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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.G., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.G.,

Defendant and Appellant.

D061841

(Super. Ct. No. EJ003183)

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

Birkmeyer, Judge. Affirmed.

T.G. appeals orders terminating her parental rights to her daughter M.G. and referring M.G. for adoption. She contends the court erred by not applying the beneficial parent-child relationship exception to termination of parental rights and adoption of Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i).¹ We affirm the orders.

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

FACTUAL AND PROCEDURAL BACKGROUND

On January 26, 2010, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of three-month-old M.G. under section 300, subdivision (b) based on T.G.'s drug use. It had been reported that T.G. and her roommate were selling methamphetamine and marijuana from their home and T.G. had left M.G. alone when she visited neighbors. Drug screens of T.G. and M.G. showed evidence of methamphetamine. T.G. had lost custody of two other children. She said she had completed the KIVA substance abuse program in 2007. The court ordered M.G. detained in out-of-home care and ordered liberal supervised visitation.

On March 22, 2010, the court found the allegations true, declared M.G. a dependent child, ordered her placed in foster care and ordered services for T.G.

T.G. began participating in services. She entered KIVA, left, then returned and attended parenting education, 12-step meetings and workshops. She visited M.G. on a regular basis. At the six-month review hearing on November 8, 2010, the court continued services. The social worker observed T.G.'s parenting skills were improving and that during visits she took on an appropriate parental role, set limits and was affectionate with M.G.

In May 2011, T.G. began daily, unsupervised visits with M.G., and then started Monday to Friday visits, including overnights. At the 12-month hearing in May, the court continued services. In June, the court ordered a 60-day trial visit.

For the 18-month hearing in July 2011, the social worker recommended M.G. be placed with T.G. with family maintenance services. T.G. improved in her ability to care for M.G. and to provide appropriate discipline, but she had difficulty managing child care

responsibilities, work, housing issues and her case plan requirements. She learned her roommate had not been paying her portion of the rent and they faced potential eviction.

On August 29, 2011, the Agency filed a supplemental petition under section 387, alleging T.G. was no longer able to provide appropriate care and supervision of M.G. in that she had tested positive for methamphetamine, had been discharged from substance abuse treatment and had not kept the Agency informed of her living arrangements. T.G.'s drug treatment program had discharged her from treatment, she had a positive test for amphetamine/methamphetamine and she did not return to drug court as ordered. The court made a prima facie finding on the petition and ordered M.G. detained.

On October 17, 2011, the court found the allegations of the petition true and ordered M.G. placed in relative care. It found T.G. had been offered reasonable services, terminated her services and set a section 366.26 hearing.

The social worker reported M.G. had been placed with her maternal aunt and uncle. After T.G. returned to KIVA, she and M.G. had visits there. M.G. took some time to be comfortable with T.G., and T.G. sometimes had difficulty having M.G. follow her directions, but visits were appropriate and affectionate. M.G. separated easily from T.G. at the end of visits. The aunt and uncle wanted to adopt M.G. and there were 71 families with approved adoptive home studies who wanted to adopt a child with her characteristics.

At the section 366.26 hearing on April 19, 2012, the court considered T.G.'s testimony, other evidence and argument by counsel. It concluded M.G. was an adoptable child, that the exception to adoption and termination of parental rights of section 366.26, subdivision (c)(1)(B)(i) was not present and there was no evidence M.G. would be greatly

harmed by termination of parental rights. The court terminated parental rights and set the matter for adoption.

DISCUSSION

T.G. contends the court erred by terminating her parental rights because the evidence showed she and M.G. have a close and loving relationship worthy of preserving under the beneficial parent-child relationship exception to adoption and termination of parental rights of section 366.26, subdivision (c)(1)(B)(i).

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 of a specified statutory exception to termination of parental rights and adoption. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show 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 "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception."

In *In re Autumn H.*, *supra*, 27 Cal.App.4th at pages 575-577, this court found substantial evidence to support an order terminating parental rights. This court stated:

"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." (*Id.* at p. 575.)

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 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.)

Substantial evidence supports the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply. As the court found, T.G. had maintained regular visitation and contact with M.G. However, she did not show that their relationship was so beneficial that it would be detrimental to M.G. to terminate parental rights. T.G. was not able to fulfill a parental role. Although they had pleasant visits, T.G. did not always respond to M.G.'s needs and sometimes put her own needs first, such as taking smoke breaks during their limited time together. She attempted to instruct M.G., such as telling her to sit quietly when they watched a movie, to eat her lunch and not play and not to throw sand, but she was not always successful. She did not provide appropriate snacks, but gave M.G. too much ice cream, soda and candy.

M.G. looked to the aunt and uncle as her parents and called them "mommy" and "daddy." At times it took M.G. a while to warm up to T.G., but then the two played together and M.G. had a good time. During some visits M.G. played alone or with other children or preferred to stay with the aunt if the aunt remained in sight. M.G. separated easily from T.G. when visits ended. M.G. was more attached to the aunt and uncle than she was to T.G. When she returned home after visits, she appeared happy and excited and hugged the aunt and uncle and their children. While they were driving to one visit, the social worker noticed that M.G. was tearful. When the social worker told M.G. that after

playing with T.G. they would return to the aunt and uncle's home, M.G. relaxed and returned to her usual cheerful demeanor. As the social worker observed, the visits were like play dates, and M.G.'s relationship with T.G. was more like a relationship with an extended family member than a relationship with a parent.

The court did not err by finding T.G. did not show the benefits of continuing their relationship would outweigh the benefits M.G. would gain from being adopted into a permanent, stable home.

DISPOSITION

The orders are affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.