

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.O., et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.V.,

Defendant and Appellant.

E054397

(Super.Ct.No. RIJ118377)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County
Counsel, for Plaintiff and Respondent.

S.V. (mother) is the mother of six children, four of whom are the subject of these proceedings: I.O., C.O., J.O. and L.O. (children). When the children were initially detained in December 2009, the children were, respectively, ages 10, 8, 5 and 4. The children have two older siblings, then ages 11 and 12, who had gone to live with other relatives and were not part of these proceedings. In this appeal, mother challenges the juvenile court's decision at a hearing held under Welfare and Institutions Code section 366.26¹ to terminate her parental rights and place the children with their paternal grandparents for adoption. Specifically, mother argues: (1) the court should have applied the parental relationship exception to the presumption for adoption; and (2) the court erred when it selected adoption as the children's permanent plan rather than legal guardianship. As discussed below, we affirm the juvenile court's rulings.

FACTS AND PROCEDURE

Initial Referrals and Detention—September through December 2009

On September 29, 2009, social workers and law enforcement arrived at mother's home after an immediate response referral alleged that the home smelled bad, was filled with cockroaches, was strewn with trash and marijuana pipes, and the toilets and all bathroom drains were backed up and unusable. At that time, mother and her six children were not at the home because they had been staying with the paternal grandmother for the previous week. Mother told the social worker when contacted later that day that she had

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

lived in the home with her children, and that the plumbing had started to malfunction about three months prior when six of her relatives had moved in with them. A plumber had been out several times but had not been able to remedy the problems. Mother stated she had spoken to the landlord about the cockroaches but the landlord had not taken any action. Mother also stated that she could not get her relatives to leave the home, and she intended to find herself and her children another place to live. In addition, Mother stated she was afraid of her adult nephew living in the home because he regularly beat up his girlfriend and threatened mother, used drugs, and had gang affiliation. Several of the children told the social worker that they did not feel safe in that home because the adult nephew was always fighting with someone. One of the children stated there was not enough food in the house and that they had been going to their paternal grandmother's to eat. J.O. had significant tooth decay. On the date of contact, mother agreed to sign a safety plan, to participate in services, to remain living with the paternal grandmother, and to take J.O. to the dentist.

In early October 2009, mother sent the two oldest children to Washington to live with relatives.

On October 30, 2009, the Department of Public Social Services (DPSS) received another referral alleging that mother would leave the children with relatives and then disappear for days. Sometimes mother would take the two youngest children with her; when they returned to paternal grandmother's house, the children would be hungry and dirty. Mother was not providing the children with food or clothing and had not taken J.O. to the dentist. Mother also stated on several occasions that she was depressed and stated,

“I don’t know what I’m doing anymore.”² The social worker contacted mother and attempted to meet with her over the next few weeks, but mother did not cooperate. On December 8, 2009, relatives told the social worker that the children were not being allowed to attend school because mother had not provided proof of residence. On that date, the children were taken into protective custody. In an interview with the social worker that day, mother admitted to smoking marijuana, using methamphetamines once or twice per week, and said she was drinking alcohol a lot more than usual. Mother stated that she had been overwhelmed with everything in her life and had been depressed. She stated she had trouble functioning and doing everyday things. She was stressed out because the children’s father was not there to help her with the children and sent no money to help. Mother had not taken J.O. to the dentist and had not participated in any of the services that were part of the safety plan she had signed in September.

At the detention hearing held on December 11, 2011, the juvenile court ordered the children detained and placed with the paternal grandmother.

Jurisdiction and Disposition—December 2009 - February 2010

On December 21, 2009, mother was arrested and charged with felony possession of controlled substances. The social worker interviewed the children on December 30,

² Mother and the children’s father had both dropped out of high school in 1997 when mother became pregnant with their first child. Father worked construction to support the family. The parents married in 2004 and continued to live together until 2006, when the father was deported to Mexico. Father was not supporting the family from Mexico and mother found it very difficult to raise the six children without his help. Father was deported again in 2007 after being caught trying to re-enter the United States illegally, and was subsequently incarcerated in 2010 after attempting again to re-enter the country illegally. Father kept in contact with mother and the children by telephone.

and each child stated that they missed their mother. Mother visited with the children consistently but made no effort to keep in contact with the social worker or to begin reunification services. Mother brought soda, candy, chips, and cookies to visits after being asked not to because of the children's dental issues and one of the children's weight issue. The social worker expressed concern that mother showed greater interest in her daughters during visits and sometimes ignored or belittled her two sons. On January 19, 2010, mother tested positive for methamphetamines and marijuana.

