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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.H., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

N.S.,

Defendant and Appellant.

D062518

(Super. Ct. No. J517995)

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

N.S. appeals a juvenile court order terminating her parental rights to her minor son, J.H., pursuant to Welfare and Institutions Code section 366.26.¹ N.S. challenges the sufficiency of the evidence to support the court's finding that the parent-child relationship exception to termination of parental rights did not apply. We affirm the order.

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

FACTUAL AND PROCEDURAL HISTORY

On December 14, 2010, the Narcotics Task Force (NTF) served a warrant on the home of Mark H. and N.S., parents of eight-year-old J.H.² The warrant was issued in connection with a long-standing investigation by the Drug Enforcement Administration and Postal Inspector into the activities of Jamaican nationals and their Mexican suppliers alleged to be mailing packages of marijuana from San Diego to the East Coast. The NTF arrested both parents and they were taken into custody. Agents found evidence of a marijuana packaging operation in the home and a half pound of marijuana on top of a three-foot shelf in an unlocked garage accessible to J.H. A child protective services worker was called to the scene and J.H. was taken into protective custody and transported to Polinsky Children's Center.

Mark and N.S. were charged with possession of marijuana for sale and related crimes, as well as willful child cruelty. Both parents were subject to immigration holds on the basis they were in the United States illegally from Jamaica and, as a result, were not eligible for release on bail. On December 16, 2012, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court on behalf of J.H. under section 300, subdivisions (b) and (g). The petition alleged J.H. was at substantial risk of harm because marijuana was found in the home and the parents' incarceration left J.H. without any provision for support.

The Agency reported J.H. was born in Jamaica in 2002. In 2005, N.S. left J.H. with the maternal grandmother and entered the United States illegally to join Mark in San Diego. Later

² Mark is not a party to this appeal.

that year, Mark and N.S. successfully arranged for J.H. to be smuggled into the United States. Once reunited in San Diego, N.S. stayed at home with J.H. They lived with, and were supported financially by, Mark. Initially, Mark did odd jobs as a carpenter and mechanic to support the family. Eventually, though, the family's income was derived solely from the sale of marijuana and N.S. assisted in this illegal business. At the time of his parents' arrest, J.H. attended a private school and was in the second grade. He was described by the school's principal as "an excellent student," was always appropriately dressed and on time, and did not have any behavioral problems. J.H. was also up to date with immunizations and had been to regular health and dental check-ups.

At the time of the jurisdiction hearing in January 2011 both parents, who remained in custody, wanted J.H. placed with his paternal grandmother or paternal aunt in Connecticut. The paternal grandmother was willing and able to assume custody of J.H. immediately. To facilitate the placement, the Agency requested expedited Interstate Compact on the Placement of Children (ICPC) home evaluations for the grandmother and aunt. The court sustained the allegations of the petition under section 300, subdivision (b) and at the subsequent disposition hearing the court declared J.H. a dependant, removed J.H. from parental custody and ordered reunification services for both parents. In late March, the ICPC for the paternal grandmother was approved and in April, J.H. was transported to Connecticut to live with her and her adult son and daughter.

At the time of the six-month review hearing, J.H. was adjusting well to his grandmother's home and doing well in school. A pro bono immigration attorney was also assisting J.H. to obtain legal residency (a green card). J.H. spoke to both parents frequently

and was sad about not seeing them, but was happy living with his grandmother, aunt and uncle. In the meantime, Mark was deported to Jamaica. N.S. remained in custody and was awaiting potential deportation. Neither parent was in contact with the Agency during the review period, and it was unclear if they had participated in reunification services and wished to continue attempts to reunify with J.H., or preferred J.H. remain with the paternal grandmother. At the hearing, the court ordered six additional months of services for the parents to determine their intentions and to allow sufficient time for J.H.'s green card application to be processed.

During the subsequent review period, J.H. was approved for permanent resident status in the United States and continued to do well in Connecticut with his grandmother. Although he missed his parents and spoke to them regularly by telephone, he was happy living with his grandmother. The Agency received a letter from N.S. stating she was still in custody in San Diego and was continuing to fight deportation. N.S. stated she wanted J.H. to complete the immigration process and remain in the United States, but she did not want to lose her parental rights.

At the 12-month review hearing, N.S.'s counsel stated she was in weekly contact with N.S. and confirmed N.S. remained in custody. N.S.'s counsel also reported that she had tried unsuccessfully to produce N.S. for hearings. The Agency stated that N.S. had not had any reunification services because she was in custody. The court found that N.S. and Mark had not made substantive progress with their case plans, terminated reunification services and set a section 366.26 selection and implementation hearing.

The Agency assessed J.H. as adoptable. He continued to do well in school, was in good health and did not have any developmental concerns. J.H. spoke with his parents on the

telephone regularly, but did not ask about them between calls and did not have any adverse behavior or reaction after speaking with them. In an interview with the Agency's social worker, J.H. stated his grandmother had explained adoption to him, he knew his grandmother wanted to adopt him and he felt happy about it. J.H. also stated that he would feel sad if he never got to see his parents again but he still wanted his grandmother to adopt him. Throughout the proceeding, the grandmother expressed her desire to adopt J.H. as well as her willingness to foster the relationship between J.H. and his biological parents.

