with her. Malia wanted to live with Nina and the minors' current caregivers.

After considering the evidence and arguments of counsel, the court found the minors were likely to be adopted and none of the exceptions to adoption applied. Finding adoption was in the minors' best interests, the court terminated parental rights and referred the minors for adoptive placement.⁴

DISCUSSION

P.D. challenges the sufficiency of the evidence to support the court's finding the sibling relationship exception of section 366.26, subdivision (c)(1)(B)(v) did not apply to preclude terminating her parental rights as to the minors. She asserts the minors have a strong bond with Nina, and it would be detrimental to them if the sibling relationship ended. P.D. further asserts the minors would benefit more from maintaining their relationship with Nina than they would from being adopted.⁵

⁴ The court ordered legal guardianship as Nina's permanent plan.

⁵ Nina's counsel on appeal joins in P.D.'s arguments, stating Nina "strongly objects to the loss of the sibling relationships caused by the selection of adoption as the permanent plan for the younger children." Nevertheless, Nina's counsel acknowledges the focus must be on the best interests of the children being considered for adoption, not on the interests of the children's sibling. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) Counsel for the minors on appeal argues adoption is in the minors' best interests because "they desperately need the

A

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one or more of the enumerated statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

full commitment of dedicated adoptive parents who will be there for them indefinitely and no matter what their behaviors may be."

B

The sibling relationship exception to adoption applies when the juvenile court finds there is a compelling reason for determining termination of parental rights would be detrimental to the child because it would substantially interfere with that child's sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has strong bonds with a sibling. The court must also consider whether ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*) The purpose of this exception is to preserve long-standing sibling relationships that "serve as anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.)

"The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) The parent must first show: (1) the existence of a significant sibling relationship; (2) terminating parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) After the parent shows a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefits of adoption. (*Id.* at pp. 952-953; *In re Naomi P.*, *supra*, 132 Cal.App.4th at p. 823.)

We review the court's finding as to the applicability of a statutory exception to adoption for substantial evidence. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

C

Here, the evidence supports a finding the minors know Nina is their sister, love her and have a bonded relationship with her. They had lived with Nina during the first few years of their lives and they interacted well with her during visits, which were described as "a very positive experience" for them. However, P.D. did not meet her burden of showing the relationship the minors had with Nina was sufficiently significant to constitute a "compelling reason" to order a permanent plan other than adoption for the minors. (§ 366.26, subd. (c)(1)(B).) Although the minors enjoyed visiting Nina, they separated easily from her and did not ask to see her between visits. There was no indication the minors were adversely affected by the absence of Nina from their daily lives. They were thriving in their current placement with caregivers who were meeting their special needs. From this evidence, the court could reasonably infer it would not be detrimental to the minors if the sibling relationship ended. (*In re Eric P.* (2002) 104 Cal.App.4th 395, 402; see also *In re Celine R.* (2003) 31 Cal.4th 45, 54

[sibling exception to adoption applies only if evidence shows adoption would be detrimental to the child who is the subject of the recommendation for adoption].)

Further, the evidence supports a finding the benefit to the minors of continuing the sibling relationship was outweighed by the benefits they would realize through adoption. The minors had experienced much trauma in their young lives, endured multiple placements and consequently, had behavioral issues. Once they were placed with caregivers who are committed to adopting them, their behavior dramatically improved. The minors are bonded to these caregivers and want to become permanent members of their household.⁶ The caregivers continue to receive specialized training to help provide the minors with appropriate, consistent and therapeutic interventions. The minors' need for competent, caring and stable parents is paramount, and can be realized only through the permanency of adoption. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 952-953; *In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) Substantial evidence supports the court's finding the sibling relationship exception to adoption did not apply to preclude terminating P.D.'s parental rights.⁷ (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 61-62.)

⁶ Although Malia said she wanted to live with Nina *and* with the minors' current caregivers, this was not a realistic possibility.

⁷ Moreover, the minors' caregivers are willing to continue contact between the minors and Nina as long as it is in the minors' best interests. Although, as P.D. argues, there are no guarantees sibling contact will continue after the minors are adopted, this factor is not determinative. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 55 [court cannot require, but can encourage, adoptive parents to agree to visits among siblings].) Under the proper legal analysis of section 366.26, subdivision (c)(1)(B)(v), there was no showing termination of parental rights would be detrimental to the minors if the sibling relationship ended. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.