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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re T.R. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.R. et al.,

Defendants and Respondents;

T.R.,

Appellant.

D061990

(Super. Ct. No. EJ3252A-B)

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

T.R., a dependent of the juvenile court, contends the juvenile court erred when it
denied her petition to place younger sister, T.R.R., who is also a dependent of the

juvenile court, in their aunt's home for the purpose of adopting the siblings together. (Welf. & Inst. Code, § 388, subd. (b).)¹ T.R. also contends the juvenile court erred when it found that the sibling relationship exception did not apply and terminated parental rights. (§ 366.26, subd. (c)(1)(B)(v).) We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2010, the San Diego County Health and Human Services Agency (Agency) removed T.R., born February 1999, and T.R.R., born December 2004, (together, the children) from their parents' care. Their mother was diagnosed with schizoaffective disorder and was unable to meet their needs. Their father was a physically abusive alcoholic.

T.R.R. was diagnosed with attention deficit hyperactivity disorder and sensory deprivation disorder. At age five years, T.R.R. was morbidly obese, physically aggressive, and suffered from anxiety, speech problems, enuresis and encopresis. Because of her mother's disabilities, 11-year-old T.R. had assumed responsibility for T.R.R.'s care to the best of her abilities.

T.R. and T.R.R. had a large, extended maternal family.² The Agency placed T.R. with her aunt Janell and uncle Aaron H. Due to the level of care T.R.R. required, the Agency placed her in a foster home with intense therapeutic services and support. T.R.R. stayed with her grandmother on Fridays and Saturdays, providing respite care for the

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

² Unless otherwise indicated, references to relatives are to the children's maternal relatives.

foster care parents, S.F. and Walter F. (together, the F.'s). At a team decision meeting in August 2010, the children's family, including the parents, grandparents, aunt Janell and uncle Aaron, and aunts and uncles, Valarie M. and Darren M., Kelly P. (Aunt Kelly or Kelly), and Cheryl and C.Y. agreed to T.R.R.'s continued placement in the F.'s home.

S.F. took an assertive interest in meeting T.R.R.'s special needs, who responded well to the structure and services in the foster home. By February 2011, T.R.R.'s behavior had stabilized with intense therapeutic services. She no longer displayed poor hygiene and had almost reached her recommended weight, losing more than 40 pounds. T.R. was doing well with Janell and Aaron. However, at times, T.R. displayed depressed moods, anxiety and guilt and had nightmares and flashbacks.

T.R. and T.R.R. saw each other every week during visits with their parents and at relatives' homes. In April 2011, social worker Marianne Cleveland reported that T.R. had asked to visit T.R.R. more often. According to Cleveland, this was a positive change for T.R., who had distanced herself from T.R.R. in response to the parental role that T.R. had assumed when their mother was not able to care for T.R.R. Cleveland said T.R. was thoughtful and mature. She was affectionate with T.R.R. By August 2011, T.R. no longer felt that she had to assume a parental role with her younger sister.

As family reunification became less likely, the social worker began to explore permanent placement options for the children. T.R. was happy with Janell and Aaron, who were willing to adopt her. The F.'s wanted to adopt T.R.R., and were willing to consider adopting T.R. if the court determined the children should stay together. M.M. and Todd M., and Kelly also expressed interest in adopting T.R.R. In late August, Aunt

Kelly said she and her husband were willing to adopt T.R. and T.R.R. There were no family members in the San Diego area who were able to provide a home for both children. After further consideration, and in view of T.R.R.'s special needs, Kelly said T.R.R.'s placement with M.M. and Todd would be more appropriate, and she would like to be considered as "Plan B" for T.R.R. In early September, the Agency began to develop a plan to place T.R.R. with relatives.

In September, the juvenile court terminated the parents' reunification services and set a section 366.26 hearing. The court continued T.R.R.'s placement in foster care.

