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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.R.,

Defendant and Appellant.

E054604

(Super.Ct.No. RIJ117469)

OPINION

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

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

B.R. (Mother) appeals from an order terminating her parental rights concerning her child, A.R., pursuant to Welfare and Institutions Code¹ section 366.26. Mother contends the trial court erred in denying her section 388 petition and then failing to apply the beneficial parental relationship exception to adoption. We affirm the order.

I. PROCEDURAL BACKGROUND AND FACTS

A.R. was born in March 2011. Mother had previously failed to reunify with six of her other children. Her parental rights were terminated as to four of the children,² and two other children are living with their father in another state. At the time of A.R.'s birth, Mother tested positive for marijuana, although A.R. tested negative. On March 22, the Riverside County Department of Public Social Services (Department) filed a juvenile dependency petition pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling), alleging that Mother had "an unresolved history of abusing controlled substances," and had abused marijuana while pregnant with A.R.³ On March 23, the court found that a prima facie showing had been made for detaining A.R. out of the home, and a contested jurisdiction hearing was set. The court authorized supervised visitation between A.R. and his parents.

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

² Last year, this court affirmed the order terminating Mother's parental rights to these four children. (*In re E.G.*, May 5, 2011, E051953, [nonpub. opn.])

³ Because A.R.'s father did not participate in the lower court's proceedings or this appeal, it is unnecessary to include him in any discussion of the facts.

Given Mother's history of substance abuse, the Department had offered a wide variety of services to her since her first contact with the Department in 2002. In 2004, after her children were removed from her care, the court ordered 12 months of reunification services, and then six months of family maintenance services. Following completion of her case plan, her children were returned to her; however, by June 2008 she had relapsed by using methamphetamine. Thus, her parental rights to those children were terminated. Shortly after A.R.'s birth, Mother enrolled in a drug treatment program. She wanted A.R. to "grow up with a sober mother so that he [could] live a normal life." She did not want him to go through what her other children had.

A.R. was placed in a foster home, which was the adoptive home of his siblings. The caregiver was interested in adopting him also. The siblings were bonding with A.R. and were very excited to have their baby brother placed in the home with them. Mother consistently visited with A.R. The visits went well; Mother was attentive and nurturing.

On April 14, 2011, the court found true the allegations in the petition and adjudged A.R. to be a dependent of the court. Reunifications services were denied to Mother pursuant to section 361.5, subdivision (b)(10) and (b)(11). A.R. remained placed with the prospective adoptive family. A selection and implementation hearing was set.

According to the report prepared for the section 366.26 hearing, which was filed on July 21, 2011, Mother continued to have weekly visits with A.R. However, A.R. was described as being "attached and bonded to the caregiver as well as the siblings [who] know [A.R.] is their brother and want him to remain in the same home." On August 10, Mother filed a section 388 petition and requested that A.R. be returned to her under a

family maintenance plan, or in the alternative, that the court vacate the section 366.26 hearing and grant reunification services to her. Mother was attending the Hemet family preservation court and was in phase two of the program. She was attending group counseling three times a week, submitting to random drug testing, and attending three Alcoholics Anonymous and Narcotics Anonymous (AA/NA) meetings a week, as well as participating in 12-Step meetings. She tested negative on all substance abuse tests and maintained sobriety. She further attended counseling at Freedom Community Christian Church.

At the hearing on her petition, Mother testified that she was employed, had housing, and believed her circumstances had changed by surrounding herself with people who were helping her stay clean and sober. The trial court found that Mother's circumstances were changing but had not yet changed. Also, the court found that it would not be in A.R.'s best interests to "face the possibility of being removed from [the] child's current stable circumstances." Thus, the court denied Mother's petition and proceeded with the section 366.26 hearing. After finding it likely that A.R. would be adopted and there was a sufficient basis to terminate parental rights, the court terminated parental rights and selected adoption as the permanent plan. Mother appeals.

II. SECTION 388 PETITION

Mother contends the court erred in denying her section 388 petition.

A. Standard of Review

Section 388, subdivision (a), provides in pertinent part that: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . .

may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.”