At the jurisdiction and disposition hearing held on February 18, 2010, the juvenile court found the allegations in the section 300 petition to be true and ordered mother to participate in reunification services. The service plan consisted of individual counseling, parenting class, substance abuse treatment, and random substance abuse testing.

Six-month Review—February to August 2010

During this reporting period, mother remained unemployed and took turns living with friends and relatives. The children told the social worker that if they could not reunify with their mother, they would like to remain with their paternal grandmother. Mother had not participated at all in any of her reunification services, and so had not progressed to unsupervised visits. Mother was inconsistent with the supervised weekly visits at fast food restaurants and would go several weeks without attending the visits. The quality of the visits was uneven, as mother would sometimes disconnect with the children during the visit and allow them to go off and play on the playground without her. Mother spent time on her cell phone and talking with relatives she had brought with her rather than interacting with the children. Mother became confrontational if the visitation

monitor attempted to redirect her to focus on the children. However, the children were very glad to see their mother.

At the six-month review hearing held on August 19, 2010, the juvenile court described mother's progress on her case plan "unsatisfactory" and offered her six more months of reunification services.

Twelve-month Review—August 2010 to March 2011

On October 1, 2010, mother was arrested for drug possession and being under the influence. On October 5, she was placed on formal probation for three years. Mother had not yet participated in any services and still had no income or steady place to live. However, in January 2011, after missing several appointments she had made with the social worker, mother told the social worker that she was ready to begin services. Mother attended an intake appointment at a mental health substance abuse program on February 9, 2011, but never returned. Mother was arrested on February 28, 2011, for violating probation and was released March 2, 2011, after being reinstated on probation. In December 2010, J.O.'s therapist contacted the social worker and recommended J.O. not be forced to visit with mother because he was angry with her for leaving him and it caused him stress, which in turn affected his behavior in school and at home. Mother continued to visit with the children at fast food restaurants with more consistency than previously, but had many of the same issues as in the previous reporting period, e.g., cell phone use, focusing on the children, and accepting direction. The paternal grandmother asked that future visits be at the DPSS office so she would not have to supervise them.

At the 12-month hearing held on March 9, 2011, I.O. was present and told the juvenile court, “I would like to stay with my grandma. ¶ . . . ¶ And when my mom is ready, I want to go with her.” The court terminated reunification services and set a section 366.26 selection and implementation hearing for July 7, 2011. The court reduced visitation from weekly at a fast food restaurant to twice monthly at the DPSS office.

Section 366.26 Hearing—March to July 2011

In the report filed for the section 366.26 hearing, the social worker stated the children were doing well with their grandmother and had told her that if they could not reunify with their parents they would like to be adopted by their grandmother. Mother was authorized to have two supervised visits with the children a month at the DPSS office, but only attended about once a month, for a total of four visits during this reporting period. Mother said her transportation and telephone were unreliable. Mother’s visits went well overall, but she continued to have trouble focusing on the visits if her phone rang, and she struggled to interact with all of the children equally.

Mother was not present at the section 366.26 hearing held on July 7, 2011, because she was in a substance abuse recovery program. Mother’s counsel on that date filed a section 388 petition for modification based on mother’s enrollment in the program and her close ties with the children. Mother asked for reunification services to be extended. The juvenile court denied the motion because there was no evidence presented that mother was in a substance abuse program. In any event, even mother’s proven presence in such a program would have established only changing circumstances, not changed circumstances.

