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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOSEPH R., JR., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

D062011

(Super. Ct. No. SJ12122)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Affirmed.

A.A. appeals orders terminating her parental rights to her son, Joseph R., Jr., and referring him 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 She argues she is bonded with Joseph and should remain in his life. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On December 30, 2008, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of eight-month-old Joseph under section 300, subdivision (b) alleging he had been placed at risk of serious physical harm by a violent confrontation in the family home between Joseph's father (the father) and the maternal grandfather and a maternal aunt. A.A. and the father were both 16 years old at the time of the incident.

The court ordered Joseph detained with A.A. in a family member's home on the condition that she abide by a restraining order the court issued against the father.

On May 21, 2009, the court found the allegations of the petition true, declared Joseph a dependent child of the court, ordered him placed with A.A. and ordered services for the parents.

A.A. participated in parenting and substance abuse classes. In August 2009, she began therapy, but had irregular attendance, saying she was overwhelmed by her services and school obligations. She met with a public health nurse, and the social worker arranged for her and Joseph to have parent-child interaction therapy.

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

At the family maintenance review hearing on December 9, 2009, the court continued Joseph's placement with A.A., continued A.A.'s services and terminated services for the father.

A.A. attended some therapy sessions, but missed many others and dropped out of counseling. She was terminated from parent-child interactive therapy because she missed sessions. The therapist said A.A. had trouble managing Joseph's behavior, and she needed more parenting instruction. At the family maintenance review hearings on June 9, 2010, and February 2, 2011, the court continued services for additional six-month periods.

On March 11, 2011, the Agency filed a supplemental petition under section 387, seeking to change Joseph's placement to foster care. The petition alleged A.A. had left Joseph with a former roommate without providing for him, and she did not return for at least 10 days. The Agency had received a referral, alleging A.A. had left Joseph with the former roommate. The referral also claimed A.A. was abusing drugs. A.A. called the social worker the next day. She said she had been going through a lot. The court ordered Joseph detained in foster care.

The social worker reported Joseph had been displaying sexualized behavior in the foster home. A relative said Joseph had observed A.A. having sexual relations. A.A. denied this. At first after Joseph was detained, A.A. visited him on a regular basis, but, subsequently, her visits became sporadic. She sometimes cried during visits, and Joseph tried to comfort her.

On May 4, 2011, the court found the allegations of the supplemental petition true and that the previous disposition had not been effective in protecting Joseph. It removed custody from A.A., found it would be detrimental to place Joseph with the father, ordered him placed in foster care and ordered supervised visits.

In a report dated November 2011, the social worker reported A.A. had entered drug treatment in October, but left the next day for a medical appointment and did not return.

At the six-month review hearing on December 12, 2011, the court found A.A. had been provided with reasonable services, but had not made substantive progress with the terms of her case plan. The court found returning Joseph to parental custody would be detrimental and there was not a substantial probability he could be returned within six months. It terminated A.A.'s services and set a section 366.26 hearing to select a permanent plan.

The social worker assessed Joseph as an adoptable child. He was almost four years old, was healthy and had a sweet disposition and he was thriving in his foster home. His foster parent wanted to adopt him. Also, there was an out-of-state relative who was interested in adopting him and 81 approved adoptive families in San Diego County wanted to adopt a child with his characteristics. The social worker said A.A. had not been a consistent parental figure for Joseph, and she had not addressed her protective issues.

At the end of a visit on February 1, 2012, Joseph cried and said he wanted to stay with A.A. and did not want to go to school. At a visit on February 8, Joseph greeted A.A.

with a hug. When it was time to leave, A.A. gave Joseph some money and said goodbye. Joseph said goodbye and left with his foster mother's daughter. A.A. did not confirm the next scheduled visit and it did not take place. At the visit on February 22, A.A. brought Joseph gifts and played with him. She did not arrive for the next scheduled visit, upsetting Joseph.

On April 26, 2012, A.A. petitioned under section 388, requesting the court set aside the orders terminating services and setting a section 366.26 hearing. She asked for placement of Joseph with family maintenance services. She stated she was attending substance abuse treatment and parenting classes, and she was submitting to drug testing. The court summarily denied the petition.

At the section 366.26 hearing on May 2, 2012, the court considered the evidence and argument by counsel. It found Joseph was likely to be adopted if parental rights were terminated and none of the statutory exceptions to termination of parental rights and adoption applied. It terminated parental rights and referred Joseph for adoptive placement.

DISCUSSION

A.A. contends the court erred by not applying the beneficial parent-child relationship exception to termination of parental rights and adoption. She argues she and Joseph have a bonded relationship which should be preserved.

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 termination would be detrimental in that "[t]he parent[] [has] 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 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.)

A.A. did not maintain regular visitation and contact with Joseph after he was removed from placement with her in March 2011. Moreover, she did not show that she had a parent-child relationship with him that was so beneficial that terminating parental rights would be detrimental to Joseph.

Joseph had been under juvenile court supervision for more than three years by the time of the section 366.26 hearing. After he was removed from A.A. in March 2011, she did not visit him on a regular basis, and she did not consistently participate in services. She was loving and affectionate when she visited, but Joseph needed a permanent and a stable home, which A.A. was unable to provide. A.A. did not show that terminating parental rights would greatly harm him. She did not show she had a beneficial parent-

child relationship with Joseph or that the advantages of continuing their relationship would outweigh the benefits he would gain in an adoptive home. The court did not err by finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply and by terminating A.A.'s parental rights.

DISPOSITION

The orders are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.