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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re STANLEY C., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

D063697

(Super. Ct. No. J518144D)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia A. Bashant, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel and Erica R. Cortez, Deputy County Counsel, for Plaintiff and Respondent.

L.R., the half-sister of Stanley C., appeals a judgment terminating the father's parental rights over Stanley and selecting adoption as his preferred plan. (Welf. & Inst. Code, § 366.26.)¹ The sole issue on appeal is whether substantial evidence supports the court's finding the sibling relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(v)) is inapplicable. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Stanley was born in 2004. His mother died in 2009. She had three older children, including L.R., who was born in 1997. Stanley's presumed father, Stanley C. III (Stanley III), has a lengthy history of drug abuse, psychological problems and criminal conduct.

This dependency proceeding began in February 2010 in Los Angeles County, when all the children were living with Stanley III. He was incarcerated without making any arrangements for them, and because of his drug use, the children feared him and did not want to continue living with him. Further, the whereabouts of the half-siblings' father were then unknown. The Department of Children and Family Services (the Department) filed a petition on Stanley's behalf under section 300, subdivision (b).²

Stanley III was provided with reunification services for a lengthy period. During that time, Stanley had numerous placements. At times he and L.R. were placed together, and at other times they lived apart but enjoyed consistent visits. The siblings attended

¹ Further statutory references are also to the Welfare and Institutions Code.

² The Department also filed petitions on behalf of the other children, but their cases are not at issue on appeal.

conjoint therapy to address grief over their mother's death and "feelings of rejection associated with the multiple placements."

In January 2011 Stanley joined L.R. at the home of a nonrelative extended family member, Tiffany C. Tiffany lived in San Diego, and in July 2011 Stanley's case was transferred here, under the aegis of the San Diego County Health and Human Services Agency (the Agency).

After several continuances, the 18-month review hearing was held in January 2012. The court found Stanley III had not made substantial progress in his case plan. Among other problems, he had tested positive for drugs once and failed to show up for 10 other random tests. The court terminated reunification services, scheduled a section 366.26 hearing, and continued Stanley in Tiffany's care.

The Agency assessed Stanley as adoptable because he is "an articulate, inquisitive and intelligent boy" without "any major medical, developmental or emotional issues." The Agency nonetheless recommended a guardianship. Stanley and L.R. had a "significant relationship," and Tiffany was committed to caring for them under a guardianship. She was not then able to adopt because of financial issues.

In June 2012, however, Stanley petitioned the court under section 388 for a change of placement. He advised that he wanted to live with nonrelative extended family members and "mentors" Mike J. and Lisa J. (the J.'s) in Los Angeles. The petition alleged Tiffany was not meeting his daily needs and her home was filthy. It further alleged: "It is in Stanley's best interest to be in a placement where he feels loved, cared for, and has a sense of belonging. He is extremely bonded to Mike and Lisa and wishes

to live with them. Mike and Lisa are willing to care for Stanley, love him like their own son, and will not only provide him with basic needs but also provide him with a better quality of life than he is [currently] receiving."

An investigator with minor's counsel's office submitted a declaration pertaining to her interviews with Stanley and L.R. Stanley wanted to live with his father, but if that was not possible he wanted to live with the J.'s. He understood that if he moved to their home he would be "far from his sisters," but he believed he could call and visit them. L.R. wanted Stanley to live with the J.'s "because they take better care of him and he is happier with them." L.R. said she and Stanley had just returned from a weekend visit with the J.'s, and he cried because he did not want to leave them.

The social worker reported that Stanley liked visiting the J.'s on the weekends. The social worker asked him how he felt about the possibility of living away from his siblings, and he said "bad" and began to cry. He persisted, however, in stating he wanted the J.'s to adopt him. He said he "would 'miss' his siblings if he was unable to see them again," but "he 'talks to them all of the time' and he 'really wanted to be adopted.'" He wanted to take the J.'s last name and he referred to them as his "new family."

Additionally, Lisa provided a statement. She and Michael met all four children several years earlier when the children attended an after school program she and Michael ran. When their mother died, the J.'s "became committed to all four of the children" and "stayed closely connected with them through all of their placements." The J.'s believed the siblings' needs were being met at Tiffany's, but Stanley's were not. They wanted to provide him with a secure and permanent home through adoption.

The social worker found the allegations against Tiffany were unfounded. Tiffany, however, acquiesced in Stanley's move to the J.'s home because she did not want him to have to choose between homes. Tiffany said she would "always have a door open for him."

The court gave the Agency the discretion to change Stanley's placement, and in July 2012 it moved him to the J.'s home. L.R. wished to remain with Tiffany, and the Agency abided by her wish. The court continued the section 366.26 hearing to complete an adoption assessment.

The Agency changed its recommendation to a permanent plan of adoption. Its report describes Stanley as "cute, social, [and] intelligent," with "some emotional issues (grief and loss)." Further, he is healthy, has no developmental problems, and is "an excellent student," receiving "highest marks in every subject." He is "specifically adoptable" because the J.'s want to adopt him. Stanley calls the J.'s "mom" and "dad," and consistently said he wants to be their son. Additionally, there were 14 families in San Diego County and dozens of out-of-county families willing to adopt a child with Stanley's characteristics.

