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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JASMINE D.,

Defendant and Appellant.

D062079

(Super. Ct. No. J516742A/D)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald F. Frazier, Judge. Affirmed.

Jasmine D. appeals the judgment terminating her parental rights to her daughter, T.C., and her son, J.D. Jasmine contends the juvenile court abused its discretion by

summarily denying her modification petition (Welf. & Inst. Code, § 388)¹ and erred by declining to apply the beneficial relationship and sibling relationship exceptions (§ 366.26, subd. (c)(1)(B)(i) & (v)) to termination of parental rights.² We affirm.

BACKGROUND

Jasmine first used marijuana in 1993 or 1994, when she was 12 years old. She began using methamphetamine in 2000 or 2001, when she was 17 years old. She entered a recovery program, and claimed one year of sobriety before relapsing. When T.C. was born in June 2007, she and Jasmine tested positive for methamphetamine. Jasmine admitted using methamphetamine and marijuana during pregnancy. T.C. was detained, and remained in foster care until December 2008, when the juvenile court ordered her placed with Jasmine. By that time, Jasmine had completed a substance abuse treatment program at Harmony West Women's Recovery Center (Harmony). In July 2009, the court terminated dependency jurisdiction. During T.C.'s dependency, Jasmine's older children, Marco and Jesus, remained in Jasmine's care under a voluntary case plan. J.D., born in June 2008, was also in Jasmine's care.

In October 2010, the San Diego County Health and Human Services Agency (the Agency) received a report that Jasmine was neglecting T.C., J.D., Marco and Jesus. A social worker went to Jasmine's apartment and found her asleep. When Jasmine awoke,

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

² Jasmine contends the sibling relationship exception applied to the children's relationship to each other, and to the children's relationship to their two older brothers, Marco and Jesus. Marco, born in 2002, and Jesus, born in 2006, are not subjects of this appeal.

she appeared to be under the influence. J.D. and Jesus ran outside the apartment building, down the sidewalk past two other buildings. Jasmine yelled for them to return, but they ignored her. The social worker followed J.D. and Jesus and brought them home. She found cleaning supplies accessible to the children, empty bottles of medical marijuana and little food. Jasmine signed a safety plan. When the social worker returned to the home nine days later, she found drug paraphernalia and marijuana. Jasmine admitted she did not have a medical marijuana card.

On November 5, 2010, the Agency filed dependency petitions for T.C. and J.D. The petitions alleged Jasmine admitted using methamphetamine in the last two weeks, and marijuana in the last four days. She said she used drugs when she felt stressed. She acknowledged she used drugs while caring for the children, but claimed she took walks so she was not around them. Marijuana and drug paraphernalia were in the home and accessible to the children.

The children were detained in Polinsky Children's Center. The next day, T.C. and J.D. were moved to a foster home, where they remained for the rest of the case. Marco and Jesus were in a separate foster home throughout the case.

On November 15, 2010, Jasmine admitted she relapsed the day after she graduated from Harmony at the end of 2008. She said that since the children's detention, she had been drinking alcohol every night until she became dizzy. On November 22, 2010, during a visit at a restaurant supervised by the foster parents, Jasmine ran outside with T.C., J.D., Marco and Jesus, put them in a car, and drove away with them. Jasmine did not have car seats for the children and did not fasten their seat belts. She nearly ran over

another child as she drove away from the restaurant. The police recovered the children and took them to Polinsky Children's Center, where the foster parents picked them up. Jasmine was arrested and charged with child abduction. She pleaded guilty and received three years' probation.

In January 2011, the court made true findings on the petitions, ordered the children placed in foster care and ordered reunification services for Jasmine. At the six-month review hearing in September, the court terminated services and set a section 366.26 hearing. In May 2012, Jasmine filed her section 388 petition. Several days later, the court summarily denied the petition and terminated parental rights to T.C. and J.D. The Agency had not located an adoptive home for Marco and Jesus, and the court continued their section 366.26 hearing for 60 days.

DISCUSSION

THE SECTION 388 PETITION

Section 388 allows the juvenile court to modify an order if a parent establishes, by a preponderance of the evidence, that changed circumstances exist and the proposed change would promote the child's best interests. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) To obtain a hearing on a section 388 petition, the parent must make a prima facie showing as to both of these elements. (*Id.* at p. 806; *In re Justice P.* (2004) 123 Cal.App.4th 181, 188.) The petition should be liberally construed in favor of granting a hearing, but "[t]he prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*Zachary G.*, at p. 806.) "In determining whether the petition makes the

necessary showing, the court may consider the entire factual and procedural history of the case." (*Justice P.*, at p. 189.) We review the summary denial of a section 388 petition for abuse of discretion. (*Zachary G.*, at p. 808; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431, 433.)

