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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re W.N., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY
DEPARTMENT OF PUBLIC SOCIAL
SERVICES,

Respondent,

v.

S.N. et al.,

Petitioners.

E053957

(Super.Ct.No. SWJ008865)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J.
Rushton, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Petitioner S.N.
Konrad S. Lee, under appointment by the Court of Appeal, Petitioner D.W.
Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County
Counsel, for Respondents.

Appellants S.N. (father) and D.W. (mother) are the parents of W.N. (the child). Their parental rights as to the child were terminated. Father and mother filed separate briefs on appeal and both claim that the beneficial relationship exception applied. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ They also join in each other's arguments. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 14, 2010, the child, who was 18 months old at the time, was at home and hit his head on a table. Mother drove him to the hospital and, on the way there, the child began "acting strange." Mother pulled her car over and called 911. Once at the hospital, the child became increasingly agitated and began smacking himself in the face. He tested positive for methamphetamine.

On November 16, 2010, the Riverside County Department of Social Services (the department) filed a section 300 petition on behalf of the child. An amended petition was later filed. The amended petition alleged that the child came within the provisions of section 300, subdivisions (b) (failure to protect) and (j) (abuse of a sibling). The petition included the allegations that: (1) mother and father (the parents) neglected the health, safety, and well-being of the child; (2) mother abused controlled substances; (3) the parents had failed to benefit from family reunification services offered from December 2008 to January 2010, with regard to their other child, B.N., and their parental rights were terminated as a

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

result; (4) father was diagnosed with mental health issues; and (5) the child's sibling, B.N., had been abused and/or neglected, and the child was at risk of suffering similar harm.

Detention

The social worker filed a detention report and stated that the parents were not married and were both unemployed. They lived in a trailer on mother's parents' property. The maternal grandmother was an "intravenous drug user." The parents admitted that they had used drugs since they were young. Mother began using marijuana and methamphetamine at the age of 12. She admitted to currently using both substances on a regular basis. Father started using when he was 14 years old. He said he currently smoked marijuana daily. He admitted to using methamphetamine the day before the child tested positive for methamphetamine at the hospital. The parents also admitted to using drugs and caring for the child while under the influence.

At the detention hearing on November 17, 2010, the court placed the child in the temporary custody of the department and detained him in foster care.

Jurisdiction/disposition

The social worker filed a jurisdiction/disposition report on December 15, 2010, and reported that the child's sibling, B.N., was born positive for methamphetamine in 2008. He was taken into protective custody, and the parents were offered reunification services. They failed to complete their case plan, and their parental rights were terminated on January 14, 2010. B.N. was adopted by a

family on July 16, 2010. The child in the instant case was placed in foster care with that same family.

At a contested jurisdiction hearing on January 26, 2011, the court found father to be the presumed father of the child. The court also sustained the amended petition and adjudged the child to be a dependent of the court. The court denied reunification services to the parents pursuant to section 361.5, subdivision (b)(10) and (b)(11). The court ordered supervised visitation, twice a month.

Section 366.26 and Section 388 Petitions

The social worker filed a section 366.26 report on May 6, 2011, recommending that parental rights be terminated and that adoption with the current foster parents be the permanent plan. The social worker reported that the parents had voluntarily enrolled in an inpatient treatment program and had been there for 90 days. The social worker noted that the parents were free to leave the program at any time, which would put the child at risk due to the parents' lengthy drug history.

The social worker reported that the parents had visits with the child twice a month at the facility where the parents resided. The social worker noted that the visits were "consistent and adequate," with the exception of one visit, when father appeared to be under the influence of drugs.

The social worker observed that the child was bonded with the current caregivers, and they were meeting his needs and providing him with a safe and

secure home environment. The child appeared happy in his placement, and he was bonded with his sibling who lived with him there. The social worker observed that the child no longer seemed attached or bonded with his birth parents and felt more secure in his foster home. The foster parents had demonstrated their ability to provide the child with a secure home, and they had expressed their willingness to adopt him. The foster parents said they had a strong bond and attachment to the child and they felt a close connection to him since they had recently adopted his brother. The foster parents' own children were close to the child and wanted him to become a permanent member of their family.

On May 25, 2011, father filed a section 388 petition, requesting the court to either place the child with him and mother under a family maintenance plan, or to “reinstate” reunification services to him and mother and vacate the section 366.26 hearing. As to changed circumstances, he alleged that he and mother had been participating in an inpatient drug program since February 2011 and were doing well, they had completed a parenting program, they had been attending visits regularly, and the visits had been positive. As to best interest of the child, father alleged that the parents had turned their lives around in the inpatient program and the visits exhibited a close bond between them and the child. He further alleged that the parents had another baby and that baby had never been removed from them. Mother filed a separate section 388 petition on the same day, essentially setting forth the same allegations and requesting that she be provided with reunification services.