Aunt Kelly requested an extended visit with both children in Northern California. The Agency arranged for T.R. and T.R.R. to visit in early October. However, T.R.R.'s visit was cancelled after T.R.R.'s school, therapist and caregivers voiced concerns about T.R.R.'s reaction to an extended visit. T.R.R. said she was worried about being far away from her mom. When social worker Julie Walker asked her who her mom was, T.R.R. said "[S.F.] is my mom."

In November, the Agency moved T.R. to Aunt Kelly's home in Northern California. The social worker reported that T.R. was excited about the move and did not appear to have any issues living 10 hours away from her sister and other family members.

On January 19, 2012, T.R. filed a section 388 petition asking the juvenile court to place T.R.R. with her in Aunt Kelly's home. T.R. alleged the relationship between the maternal relatives and T.R.R.'s foster parents had completely deteriorated and had affected contact and visitation between the siblings. She further alleged the new placement order was in T.R.R.'s best interests because it would allow the siblings to be

raised by relatives in the same home and allow T.R.R. to continue her relationships with other family members.

The hearing on T.R.'s section 388 petition was held on March 22 and 23, followed by the section 366.26 hearing.³ The juvenile court admitted the Agency's reports in evidence and heard testimony from T.R., Kelly, social workers Walker and Cleveland, and the F.'s.

The Agency recommended that T.R.R. remain in a permanent placement with the F.'s, who had cared for her for the past year and a half. She had a healthy bond and attachment to them. T.R.R. was now in good physical and emotional health, and no longer had problems with eating and hygiene. Although she continued to display anxiety and had difficulty with transitions, T.R.R. had made dramatic improvements in her well-being. The F.'s were willing to adopt T.R.R. and offered to provide a placement for T.R. as well.

The parties stipulated that if T.R.R. were to testify she would state that she loved her sister. When they lived together, T.R. made macaroni and cheese for her and sometimes hit her. T.R.R. liked visiting T.R. and would be sad if they could not visit. She missed T.R. and talked to her almost every day. She was able to talk to T.R. whenever she wanted. T.R.R. wanted to visit Aunt Kelly more often and wanted the F.'s to come with her when she visited. Aunt Kelly and her children had always been nice to her but she did not want to move to her aunt's home. T.R.R. said she wanted to live with

³ The parents supported T.R.R.'s adoption by the F.'s and T.R.'s adoption by Kelly, and did not oppose termination of their parental rights.

the F.'s. She would be sad if she had to move away from their home. T.R.R. wanted T.R. to live with her in the F.'s home.

T.R. testified she wanted Aunt Kelly to adopt her and T.R.R. together. When T.R. lived in San Diego, she saw T.R.R. every Friday on visits with their parents. T.R. visited T.R.R. twice at her caregivers' home. After T.R. moved, she telephoned T.R.R. almost every day. Her telephone calls were not returned. T.R. found it difficult to keep in contact with T.R.R. T.R. did not agree with T.R.R.'s plan of adoption because in the last six months, the F.'s had stopped T.R.R.'s contact with the family. T.R. believed that the caregivers would "cut [her] off" as soon as they were not required to facilitate contact and visitation.

T.R. acknowledged that when she lived in San Diego, T.R.R. regularly asked her to spend the night with her at the caregivers' home. T.R. declined the invitations. T.R. explained that she believed she would have to take care of T.R.R., as she had done for many years. When she moved to Aunt Kelly's home, she told her aunt and uncle how she felt and they helped her realize she did not have to take care of T.R.R.

Kelly said she had been aware of the problems in the parents' home. Before she moved to Northern California, she cared for T.R. every weekend and for T.R.R. on the weekends she did not go to her paternal grandmother's home. Kelly said it was difficult to set up visits between T.R. and T.R.R. Her telephone calls to the F.'s were not returned. She last spoke to S.F. at the beginning of January.

Social worker Walker did not observe any visits between T.R. and T.R.R. T.R. moved to Northern California two days after she received their cases. T.R.R. enjoyed

spending time with Aunt Kelly. Walker believed that Kelly and the F.'s would continue to facilitate contact between T.R. and T.R.R. Kelly and S.F. were very cooperative with the Agency. Conflict between Kelly and the F.'s arose when Kelly decided she wanted to adopt T.R.R. By that time, T.R.R. had been with the F.'s for almost two years. She was doing wonderfully in their home.

