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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALANA M., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. CORA R., Defendant and Appellant.	D065419 (Super. Ct. No. J518257)

APPEAL from an order of the Superior Court of San Diego County, Felicia M Katsarov, Juvenile Court Referee. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, Patrice Plattner-Grainger and Lisa M. Maldonado, Deputy Counsel Counsel, for Plaintiff and Respondent.

James A. Moran, under appointment by the Court of Appeal, for Minor.

Cora R. appeals an order of the juvenile court terminating her parental rights to her daughter, Alana M., under Welfare and Institutions Code section 366.26 and placing Alana for adoption. (All further statutory references are to this Code.) She contends the evidence supported a finding that the termination of parental rights was detrimental to Alana within the meaning of section 366.26, subdivision (c)(1)(B) (section 366.26(c)(1)(B)) based on the beneficial parent-child relationship between them. We disagree and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2011, the San Diego Health and Human Services Agency (the Agency) filed a dependency petition on behalf of three year-old Alana after she received medical attention for a fractured arm, and medical personnel found suspicious loop-shaped scars on her chest, as well as bruises, abrasions and marks on her face and body. Alana was removed from Cora's custody and initially detained at the Polinsky Children's Center, although she was later placed with her paternal grandmother.

Cora maintained that she had nothing to do with Alana's injuries, but made numerous inconsistent and implausible statements about their causes. She ultimately admitted, however, that she was involved in the incident that resulted in Alana's fractured arm. The juvenile court issued an order precluding contact between Cora and Alana, although in mid-November 2011, Cora was authorized to begin twice weekly supervised visits. Cora engaged in visitation and started attending court-ordered therapy, but stopped going after three sessions.

In January 2012, Cora was criminally charged with felony child abuse and corporal injury on a child in a situation where great bodily injury was likely and the criminal court issued a protective order precluding her from visiting with Alana.

Thereafter, Cora completely stopped participating in reunification services. Alana's paternal grandmother expressed a willingness to adopt or become the long-term caregiver for Alana if reunification efforts proved unsuccessful.

In June 2012, the criminal court lifted the protective order and Cora resumed her visits with Alana three hours a week. Because Cora continued to minimize her responsibility for Alana's injuries and had not made significant progress in either addressing her mental health needs or attending the court-ordered child abuse course, visits continued to be supervised. She was, however, fairly consistent in attending visits with Alana.

In August 2012, Cora pled guilty to one count of felony child abuse and was placed on four years' probation. Although she was ordered to participate in a 52-week child abuse prevention course, she failed to do so; she also failed to undergo mental health treatment, despite the indication that she might need psychotropic medication and despite her assurances to the social worker that she was receiving treatment. She did, however, successfully complete a 15-week Incredible Families program and continued to maintain visitation and engage positively with Alana. In January 2013, the court ordered Cora to undergo a psychological evaluation and to participate in a 52-week child abuse prevention course.

Based on reports from the social worker about health issues that Cora claimed to have that were not reflected in her medical history and Cora's failure to attend the child abuse prevention program classes, her therapist began to question whether she had been truthful with him in her sessions; after the therapist confronted Cora about this, she stopped seeing him. She also repeatedly failed to appear for a psychological evaluation. After conducting a bonding study, Dr. Robert Kelin opined that Cora and Alana had a

moderate to strong bond, although he could not say whether the bond was primary because he had not also seen Alana and her paternal grandmother. He opined "there is a good chance that [Alana] could be hurt if [that] bond [was] severed."

Although Cora had been fairly consistent in visitation, the Agency noted her failure to progress after 18 months of services and her lack of honesty throughout Alana's dependency and recommended that the juvenile court terminate services and set a section 366.26 hearing. In May 2013, the court found that Cora had not made substantial progress on her case plan, and at the section 366.26 hearing it terminated Cora's parental rights and ordered Alana placed for adoption. Cora appeals.

DISCUSSION

The purpose of the selection and implementation hearing is to "provide stable, permanent homes for [dependent children]." (§ 366.26, subd. (b).) Thus, a juvenile court at a section 366.26 hearing must select one of three plans for the child: adoption, guardianship or long-term foster care. (§ 366.26, subd. (b)(1)-(4); *In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) A plan of adoption is the legislatively preferred plan and if the court finds the child to be adoptable, it must terminate parental rights unless a statutory exception, setting forth circumstances in which such a termination is deemed detrimental to the child, applies. (§ 366.26, subd. (c)(1); *In re Brian R.* (1991) 2 Cal.App.4th 904, 923-924.)

Cora contends that the juvenile court abused its discretion in terminating her parental rights based on the exception set forth in section 366.26(c)(1)(B), which provides that the court should not terminate the parental rights where the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid.*) To establish the applicability of this exception, a

parent must show that, through regular visits and contact, she has maintained or developed a significant, positive, emotional parent-child attachment with the child and that their relationship is so beneficial to the child "as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Here, the juvenile court concluded that Cora's relationship with Alana was not of such a nature as to outweigh the benefits of placing Alana for adoption. In determining whether sufficient evidence supports this finding, we review the evidence in the light most favorable to the court's order, giving the benefit of every reasonable inference, and resolving all conflicts, in support of it. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Substantial evidence amply supports the court's finding the beneficial relationship exception of section 366.26(c)(1)(B) was inapplicable here.

Cora clearly had an affectionate relationship with Alana and there was a bond between them, but this alone does not establish a beneficial relationship under section 366.26(c)(1)(B). "The existence of interaction between natural parent and child will always confer some incidental benefit to the child. Nevertheless, the exception in section [366.26, (c)(1)(B)] requires that the parent-child relationship promote the well-being of the child *to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents*." (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342, italics added, citing *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In addition to regular visitation, there must be a significant, positive emotional attachment between child and parent, the termination of which would greatly harm the child. (*In re Autumn H.*, *supra*, at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Although the relationship between Cora and Alana had positive attributes, the quality of their interactions was inconsistent and often did not appear to be a normal parent/child relationship. This alone is enough to render section 366.26(c)(1)(B) inapplicable. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.) Further, the evidence showed that their relationship had had some negative impacts on Alana. Their visits were sporadic over a significant period of time early in Alana's detention and, after Cora began visiting regularly, she often arrived late. Particularly as the detention proceeded, the visits were punctuated by bickering or conflict between Cora and Alana and resulted in Alana disengaging from Cora or seeking out companionship from the social worker or other children in the area and separating easily from Cora when visits were over. By comparison, Alana was thriving in the home of her paternal grandmother, who was willing to adopt her.

Cora nonetheless points to the bonding study and the testimony of Dr. Kelin about her moderate to strong bond with Alana in arguing that the juvenile court erred in terminating her parental rights. However, Dr. Kelin's opinion was at best equivocal, indicating merely that there was a "good chance" that Alana could be hurt if the bond was severed. It was the province of the juvenile court to weigh conflicting evidence, consider the credibility of witnesses and "resolve conflicts in, or make inferences or deductions from the evidence." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) On appeal, we cannot reweigh the evidence or second-guess the juvenile court's credibility determinations.

Based on this evidence, the juvenile court reasonably concluded that the nature of the relationship between Cora and Alana did not promote Alana's well-being to such a degree as to outweigh the well-being Alana would gain from being permanently placed in

an adoptive home. Thus, the statutory exception based on the existence of a beneficial parent-child relationship did not preclude a termination of Cora's parental rights.

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P.J.

HALLER, J.