The juvenile court denied mother's motion to continue the hearing so mother could be present. The court denied the DPSS motion to continue the hearing so it could complete and file the adoption assessment. The social worker testified that the paternal grandmother had been successfully screened, was capable of adopting the children, and wished to do so. Mother's counsel argued that mother had maintained contact with the children, and the court should find that the parental relationship exception to the preference for adoption was applicable. The court found that the exception did not apply and terminated mother's parental rights. The court ordered adoption as the children's permanent plan, with preference to the paternal grandmother. This appeal followed.

DISCUSSION

1. Parental Relationship Exception

Mother argues the juvenile court erred when it determined that the parental relationship exception to the preference for adoption did not apply in this case. We disagree.

In pertinent part, the parental relationship exception set forth at section 366.26, subdivision (c)(1)(B)(i), provides as follows: “[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

“We must affirm a trial court’s rejection of these exceptions if the ruling is supported by substantial evidence. [Citation.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) “We determine whether there is substantial evidence . . . by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.]” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1235.)

“The parent has the burden to show that the [parental relationship] exception applies.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) To meet this burden, it is not enough for the parent to show he or she occupies “a pleasant place” in the child’s life (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324) or to show “frequent and loving contact.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) For the exception to apply, the parent must show “the 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.) “The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The 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 are some of the variables which logically affect a parent/child bond.” (*Id.* at pp. 575-576.) The exception does not “permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship

maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

Here, mother’s visits with the children throughout the dependency were much less than regular. During the first six months, mother was inconsistent with the supervised weekly visits at fast food restaurants and would go several weeks without attending the visits. During the second six months, mother was more consistent. However, between the 12-month review hearing in March 2011, and the section 366.26 hearing in July 2011, mother attended only four of the twice-monthly visits to which she was entitled. In addition, mother chose not to maintain telephone contact with the children.

Even if mother’s visitation and contact with the children could be characterized as “regular,” substantial evidence supports the juvenile court’s finding that the children would benefit more from the stability of an adoptive home than from a continued relationship with mother. Although the children were ages 11, 10, 7, and 6 on the date of the section 366.26 hearing and stated that they enjoyed their visits with mother, they had been in their grandmother’s care for the previous one and one-half years and were comfortable there. Mother presented no evidence that termination of her parental rights would be detrimental to the children. The children stated that their first choice was to reunify with mother, but if not, they wanted to remain with grandmother and be adopted. This being said, there is no indication in the record that mother has much chance of reunifying with her children at any point in the near future. Mother declined to participate in any services at all since September 2009. Even after agreeing in January 2011 to participate in services, she had failed to do so by March 2011. The first

indication that mother actually participated in services was in July 2011, when mother filed a section 388 petition to inform the court that she was finally in a drug treatment program, after 21 months of failing to participate in any services. More telling, even though mother professed to love her children and the children said they missed mother and preferred to return to her care, mother simply was not consistent with her visits. Even in the period immediately prior to the section 366.26 hearing, the children had to bear the disappointment of mother not showing up for half of her scheduled visits, which she blamed on transportation and telephone problems. In contrast, the record shows that the paternal grandmother provided a stable home for the children, that they were happy and doing well in her care, and that they were bonded with her. Further, the grandmother was committed to adopting the children, whereas mother could not get herself together enough to visit with them often enough to graduate to unsupervised visitation, much less complete the services necessary to regain custody of the children. The children simply could not count on mother to be consistently present for them, either physically or emotionally, whereas the record indicates they could depend on their grandmother. To conclude, although the children, especially the older ones, did have a bond with their mother, substantial evidence supports the juvenile court's finding that the well-being the children derived from this bond did not outweigh the benefit to them of a stable, adoptive home with their grandmother.

2. Legal Guardianship versus Adoption

Mother argues the juvenile court erred when it chose adoption as the children's permanent plan rather than legal guardianship. However, as DPSS points out, the

juvenile court was required to choose adoption as the permanent plan once it determined the children were adoptable and that none of the exceptions to the preference for adoption applied. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) Thus, as explained *ante*, because mother did not carry her burden to show that the situation was exceptional enough to merit a finding that the parental relationship exception to the preference for adoption existed, the court did not err when it chose adoption as the children's permanent plan.

DISPOSITION

The juvenile court's rulings are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

RICHLI

J.

MILLER

J.