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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.B., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARISSA B.,

Defendant and Appellant.

D064562

(Super. Ct. No. SJ12652)

APPEAL from a judgment of the Superior Court of San Diego County, Garry G. Haehnle, Judge. Affirmed.

William Hook, 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.

Marissa B. appeals the termination of her parental rights to her daughter, M.B., contending the court erred by declining to apply the beneficial relationship exception (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i)). We affirm.

BACKGROUND

In September 2011, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for eight-month-old M.B. The petition alleged M.B. was exposed to violent confrontations between her father, Ronald S., and Marissa (the parents). Specifically, on September 19, Marissa, while holding M.B., hit and bit Ronald, while Ronald pushed and tackled Marissa. During the fight, the parents and paternal relatives pulled on M.B.'s limbs. In August, the parents had been involved in a violent incident in M.B.'s presence.

M.B. was detained in Polinsky Children's Center, then moved to a foster home. In October 2011, the court made a true finding on the petition, ordered M.B. placed in foster care and ordered reunification services for the parents. In May 2012, Marissa gave birth to a baby boy, J.B. In September, J.B. was detained after Marissa tested positive for marijuana twice. In January 2013, M.B. was moved to a foster home with J.B. In March, at the 18-month review hearing, the court terminated reunification services. In May, M.B. was moved to a prospective adoptive home with J.B. In August, the court terminated parental rights. At the time of the hearing, M.B. and J.B. remained in the prospective adoptive home and their foster parents wished to adopt them both.

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

THE BENEFICIAL RELATIONSHIP EXCEPTION

If a dependent child is adoptable,² the court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) An exception exists if a parent has "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 overcome" (*Ibid.*) The existence of a beneficial relationship is determined by factors such as "[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.) Examining the evidence in the light most favorable to the judgment (*ibid.*), we conclude substantial evidence supports the court's conclusion that although Marissa visited consistently and regularly, she had no bond with M.B.

When M.B. was detained, she was suffering from diaper rash and chest congestion. She was fearful, cried inconsolably, pulled out her hair and responded to others by kicking and screaming. At the time of the hearing, M.B. was two and one-half

² Marissa does not challenge the adoptability finding.

years old and had been out of Marissa's custody for nearly two years. M.B. was generally in good health and shy but cheerful. Marissa had not learned to put M.B.'s needs above her own.

Except for a short period, Marissa's visits were supervised. During visits, for the most part, Marissa set appropriate limits, was affectionate and provided basic care. M.B. was excited to see Marissa and enjoyed visits, but did not turn to Marissa for support and love and did not ask for her between visits. M.B. had been living with the foster parents for more than three months and was "doing extremely well" in their home. She was building a relationship with them and turned to them for comfort, love and the fulfillment of her needs. She called her foster mother "mama." The foster parents wished to adopt M.B. M.B. needed the stability and permanency they offered.

The court did not err by declining to apply the beneficial relationship exception.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.