Social worker Cleveland observed T.R. and T.R.R. affectionately placing an arm around each other. Early in the case, T.R. had distanced herself from T.R.R. and her role as caregiver. The girls enjoyed each other's company more when T.R. felt free to be T.R.R.'s sister.

S.F. testified that it was "absolutely" not her intention to stop contact between T.R. and T.R.R. That was not in either girl's best interests. The F.'s were currently supervising visits between T.R.R. and her parents, and planned to continue to do so if they were to adopt T.R.R. When T.R. was living in San Diego County, they invited her to weekly family dinners. They also invited her to spend the night at their home and go to SeaWorld® with them. T.R. accepted their invitation on two occasions but declined all other invitations. T.R. telephoned T.R.R. approximately three times a week. S.F. was willing to work with Kelly to facilitate communication between T.R. and T.R.R. T.R.R. loved T.R. and the sibling relationship was important to her.

The juvenile court found that it was not in T.R.R.'s best interests to move to Aunt Kelly's home. T.R.R. had made an exceptional transformation in the caregivers' home which was an "excellent, excellent placement for her." Although the relationship between Kelly and S.F. was strained, it was not irreparably damaged. Both caregivers

believed that ongoing contact was in T.R.'s and T.R.R.'s best interests. The juvenile court found that S.F. was a very credible witness. The court was impressed by her insight into T.R.R.'s needs and her willingness to facilitate visitation for the parents and other family members, even though she and her husband were not required to do so.

Relying on the parties' statements they would continue to permit sibling visitation and contact, the juvenile court found that termination of parental rights would not substantially interfere with the sibling relationship. In addition to visitation, the court noted that T.R. and T.R.R. could maintain their bond through telephone contact, texting, Skype, e-mail and letters. The juvenile court found that T.R. and T.R.R. were each adoptable and terminated parental rights.

DISCUSSION

A

The Court Did Not Abuse Its Discretion When It Denied T.R.'s Section 388 Petition

Under section 388, subdivision (b), any person, including a child who is a dependent of the juvenile court, may petition the court to assert a sibling relationship with a child who is a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near a dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child. The petitioner requesting the modification has the burden to show a sibling relationship and that the requested order is in the child's best interests. (§ 388, subd. (d); Cal. Rules of Court, rule 5.570(e)(2).)

In determining a child's best interests when a sibling of a dependent child asks the court to change the dependent child's placement, the juvenile court should consider all relevant factors, including the child's health, safety, and welfare, the nature of the siblings' relationship, and the nature and amount of the child's contact with each prospective caregiver. (Cf. *In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 955-956.) The juvenile court may also consider the social services agency's plan to provide "ongoing and frequent interaction among siblings" when placement of siblings together in the same home is not possible. (§ 16002, subd. (b).)

We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) While the abuse of discretion standard gives the trial court substantial latitude, "[t]he scope of discretion always resides in the particular law being applied, i.e., in the 'legal principles governing the subject of [the] action' Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse' of discretion. [Citation.]" (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.)

The record fully supports the juvenile court's thoughtful analysis of T.R.R.'s best interests. When T.R.R. was first placed with the F.'s, she was morbidly obese, physically aggressive, and suffered from anxiety, speech problems, enuresis and encopresis. At age five, she was still in diapers. She had thoughts about harming herself. T.R.R.'s boundaries were very poor. According to S.F., who was an experienced parent and foster

parent, when T.R.R. was first placed in their home "there was nothing normal, five[]year old about [T.R.R.]."

From the beginning of the case, the F.'s showed great commitment to T.R.R. They regularly attended trainings and sought assistance in how to continuously protect T.R.R.'s best interests while meeting the needs of the other children that were placed in their home. Under S.F.'s careful and competent supervision, T.R.R.'s mental and physical health significantly improved. By October 2011, T.R.R. felt safe. She was making and keeping friends. T.R.R. no longer had problems with eating, hoarding or hygiene. Her weight was healthy. She participated in gymnastics and was active, outgoing and well-behaved. In some situations, T.R.R. continued to display anxiety. Transitions were difficult for her.

