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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.V. ,

Defendant and Appellant.

E054978

(Super.Ct.No. RIJ120564)

OPINION

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

Siobhan M. Bishop, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Cynthia Morton, Deputy County Counsel,
for Plaintiff and Respondent.

I. INTRODUCTION

M.V. (mother) appeals from an order of the juvenile court under Welfare and Institutions Code¹ section 366.26 terminating her parental rights to her son, J.M. Mother contends the juvenile court erred in failing to apply the beneficial relationship exception to section 366.26. We find no error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

The Riverside County Department of Public Social Services (Department) filed a petition under section 300, subdivision (b) in November 2010, alleging that J.M., born in March 2009, was at risk of serious physical harm based on ongoing acts of domestic violence in his presence.

The detention report stated that in October 2010, mother and the child's father (father) (who is not a party to this appeal) got into an argument at a shopping center parking lot. The police determined that the incident was mutual combat and arrested both parents. Police officers told the social worker there had been about eight law enforcement contacts concerning the parents in the past three months. Mother had been arrested twice, and father had been arrested once. The parents had previously been offered parenting education and counseling services, but they failed to enroll. J.M. was taken into custody and placed with his godparents.

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

At the detention hearing on November 3, 2010, the juvenile court detained the child and ordered counseling and monitored visitation for mother.

The Department filed a jurisdiction/disposition report on November 19, 2010. The report stated that J.M. had been placed with his paternal grandparents. Mother visited with him at least twice a week for two hours, and the visits went well. Mother had been provided referrals for services and was awaiting an intake appointment.

At a hearing on November 29, 2010, the court directed the parents to stay away from one another. At the jurisdictional hearing, the court found the allegation of the petition true that J.M. came within section 300, subdivision (b) and declared him a dependent of the court. The court ordered reunification services for mother, including parenting classes, a domestic violence program, and individual counseling “if clinically appropriate.” The court informed the parents that because of J.M.’s age, they had six months to complete their services and reunify with him.

The Department filed a status review report in May 2011. The report stated that mother was employed at a dental office 30 to 40 hours per week, earning \$11.50 per hour. She was living in a three-bedroom house with her sister, sister’s boyfriend, and a housemate. Her family supported her emotionally and financially.

Mother completed a 12-week parenting class in February 2011. She attended individual counseling for several months, but she was terminated for multiple appointment “no shows.” She enrolled in an Alternatives to Domestic Violence program in February 2011 and had completed six sessions by mid-March, when she was put on hold because she continued to have contact with father.

From February to April 2011, mother and father made repeated telephone calls to the social worker, and in April, the Department held a team decision meeting to discuss the calls. During the meeting, the social worker learned there had been more than 30 telephone calls to the police regarding the parents since November 2010. A plan was put into place under which J.M. would spend half of his time with each set of grandparents; the parents would have no contact with each other or with the other's parents. The parents were to restart domestic violence classes and complete counseling. The parents agreed to have no contact of any kind with each other. If contact occurred, the parent was to contact law enforcement and file a report. Nonetheless, immediately after the meeting, the parents began texting each other, had dinner together, and exchanged cars. Mother called father when he was meeting with the social worker and then lied about making the call.

The social worker reported that mother's visits with J.M. have gone well. The maternal grandparents have visitation with him from Saturday evening to Tuesday morning, and mother stays with them during that time and visits with J.M. The visits have gone well, and J.M. calls mother "mommy." Mother plays with him, talks with him, and disciplines him. J.M. no longer cries when he is returned to his paternal grandparents.

At the six-month review hearing in June 2011, the court found mother had made “adequate but incomplete” progress toward alleviating the causes for the dependency, in that she had failed to make substantive progress or complete her case plan. The court terminated reunification services and set the matter for a permanency planning hearing under section 366.26.

The Department filed a section 366.26 report in October 2011, along with a positive adoption assessment of the paternal grandparents, who wished to adopt J.M.

In October 2011, mother filed a petition under section 388 requesting the court to vacate the section 366.26 hearing and return J.M. to her with family maintenance. She alleged she had completed her case plan, and she had a strong bond with J.M. and visited him every week.

The Department filed an addendum report in November 2011. The social worker stated that although the parents had completed the services in their case plans, “they continue to be involved with one another and have not learned from the counseling or classes how toxic their relationship is for their son.” In addition, the social worker reported, father and mother “seem to be communicating with one another concerning this case and admit they talk on the phone.

At the hearing on the petition, father’s counsel reported that father had been arrested in November 2011 for violating a restraining order by stalking mother. Counsel for the Department stated that it appeared father and mother were continuing their relationship, the issues between them had led to the dependency, and it did not appear

mother had benefited from her case plan. Mother's counsel denied that parents were continuing their relationship.

The juvenile court denied mother's petition, stating, "although there certainly is an indication that mother's circumstances may have changed, I do not think it would be in the best interest of the child to disturb the child's permanent placement at this time" The court then held the section 366.26 hearing. Mother's counsel asked the court to find that the beneficial relationship exception to termination of parental rights applied, or, in the alternative, to order legal guardianship instead of adoption as the permanent plan. The court found J.M. was adoptable, and none of the exceptions to terminating parental rights applied. The court therefore terminated mother's and father's parental rights.

III. DISCUSSION

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), and the Legislature has indicated adoption is the preferred permanent plan. (*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.)

The parental benefit exception set forth in section 366.26, subdivision (c)(1)(B)(i) 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).) It is undisputed that mother maintained regular visits with J.M. Thus, we focus on 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.)

There must be a “‘compelling reason’” for applying the parental benefit exception. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349; see also § 366.26, subd.

(c)(1)(B)(i.) This is a “quintessentially discretionary determination,” and we show broad deference to the juvenile’s court’s discretionary determination. Thus, we 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. (*In re Jasmine D.*, *supra*, at p. 1351.)

Mother’s argument that she established the applicability of the exception is based on the following: J.M. spent the first 19 months of his life in her care; J.M. enjoyed his visits with her and sometimes cried for her when the visits ended; and he called her “mommy.” During the visits, she played with him, talked to him, and disciplined him. However, throughout the dependency at least until the time reunification services were terminated, mother continued her toxic relationship with father, including texting him, going to dinner with him, and telephoning him, making constant telephone calls to the paternal grandparents’ home. During the six-month review reporting period alone, there had been “over ten known reports and 30 telephone contacts to the police.” Mother lied to the social worker, denying that she had made a telephone call to father, even after the social worker heard the call on father’s speaker phone.

The adoption report indicated that the prospective adoptive parents, the paternal grandparents, had known J.M. since birth and had cared for him for more than 10 months. They were able to provide “reliable income, stable housing and a nurturing home environment” to him. The trial court observed that J.M. was “clearly in a good and loving home and is entitled to permanence.” Moreover, the prospective adoptive parents,

the paternal grandparents, were open to continuing supervised visitation between J.M. and mother.

Given the above, we cannot conclude that the juvenile court erred in finding that mother failed to show that J.M. would benefit from continuing the relationship more than he would benefit from the permanence of adoption by loving grandparents.

IV. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.