At the selection and implementation hearing, N.S. argued against termination of her parental rights on the ground she had a beneficial parent-child relationship with J.H. under section 366.26, subdivision (c)(1)(B)(i).³ She argued guardianship with the paternal grandmother, and not adoption, was the better option. The Agency's report, however, indicated N.S. wanted J.H. to remain in the United States and that she was willing to have J.H. adopted by the paternal grandmother if she were deported. After considering the evidence and arguments of counsel, the court found the benefits of adoption outweighed the benefits of maintaining the parent-child relationship between N.S. and J.H. and terminated the parental rights of N.S. and Mark.

DISCUSSION

N.S. challenges the sufficiency of the evidence supporting the court's finding the beneficial parent-child relationship exception to adoption did not apply. She asserts she shared a beneficial relationship with J.H. such that J.H. would suffer detriment if that relationship were terminated.

³ Mark did not contest termination of his rights and wanted J.H. to be adopted by the paternal grandmother.

I

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 termination of parental rights would be detrimental to the child under one of the specified statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid.*) We have interpreted the phrase "'benefit from continuing the . . . relationship'" to refer to a parent-child relationship that "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 other words, the court balances the strength

and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

We review an order terminating parental rights 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, 52-53; *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.* (2002) 101 Cal.App.4th 942, 947.)

II

Here, N.S. and J.H. had a parent-child relationship. N.S. raised J.H. for most of the first eight years of his life and provided him with a relatively secure home. N.S., however, failed to show the parent-child relationship was sufficiently beneficial to apply the exception of section 366.26, subdivision (c)(1)(B)(i).

At the time of the selection and implementation hearing, N.S. and J.H. had been separated for more than 18 months. With N.S.'s consent, J.H. had lived with his paternal grandmother in Connecticut for more than a year and was thriving in her home. He was doing well in school and had no behavioral or emotional problems. When J.H. did struggle at school, the paternal grandmother strongly advocated on his behalf. Although J.H. missed his parents, he did not cry or demonstrate other strong negative feelings as a result of the separation. J.H. also understood what adoption meant. Although he would be sad if he never got to see his parents again, he knew this was a possibility if his grandmother adopted him and he still wanted to be adopted. For her part, N.S. wanted to exercise her parental rights *only if* she was not deported to Jamaica. N.S. expressed her desire for J.H. to remain in the United States and believed the paternal grandmother was the best person to provide for J.H. if she were deported.⁴ Thus, N.S. failed to show J.H. would be greatly harmed if parental rights were terminated.⁵ (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; see also *In re Scott B.*, *supra*, 188 Cal.App.4th at p. 470.)

⁴ The paternal grandmother expressed her commitment to nurturing J.H.'s relationship with N.S. and offered to take J.H. to visit her wherever she ends up living. Although this commitment is not legally enforceable, the court was entitled to consider it in assessing detriment to J.H.

⁵ J.H. and N.S. did not have the type of emotional bond that existed between mother and son in *In re Scott B.* (2010) 188 Cal.App.4th 452 that if severed would harm J.H. There, third party testimony showed that if the mother's parental rights were terminated, the minor would have been emotionally devastated. (*Id.* at pp. 471-472.) Based on this evidence, the court concluded Scott's emotional make up would "not enable him to endure interruption of his long-standing frequent visits with Mother." (*Id.* at p. 471.)

Further, Scott B., who was autistic, believed adoption meant he would continue to have a relationship with his biological mother. Scott B. did not understand that adoption meant his contact with his mother could be cut off. (*In re Scott B.*, *supra*, 188 Cal.App.4th at pp. 471-

Further, N.S. has not shown that maintaining her relationship with J.H. outweighed the benefit of adoption for him. At the time of the selection and implementation hearing, J.H. had been out of the parents' care for more than 18 months. He depended on his paternal grandmother to meet his daily physical, medical, developmental and emotional needs. J.H. bonded with his paternal grandmother, who wants to adopt him. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.) Although N.S. believes a guardianship would serve J.H.'s interests, adoption is the only option that provides the stability and permanence he needs. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [Legislature has decreed guardianship is not in best interests of children who cannot be returned to their parents; only adoption affords the most permanent and secure alternative]; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368-1369 [parents' preference to preserve family unit does not override best interests of minors in stability and security of adoptive home].) The court was entitled to accept the social worker's opinion that the benefits of adoption for J.H. outweighed the benefits of maintaining a relationship with N.S. We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D., supra*, 70 Cal.App.4th at p. 53.)

While this case is atypical in that J.H. had a relatively stable, comfortable life with his parents prior to their arrest, adoption would not "deprive [J.H.] of a substantial, positive emotional attachment such that [he] would be greatly harmed" (*In re Autumn H., supra*,

472.) Here, there was no evidence refuting J.H.'s understanding of adoption and his stated desire to be adopted by his grandmother.

27 Cal.App.4th at p. 575.) The record supported the trial court's finding that J.H.'s placement in a stable, permanent home with his grandmother outweighed any potential benefit to J.H. of maintaining N.S.'s parental rights.

DISPOSITION

The order is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.