On June 22, 2011, after hearing testimony, the court denied both section 388 petitions. The court noted that the parents were touting five months of sobriety in a faith-based sobriety program. However, they had not shown the ability to be sober in the real world. Without a proven record of sobriety in any other environment, the court found that their circumstances were changing, but had not changed. The court further noted that the child had a very strong bond with the current caretakers, and with his brother who lived with them. The court denied the section 388 petitions and immediately proceeded with the section 366.26 hearing.

Father asked the court to consider the sibling exception (§ 366.26, subd. (c)(1)(B)(v)) to the termination of parental rights. Mother joined in his arguments, and also asked the court to consider the beneficial parental relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) The court found that the parents had not established those exceptions. The court concluded that none of the exceptions to the termination of parental rights applied. The court then found it likely that the child would be adopted and terminated parental rights as to both parents.

ANALYSIS

The Beneficial Parental Relationship Exception Did Not Apply

The parents contend that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the 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).) The phrase “benefit from continuing the relationship” refers 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.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) It is the parent’s burden

to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

In support of his position, father asserts that the child lived with him and mother until the child was 18 months old, that he visited with the child consistently, that he and mother brought him cupcakes for his birthday and Easter eggs for Easter, they played together and watched movies, they let him feed his baby brother, and they told him they loved him. Father also states that the child would reach out when he saw them, and he called them “Daddad” and “Mommy.” In addition, father asserts that he remained sober during the five months prior to the section 366.26 hearing, even though he was not given reunification services.

Mother similarly asserts that she visited the child regularly “with positive results.” She states that they “did activities typical of a parent-child relationship[,] including playing together and eating as a family.”

The parents’ interactions with the child do not even begin to demonstrate that their relationship with the child promoted his well-being “to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) Neither father nor mother has proffered any evidence to support a finding that the child had a “substantial, positive emotional attachment [with them] such that the child would be greatly harmed” if the relationship was severed. (*Ibid.*) In fact, the social worker observed that, after living with the prospective adoptive parents, the child “no longer appear[ed] attached or bonded with his birth parents and [felt] more

safe and secure in the prospective adoptive home.” At best, mother’s and father’s supervised interactions with the child “amounted to little more than playdates for him with . . . loving adult[s].” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1316.)

In contrast, the evidence shows that the child had a strong bond with the prospective adoptive parents, and they were successfully meeting his emotional, physical, and educational needs. The child was also bonded with his older brother, who had been adopted by the same family, as well as with the prospective adoptive parents’ other children. The prospective adoptive parents felt like the child was a part of their family, and they were committed to adopting him.

Mother additionally asserts that, according to *In re S.B.* (2008) 164 Cal.App.4th 289, 293-294 and *In re Amber M.* (2002) 103 Cal.App.4th 681, 690-691, a parent’s efforts at reunification may be considered as part of the basis for determining that the beneficial parental exception applies. She then asserts that she did “everything that was asked of her.” However, mother’s argument is misplaced because she was denied reunification services. Thus, whether or not she complied with a case plan is inapplicable here, since she never participated in reunification services.

Mother further cites *In re Zeth S.* (2003) 31 Cal.4th 396 (*Zeth S.*) and *In re Edward R.* (1993) 12 Cal.App.4th 116 (*Edward R.*), in stating that the family’s circumstances as they existed at the time of the section 366.26 hearing should be considered. Mother claims that her “successful efforts at drug rehabilitation,

coupled with her long established, loving relationship with [the child], form a compelling reason not to terminate her parental rights.” She points out that she had voluntarily enrolled in a one-year treatment program, she had remained sober for five months of the seven-month dependency, she was now “drug free,” and she completed and/or was attending parenting, anger management, and substance abuse classes.

Mother’s argument fails. We first note that her reliance on *Zeth S.*, *supra*, 31 Cal.4th 396 is misplaced. *Zeth S.* concerned the issue of whether or not postjudgment evidence could be considered in an appeal of an order terminating parental rights. (*Id.* at pp. 407, 413.) *Edward R.*, *supra*, 12 Cal.App.4th at page 127, does state that present circumstances are relevant in determining whether the minor would benefit from continuing the parental relationship. However, the circumstances cited by mother do not aid her in establishing that the beneficial parental relationship exception applied. (See *ante.*) Moreover, mother’s declaration that she has been “successful” in her drug rehabilitation, presumably because she remained sober for five months, is premature in light of her lengthy drug history. We further note that the court denied her section 388 petition, concluding that her circumstances had not actually changed since she had not shown the ability to remain sober outside of her treatment program.

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.

DISPOSITION

The orders are affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.