As to the sibling bond, the Agency's report states the J.'s were committed to all of the children even before the dependency proceedings began, and they intended to foster the sibling relationship. Further, it states: "In balancing the . . . sibling relationship against the benefits of adoption, it appears to be in Stanley's best interest to be adopted. Prior to dependency, Stanley lived in a chaotic household compounded by the trauma of discovering his mother deceased. Upon removal, to exacerbate the trauma, Stanley

experienced 7 placements in two years and has not had the opportunity to develop a sense of stability. . . . [O]ne can infer that in the event that parental rights are not terminated and dependency is continued for an additional 10 to 13 years . . . , it would further foster his concept of having 'temporary homes' and also place him in a vulnerable position of having additional placements in the future. [¶] Overall, children deserve the most permanent plan available and Stanley is in desperate need of stability and permanency."

At the February 2013 hearing, the social worker testified: "[Stanley's] progressing in [the J.'s] care. And he deserves permanency. He deserves stability. I mean, this is the first stable family he's had. He's demonstrating claiming behaviors by calling them mom and dad. I mean, he's doing wonderfully." The social worker believed adoption would not be detrimental to the sibling relationship because the J.'s intended to foster it through consistent contact and they were willing to have visits in their home.

Lisa testified she intended to adopt Stanley and to "maintain as much contact with [his siblings] as possible." The J.'s told Stanley he could call his siblings whenever he wanted, "let us know and we'll call them." The siblings were welcome to visit Stanley in the J.'s home and stay overnight. She had driven him to San Diego to visit them, although they are teenagers with busy schedules and at times they are difficult to reach. She conceded Stanley and L.R. had not visited since the preceding July.

Stanley III opposed the severance of his parental rights. He testified he wanted his son to know he loved him, and "I just did not give up." He also wanted Stanley to keep his last name and to preserve the legal relationship between Stanley and L.R. He

believed Stanley was happy with the J.'s., and he wanted his son to remain with them under a guardianship.

The court found by clear and convincing evidence that it is likely Stanley will be adopted and none of the exceptions to the adoption preference applies. It terminated parental rights, selected adoption as the preferred permanent plan, and designated the J.'s as prospective adoptive parents.

In addressing the sibling relationship exception, the court explained: "[Stanley] wants to be adopted. He was even asked about his siblings. And he said he will really miss his siblings if he couldn't have contact with them, but he still really wants to be adopted. He's made it very clear. And given his history, and the number of placements he's had and the instability he's had, I'm not surprised by that desire to just be guaranteed I am never leaving this home again. And I think adoption is the only plan that gives him that assurance you never have to leave us again."

DISCUSSION

I

" 'Adoption, where possible, is the permanent plan preferred by the Legislature.' [Citation.] . . . If the court finds a minor 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." (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) "The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) The

party raising an exception has the burden of proving its applicability. (*In re Megan S.*, *supra*, at p. 251.)

"One of the . . . statutory justifications for refraining from terminating parental rights and placing adoptable children in adoptive homes is the 'sibling relationship exception.' " (*In re Hector A.* (2005) 125 Cal.App.4th 783, 791; § 366.26, subd. (c)(1)(B)(v).) This exception applies when "[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, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

"To show a substantial interference with a sibling relationship the parent [or sibling] must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted (*L.Y.L.*).

This court has recognized "the 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, citing *L.Y.L., supra*, 101 Cal.App.4th at p. 950.) "[E]ven if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide." (*L.Y.L., supra*, at pp. 952-953.)

II

L.R. challenges the sufficiency of the evidence to support the court's finding the sibling relationship exception is inapplicable. "The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*L.Y.L., supra*, 101 Cal.App.4th at p. 947.)

We conclude the evidence amply supports the court's ruling. Stanley and L.R. undoubtedly love each other and have a close relationship. They lived together for a substantial portion of his life, and they shared common experiences, including the trauma of losing their mother. We cannot fault the court, however, for finding any potential detriment was outweighed by the benefits of adoption, particularly given Stanley's young age and the lengthy period of instability in his placements.

L.R. emphasizes a notation in an Agency report that when considering moving away from his sisters, Stanley said he felt bad and began to cry. L.R. concedes, however,

that he nonetheless wanted the J.'s to adopt him. Further, L.R. told the social worker that after a weekend visit with the J.'s Stanley cried because he did not want to leave them. In *L.Y.L., supra*, 101 Cal.App.4th at p. 952, we held that, standing alone, evidence a child "would be sad" if separated from a sibling was insufficient to show the court erred by finding the exception inapplicable. We come to the same conclusion here.

L.R. asserts the court should have selected guardianship because the J.'s were willing to care for Stanley permanently whether it selected adoption or guardianship, and Tiffany was willing to enter into a guardianship. We disagree. "Unlike adoption, other permanency options are not equivalent to the security of a permanent home." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 231.) " 'A guardianship is 'not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature." [Citation.] " (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1156.) "Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) Stanley is entitled to the security and permanence of an adoptive home with parents devoted to raising him to majority.³

³ We note that with the consent of adoptive parents, the "court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact." (§ 366.29, subd. (a).)

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

HUFFMAN, J.