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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.R., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.R.,

Defendant and Appellant.

E054560

(Super.Ct.No. J231210)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Lily Sinfield,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Svetlana Kauper, Deputy County Counsel,
for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, D.R. (Father), appeals from the juvenile court's order terminating parental rights and placing his four-year-old son J.R. for adoption. Father claims insufficient evidence supports the court's determination that the parental benefit exception to the adoption preference did not apply. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We conclude that substantial evidence supports the determination, and affirm the order.

II. FACTS AND PROCEDURAL HISTORY

On February 3, 2010, when J.R. was nearly three years old, he was admitted to a hospital after he allegedly fell down three to four stairs while in the care of his mother's companion, F.H. Upon his admission, J.R. had multiple bruises in different stages of healing, including three on his left knee, others on his left ankle and left hand, one on his right chest and forearm, one on his abdomen, and lacerations to his right eye and the bridge of his nose. He also had a perforated bowel that was corrected with surgery. According to doctors, the perforated bowel injury was inconsistent with a fall down three to four stairs, but was consistent with "a significant blow" to the abdomen "tantamount to an impact experienced in an auto accident." Several of J.R.'s other injuries were also deemed inconsistent with a fall down three to four stairs. J.R. also had bald spots on his head that were consistent with his hair having been pulled out, or "inflicted trauma(s)."

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

Father lived in Bullhead City, Arizona in February 2010 and was not present when J.R. was injured. J.R.'s mother told the social worker she believed F.H. caused J.R.'s injuries. In November 2009, when J.R. was less than two years old, he suffered a broken knee. The San Bernardino County Children and Family Services (the Department) investigated the matter but deemed the referral unfounded at the time. Father was not living with J.R. when he suffered the broken knee.

While living in Arizona in 2007, both the mother and Father were the subjects of 10 child protective services investigations. All of the referrals were deemed unsubstantiated, but the mother told the social worker she lied when she told Arizona investigators that Father had never physically abused J.R. or his half sister. The mother and Father were on probation for domestic violence, and other children were removed from Father's care in Nevada in 2006. Father failed to reunify with those children, and they were returned to their mother's care. Father's home was not considered for placement of J.R.

J.R. was released from the hospital and placed in foster care on February 11. Due to his history of seizures, J.R. was deemed a special needs child and placed on antiseizure medication. J.R. did not speak in words, had an unsteady gait, and fell when he attempted to run. He also appeared small for his age. According to the mother, J.R. was born with respiratory distress and was on oxygen for the first two and one-half months of his life.

At the detention hearing on February 8, Father was granted weekly supervised visitation and apparently had a visit with J.R. after the hearing. At the jurisdictional hearing in March, the court sustained allegations that (1) the mother failed to protect J.R.; (2) Father failed to supervise or protect J.R. from the conduct of F.H.; and (3) J.R. was under the age of five and suffered severe physical abuse by a person the mother knew or reasonably should have known was abusing him. (§ 300, subds. (b), (e).)

Prior to the dispositional hearing in May 2010, the Department recommended services for Father “with a great deal of trepidation” given his history of domestic violence and incarcerations, his failure to reunify with other children, and the Department’s suspicion that he “applied excessive physical force” on J.R. and J.R.’s half sibling while the children were in his care. At the dispositional hearing, the court awarded Father services and continued his weekly supervised visitation. Father’s case plan included general counseling, a domestic violence program, and parenting classes.

By November 2010, Father had not completed his domestic violence program, but was compliant with the parenting and anger management portions of his case plan. He was unemployed, frequently changed his residence, and did not stay in contact with the social worker. According to the social worker, Father had poor parenting skills and had not benefited from the parenting program.

Following his initial visit with J.R. in February, Father did not visit J.R. again until October 27, 2010. Father unreasonably expected J.R. to behave and act age appropriate even though he was unable to do so due to his disabilities. Father would call J.R. names

like “dork,” “guber,” and “clutz,” and became upset with J.R. when the child did not do what Father asked of him or when the child wanted to return home with his foster parents.

Before the six-month review hearing, the Department recommended terminating Father’s services, but at the time of the hearing in January 2011, changed its recommendation to continuing Father’s services. At the hearing, county counsel pointed out that Father had “only had a handful of visits” with J.R. since the inception of the case, and needed to visit more often if reunification was going to be successful. The court continued Father’s services and visitation.

In the 12-month review report, the Department again recommended terminating Father’s reunification services. As of March 30, 2011, Father had not completed general counseling and the social worker was unable to verify whether he had enrolled in a domestic violence course. The social worker felt Father still had an anger management problem even though he had completed a parenting and anger management course. Father did not notify the social worker of his March 8 arrest on an outstanding warrant.