“At a hearing on a motion for change of placement, the burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interest of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)) A section 388 petition is addressed to the sound discretion of the juvenile court, and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.)

B. There Was No Abuse of Discretion

While Mother argues that her circumstances have changed, the record does not support such argument. As the Department points out, Mother was 29 years old at the time she filed the section 388 petition. She began using methamphetamine and marijuana at the age of 12. Since 2002, she has been offered and has participated in a wide variety of services. Despite her participation, she ended up relapsing and losing custody of and parental rights to A.R.’s siblings. Following termination of her parental rights to A.R.’s siblings, Mother continued to be a substance abuser through the birth of A.R. While we commend her for taking the initiative to end her addictions and get back to a healthier, “normal life,” the fact remains she has not yet achieved such goal. At the time of the August 11, 2011, hearing, she was only halfway through phase two of a four-phase

substance abuse program that was a year long. She was not even halfway through the program. Previously, after completing court-ordered services, she relapsed. It is much too early to say that her circumstances have changed. As recognized by the court in *In re Kimberly F.*, “[i]t is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.” (*In Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9; see also *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [Fourth Dist., Div. Two] [three-month period of sobriety insufficient to show changed circumstances].) A petition that alleged “merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify” with the child at some future point does not promote stability for the child and the child’s best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Accordingly, the juvenile court did not abuse its discretion by denying Mother’s section 388 petition.

III. BENEFICIAL RELATIONSHIP EXCEPTION

Mother contends the trial court erred by failing to find that the “beneficial parental relationship” exception to termination applied.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 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). [Citations.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297 (*S.B.*.)

The parental benefit exception is set forth in section 366.26, subdivision (c)(1)(B)(i). (*S.B., supra*, 164 Cal.App.4th at p. 297.) The exception applies when two conditions are satisfied: (1) “the parent has maintained regular visitation and contact with the child,” and (2) “the child would benefit from continuing the relationship.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466; see § 366.26, subd. (c)(1)(B)(i).) Here, while the Department concedes the first condition, it argues that the record does not support the second requirement.

The parent has the burden of establishing the applicability of the exception. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) To satisfy this burden, the parent must show that his or her relationship with the child “‘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. . . . 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.’ [Citation.] [¶] 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. [Citations.]” (*Id.* at p. 827.)

“‘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 (*Jasmine D.*))

There must be a “compelling reason” for applying the parental benefit exception. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349; § 366.26, subd. (c)(1)(B).) This is a “quintessentially discretionary determination.” (*Jasmine D.*, *supra*, at p. 1351.) Broad deference must be shown to the juvenile court’s discretionary determination, and this court will interfere only if, under all the evidence presented, viewed in the light most favorable to the juvenile court’s determination, we conclude no judge could reasonably have made the determination. (*Ibid.*)

Here, Mother’s argument that she established the applicability of the parental benefit exception to adoption is based essentially on the following: A.R. was only five months old but recognized Mother and would cry and reach for her at the end of their visits. Although Mother was not given reunification services, she had remained sober since A.R. was born. During visits, she “did everything [s]he could to maintain a bond with her son. She was attentive and nurturing, and there were no concerns about the quality of her visits. . . . She arrived on time, played with him, and was appropriate with him.” She argues that “[t]he benefit [A.R.] would gain from continuing his relationship with Mother would promote his well-being to such a degree that it would outweigh any possible permanence he would gain from adoption.”

Contrary to Mother’s view of the facts, there are facts from which the court could reasonably conclude that Mother did not occupy a parental role in A.R.’s life. Having

been removed at birth, A.R. had never lived with Mother. Instead, with the exception of two days, he had lived his entire life with the prospective adoptive parents and his four siblings. There appeared to be a reciprocal bond between A.R. and the prospective adoptive parents, who were willing and able to provide him with a permanent and loving adoptive home. There is nothing in the record that shows A.R. would “suffer great detriment by terminating parental rights.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Based on the above, we conclude that the court did not abuse its discretion in ruling that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply.

IV. DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

KING

J.