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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.F., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.F.,

Defendant and Appellant.

E054902

(Super.Ct.No. INJ021464)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence P. Best,
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 Prabhath D. Shettigar, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant A.F. (father) appeals from the trial court's order under Welfare and Institutions Code section 366.26¹ terminating his parental rights to his infant son, L.F. The only issue father raises is whether substantial evidence supports the trial court's implied finding that the beneficial parental relationship exception to termination of parental rights does not apply. We conclude the finding is supported by substantial evidence. Therefore, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties acknowledge the facts are undisputed. Therefore, we take the majority of the pertinent facts from father's opening brief. Riverside County Department of Public Social Services (DPSS) filed a section 300 petition with respect to then four-month-old L.F. in June 2010 after local law enforcement officers found him living with his mother in an unsafe environment.² L.F., who had been born with a tissue membrane blocking his nasal passages that made it difficult for him to breathe, had been sick and wheezing for several days but his mother had not taken him to a doctor. Father was not in the home, and mother claimed not to know his whereabouts. DPSS removed L.F. and placed him in foster care.

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

² The main entrance to mother's residence was blocked with piles of clothing, tools, and other debris. Inside DPSS found baggies of marijuana, marijuana plants, starter planting kits, and liquid marijuana supplements, among other things, that mother apparently possessed legally in accordance with her medical marijuana card. L.F.'s bed was a portable playpen located in a closet under hanging clothes.

Father appeared at the initial detention hearing on June 23, 2010. The court detained L.F. and authorized supervised visits for mother and father of a minimum of one hour, twice per week. The social worker reported among other things that both parents had untreated mental health issues (depression and anxiety), that father engaged in acts of domestic violence against mother, and that father smoked medically prescribed marijuana to ease lumbar pain.

At the combined jurisdiction and disposition hearing on August 2, 2010, the trial court made the necessary findings and ordered reunification services for both parents. Father apparently had not had any visits with L.F. because it was emotionally difficult for father to visit only two hours at a time.

Before the six-month review hearing, father moved to Nevada to live with his mother. He intended to join the Navy, and after he got situated, which he believed would take about three years, he intended to return for L.F. Father was not participating in reunification services.

By the time of the contested six-month review hearing on February 28, 2011, L.F. had been placed in the home of his maternal grandparents who intended to adopt the child.³ Father began visiting L.F. in December 2010 and had two visits with the child during the initial six-month review period. On January 24, 2011, father, who had acknowledged he had a drug problem, was admitted into a 90-day drug treatment

³ L.F. had also had three surgeries to open his nasal passages and alleviate his difficulty breathing. The third surgery was successful, and as a result, the child was gaining weight and thriving.

program. The trial court found that father and mother had not made satisfactory progress on their reunification plans. Therefore, at the six-month review hearing, the trial court terminated reunification services and set the selection and implementation hearing for June 20, 2011.

After two continuances, the trial court conducted the selection and implementation hearing on September 12, 2011. The social worker, among other things, reported the substance of a telephone conversation with father on May 10, 2011, in which he stated he had completed his three-month inpatient drug treatment program and had been drug free for 108 days. Father reported he was looking for a job and acknowledged he was not in a position to care for L.F. Father had not been able to visit L.F. while he was in the treatment program. During this review period, father had only one visit with L.F. After making the required findings, the trial court terminated father's parental rights and ordered adoption as the permanent plan for L.F.⁴

Father appeals from that order.

DISCUSSION

Father raises only one issue in this appeal, that substantial evidence does not support the trial court's implied finding that the beneficial parental relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) is inapplicable. We disagree.

⁴ Father filed a section 388 petition on September 14, 2011, which the trial court did not consider because it was untimely.

We review a trial court's order terminating parental rights to determine whether it is supported by substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Under section 366.26, subdivision (c)(1), the trial court must terminate parental rights if it finds by clear and convincing evidence that a child is adoptable unless it finds a compelling reason for determining that termination would be detrimental under one or more of the exceptions set out in subdivision (c)(1)(B). Under section 366.26, subdivision (c)(1)(B)(i), "the court may forego adoption and refrain from terminating parental rights only if a parent has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination. [Citation.] The benefit to the child from continuing such a relationship must also be such that 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." [Citations.] A child who is determined to be a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may benefit the child to some degree but does not meet the child's need for a parent. [Citation.] Adoption, when possible, is the permanent plan preferred by the Legislature if it is likely the child will be adopted. [Citation.]" (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) "To overcome the strong policy in favor of terminating parental rights and to fall within section 366.26, subdivision (c)(1)[(B)(i)]'s purview, the

parent must show more than ‘frequent and loving contact’ [citation], and be more to the child than a mere ‘friendly visitor or friendly nonparent relative.’ [Citation.] The parent must show the parent-child bond is a ‘substantial, positive emotional attachment such that the child would be greatly harmed’ if parental rights were terminated. [Citation.]” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Father did not meet the first requirement of the beneficial parental relationship exception because he did not maintain regular visitation with L.F. Although father was entitled to two visits per week with L.F., the undisputed evidence shows that he did not take advantage of that order during the first six months of the dependency process. In all, father had at most six supervised visits with L.F. from the time the infant was detained in June 2010 to September 2011 when the court terminated father’s parental rights. In short, father did not maintain regular visitation and contact with L.F. The absence of evidence showing father maintained regular visitation and contact with L.F. is sufficient on its own to support the trial court’s implied finding that the beneficial parental relationship exception is inapplicable in this case.

Because father did not have regular contact with L.F., he is unable to point to evidence that establishes the second requirement of the exception—that L.F. would benefit from continuing his relationship with father because L.F. had developed a substantial, positive emotional attachment to him and would be greatly harmed if that connection were severed. L.F. was only four months old when DPSS detained him and removed him from the custody of his parents. Father did not offer any evidence

regarding the nature of his relationship with L.F. during the first four months of the child's life. Over the next 15 months, father saw L.F. six times, at most, and then only over after a six-month period in which father did not visit the child at all because it was too hard on father. L.F. could not have developed a significant relationship with father, least of all one worth preserving, because the infant had not spent enough time with father for such a relationship to develop.

In short, we conclude the evidence supports the trial court's implied finding that the beneficial parental relationship exception to termination of parental rights does not apply in this case.

DISPOSITION

The order terminating father's parental rights to L.F. is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

MILLER
J.