Additionally, Father’s living situation was still unstable as of March 30, 2011. He had not been employed since January; he was living with a girlfriend in Fort Mojave, Arizona; and he did not have a car or driver’s license. He had been provided with gas vouchers, however, and had been regularly visiting J.R. since January 2011.

At the 12-month review hearing in April 2011, the court terminated Father’s services after finding he failed to regularly participate in, make substantial progress in, or

substantially benefit from, his case plan. The court authorized J.R.'s placement with his maternal aunt and uncle in Sacramento, and reduced Father's visitation to a once monthly, supervised one-hour visit.

In May 2011, J.R. was removed from his foster care placement in Victorville and was placed with his maternal aunt and uncle in Sacramento. Father was unable to visit J.R. after he was placed in Sacramento because he did not have his own vehicle or the means to travel that far from Arizona. Between May and August 2011, Father made two inquiries concerning J.R.'s well-being and requested one telephone call, which was arranged for July 28, 2011.

In a section 366.26 report dated August 11, 2011, the Department recommended terminating parental rights and placing J.R. for adoption. J.R. was still living in Sacramento with his maternal relatives, who had become his prospective adoptive parents. The prospective adoptive parents were willing to adopt J.R. and were capable of caring for his special needs. J.R. called his prospective adoptive parents "mommy and daddy," and looked to them for his daily support.

A contested section 366.26 hearing was held on September 20, 2011. Father claimed J.R. knew him as "his daddy," and recounted telephone conversations in which J.R. told Father about his friends and his fascination with cars. Father believed J.R. would benefit from a relationship with his paternal half siblings and extended family. Father's counsel objected to termination of his parental rights on the ground Father had a "significant relationship" with J.R. J.R.'s counsel did not believe Father had a parental

bond with J.R., and argued that the relationship was more akin to “a friendly visitor” or someone J.R. recognized on the telephone. At the conclusion of the hearing, the court found that the parental benefit exception did not apply, terminated parental rights, and placed J.R. for adoption.

III. DISCUSSION

Father claims the order terminating parental rights must be reversed because insufficient evidence supports the court’s determination that the parental benefit exception did not apply. We disagree.

A. *Applicable Law*

At a permanency planning hearing, the juvenile 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 Autumn H.* (1994) 27 Cal.App.4th 567, 573.) “Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

The parental benefit exception applies when two conditions are satisfied: the 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); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) To show that the exception applies: “The parent must do more than demonstrate ‘frequent and loving contact[,]’ [citation] an emotional bond

with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a ‘parental role’ in the child’s life.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.)

The parent must also show that the parent-child 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 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 Derek W.*, *supra*, 73 Cal.App.4th at p. 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“‘The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including 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. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.’ [Citation.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349-1350.)

On appeal, we review the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re S.B.*, *supra*, 164 Cal.App.4th at p. 298.)

B. *Analysis*

Father claims he maintained regular visitation and contact with J.R., in view of his out-of-state residence and lack of transportation. Though he admits he “got a late start” in visiting with J.R. and missed many visits due to his lack of transportation, Father points out that he had been regularly visiting J.R. for two to three months when his reunification services were terminated in April 2011. Father also notes that he maintained telephonic contact with J.R. after J.R. was placed with the maternal aunt and uncle in Sacramento, and Father could no longer visit J.R. in person.

But even if Father maintained regular visitation and contact with J.R. under the circumstances (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538 [benefit of parent’s continued contact with minor must be considered in the context of the limited visitation the parent was permitted to have]), substantial evidence shows that the benefits J.R. would realize from being adopted outweighed the benefits he would realize from maintaining his relationship with Father. Indeed, though the juvenile court acknowledged that there was a bond between Father and J.R., the court noted that that bond did not rise to the level of a parental bond.

In sum, substantial evidence supports the court’s determination that the parental benefit exception did not apply. J.R. was only four years old at the time of the section 366.26 hearing, his prospective adoptive parents were willing to adopt him, and were able to care for his special needs. Throughout the reunification period, Father consistently failed to demonstrate that he was capable of parenting J.R. or caring for his special needs. Nor was there any indication that severing J.R.’s relationship with Father would deprive J.R. of a “*substantial*, positive emotional attachment such that [he] would be *greatly* harmed.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

IV. DISPOSITION

The order terminating parental rights and placing J.R. for adoption is affirmed.

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/s/ King
J.

We concur:

/s/ Hollenhorst
Acting P.J.

/s/ Codrington
J.