At the time of the section 388 hearing, T.R.R. had lived with the F.'s for almost two years. She had become part of their family. T.R.R. called the F.'s "mom" and "dad" and had a healthy attachment to them. She said she would be sad if she had to leave their home. T.R.R.'s therapist said T.R.R. wanted to live with the F.'s. When T.R.R. learned that the Agency was considering moving her to a relative's home, she regressed and began displaying anxiety, crying, restlessness and irritability. On one occasion, when a social worker asked T.R.R. where she wanted to live, T.R.R. showed signs of anxiety and asked S.F., "[M]ommy, why does everyone keep asking me where I want to live"? She then hugged S.F.

While T.R.R. loved and missed her sister, and Aunt Kelly was a loving, caring and devoted mother and aunt, the record shows that T.R.R. was bonded to the F.'s and was

flourishing in their care. In addition, the juvenile court appropriately considered T.R.R.'s wishes to remain with the F.'s. We conclude that the juvenile court did not abuse its discretion when it denied T.R.'s petition to place T.R.R. with her in Aunt Kelly's home.

B

The Juvenile Court Did Not Abuse Its Discretion When It Determined the Sibling Relationship Exception Did Not Apply

"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 is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the minor under one of the specified exceptions. (§ 366.26, subd. (c)(1).) The parent has the burden to show termination would be detrimental to the minor under one of those exceptions. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.)

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to termination of parental rights when severing the sibling relationship would be detrimental to the dependent child. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) To establish detriment, the evidence must show " [t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest[s], including the

child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.' " (*Id.* at pp. 947-948.)

The record leaves no doubt that T.R. and T.R.R. share a loving and affectionate sibling relationship. T.R. and T.R.R. were raised in the same home for five years. Unfortunately, their significant common experiences in that home left each child traumatized. At the time of the section 366.26 hearing, the children's circumstances were remarkably similar. Both T.R. and T.R.R. continued to display symptoms of anxiety. Each missed the other sibling and wanted to live with her. T.R. wanted T.R.R. to live with her in Aunt Kelly's home. T.R.R. wanted T.R. to live with her in the F.'s home. T.R. declined all but two invitations to visit T.R.R. in the F.'s home. T.R.R. wanted to visit Aunt Kelly, but only if the F.'s came with her. T.R.'s and T.R.R.'s wishes (and anxiety) underscore the importance of their bonds with their respective caregivers, and their needs for permanency and stability. The record supports the conclusion that although the sibling relationship was important to the children, their individual needs for a placement in which they felt safe and secure significantly outweighed the importance to them of living together as siblings.

The record does not support T.R.'s argument the promise of continued sibling contact was illusory. The juvenile court found that S.F. was very credible and that Kelly was dedicated to her extended family. Kelly and S.F. agreed that continuing the sibling relationship was in the children's best interests. They each unequivocally stated they would work together to maintain the sibling relationship. S.F. had long facilitated T.R.R.'s visits with family members, and had extended many invitations to T.R. to visit

T.R.R. in their home. S.F. continued to supervise T.R.R.'s visits with her parents after reunification services were terminated even though she had no obligation to do so. Kelly was willing to have T.R.R. visit for extended periods in her home and was also willing to travel to San Diego to facilitate sibling visitation. In addition, T.R. and T.R.R. are old enough to be able to independently communicate with each other through telephone calls, texting, e-mail and Skype.

The juvenile court did not abuse its discretion when it found that termination of parental rights would not substantially interfere with the sibling relationship and to the extent it did, the benefits of the legal permanency of adoption outweighed T.R.R.'s long-term emotional interest in maintaining the sibling relationship. (§ 366.26, subd. (c)(1).) We conclude that the court did not err when it terminated parental rights.

DISPOSITION

The findings and orders are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

IRION, J.