Jasmine's section 388 petition asked the court to vacate the September 2011 order terminating her services and setting the section 366.26 hearing, and return T.C. and J.D. to her care or continue the hearing "to allow the children to transition home." As changed circumstances, the petition alleged Jasmine completed a 14-hour domestic violence awareness group in February 2012, and a six-month substance abuse treatment program at Harmony. The petition alleged the proposed modification was in T.C.'s and J.D.'s best interests because they had lived with Marco and Jesus, continued to have contact with them and shared a sibling bond with them. The court did not abuse its discretion by finding Jasmine had not met her burden of making a prima facie showing of changed circumstances or best interests.

Jasmine had a substance abuse history of many years. Before services were terminated in this case, she failed in three treatment programs over a span of several years. She completed a fourth program just two months before the hearing. She admitted she and Jose C., T.C.'s presumed father and J.D.'s alleged father, were "still together," although he was serving a seven-month prison sentence in Mexico for human trafficking. Jose had a long history of untreated substance abuse, and Jasmine acknowledged one of the stressors causing her 2009 relapse was his pending release from jail. Jasmine had not

completed the parenting education she clearly needed, completed individual therapy, and demonstrated an ability to maintain a safe home.

Because this case was past the reunification phase, the focus was on T.C. and J.D.'s need for permanency and stability, and there was a rebuttable presumption it was in their best interests to remain with their foster parents, who wished to adopt them. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) They were thriving in their foster home and shared a loving, bonded relationship with the foster parents. The foster parents were willing to maintain contact with Jasmine to meet the T.C. and J.D.'s needs, and wished to maintain their contact with Marco and Jesus.

THE BENEFICIAL RELATIONSHIP EXCEPTION

If a dependent child is adoptable,³ the court must terminate parental rights at the section 366.26 hearing unless the parent proves the applicability of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) One exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial 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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) If terminating parental rights "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is

³ Jasmine does not contest the adoptability finding.

overcome" (*Ibid.*) The existence of a beneficial relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs" (*Id.* at p. 576.)

By the time of the hearing, T.C. was nearly five years old. She had been out of Jasmine's care for more than two and one-half years in this case and nearly one and one-half years in the previous case. J.D., nearly four years old, had been out of Jasmine's care for more than two and one-half years. After the latter part of this case, Jasmine was usually appropriate during her visits, which were always supervised.⁴ She and the children loved one another, and they were happy to see her at visits. Jasmine was affectionate and attentive, but had trouble controlling the children, and did not always fulfill a parental role during visitation. T.C. and J.D. had lived with their foster parents for virtually the entire case and had benefited greatly from the stable, nurturing placement. They shared a loving bond with the foster parents, who were committed to the children and met all their needs. Examining the evidence favorably to the judgment (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576), we conclude substantial evidence supports the court's finding the benefits of adoption outweighed the parent-child relationship.

⁴ The court did not expressly address the regularity of visitation and contact. Aside from missing some visitation early in the case, Jasmine visited regularly.

THE SIBLING RELATIONSHIP EXCEPTION

Section 366.26, subdivision (c)(1)(B)(v), provides an exception to termination of parental rights when termination would substantially interfere with the child's sibling relationship and the severance of the relationship would be sufficiently detrimental to the child to outweigh the benefits of adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-953; § 366.26, subd. (c)(1)(B)(v).) The juvenile court must "balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer." (*In re L.Y.L.*, *supra*, at p. 951, citing *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Factors to be considered include whether the siblings were raised in the same home; whether they shared significant common experiences or have existing close and strong bonds; and whether ongoing contact is in the child's best interests, including his or her long-term emotional interests, as compared to the benefits of adoption. (§ 366.26, subd. (c)(1)(B)(v).) "[T]he application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount." (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

Except during the first six months of J.D.'s life, he and T.C. lived together, first with Jasmine, then in foster care. The children were attached to each other. As noted above, their foster parents wished to adopt them. Thus, substantial evidence supports the conclusion termination of parental rights would not substantially interfere with the relationship between T.C. and J.D.

T.C. lived with Marco and Jesus for less than two years before she was detained in this case, and J.D. lived with Marco and Jesus for less than two and one-half years. During this case, and during T.C.'s first dependency, there was sibling visitation. T.C. and J.D. were attached to Marco and Jesus. Their foster parents expressed a strong interest in maintaining their contact with Marco and Jesus, and the social worker believed the foster parents would do so. The foster parents would have taken Marco and Jesus into their home had it been large enough for four children. Substantial evidence supports the conclusion termination of parental rights would not substantially interfere with T.C. and J.D.'s relationship with Marco and Jesus.

The social worker believed T.C. and J.D. needed the benefits of adoption more than they needed maintenance of the sibling bond. Substantial evidence supports the conclusion that even if termination of parental rights were to substantially interfere with the sibling relationships, this would be not so detrimental to T.C. and J.D. to outweigh the benefits they would achieve through adoption.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.