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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.V. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.M.,

Defendant and Appellant.

E055027

(Super.Ct.No. RIJ119783)

OPINION

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

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,
for Plaintiff and Respondent.

L.M. appeals from an order terminating parental rights to her two daughters. She contends that the juvenile court should have applied the “beneficial parental relationship” exception to termination. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) This “may be the most unsuccessfully litigated issue in the history of law” (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413.) While it can have merit in an appropriate case (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 296–301), this is not even close to being such a case. Hence, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

L.M. (the mother) and A.V. (the father) had two daughters, E.V. and N.V. (collectively children).

In 2007, the father was convicted of inflicting corporal injury on the mother (Pen. Code, § 273.5).

In November 2009, when N.V. (the younger of the two girls) was born, she tested positive for methamphetamine. Both parents admitted using methamphetamine. They agreed to participate in the family preservation court program.

In May 2010, the social worker received a report that the parents had “failed” family preservation court; they had each tested positive for methamphetamine three times. The social worker went to the home, but nobody was there. Looking in the window, she saw “trash and clothes strewn throughout the house” When she managed to

interview the parents, the mother admitted that she was under the influence of methamphetamine; the father admitted having used methamphetamine two days earlier. E.V. told the social worker that she sometimes went to bed hungry.

As a result, the Riverside County Department of Public Social Services (the Department) detained the children and filed a dependency petition as to them. At the time, E.V. was four years old; N.V. was five months old.

In June 2010, at the jurisdictional/dispositional hearing, both parents submitted on the social worker's reports. The juvenile court found jurisdiction based on failure to protect. (Welf. & Inst. Code, § 300, subd. (b).) It ordered the parents to participate in reunification services. Later in June 2010, the children were placed with their maternal great-grandmother.

In June 2011, at the 12-month review hearing, the juvenile court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26).

In October 2011, at the section 366.26 hearing, counsel for both parents asked the court "to consider a less restrictive plan such as legal guardianship" The juvenile court found that the children were adoptable and that termination would not be detrimental. Accordingly, it terminated parental rights.

II

THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

A. *Additional Factual and Procedural Background.*

The evidence before the juvenile court at the section 366.26 hearing consisted of two specified social worker's reports. We confine our review to this evidence (see Welf. & Inst. Code, § 366.26, subd. (c)(1)), which showed the following.

The parents had supervised visitation with the children for one hour a week. They had missed a visit only once, when the mother was incarcerated. The social worker reported that “[v]isitation has been consistent and appropriate and the children enjoy going.”

By the time of the section 366.26 hearing, the children had been placed with the maternal great-grandmother for over 15 months. Even before the placement, the older girl had spent “almost every weekend since she was just a baby” with the maternal great-grandmother. The children had “adjusted very well” to living with her. They were “happy and comfortable” in the home. They were “bonded” with her, and they “look[ed] to her as a mother.” They “readily showed affection toward her and sought her out when they needed help . . . , comfort, or reassurance.” She was “very attentive to the girls and readily show[ed] affection.”

The maternal great-grandmother had agreed to allow the parents postadoption visitation.

B. *Analysis.*

As a general rule, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions. (*Id.*, subds. (c)(1)(A) & (c)(1)(B)(i)-(c)(1)(B)(vi).) One of these is the beneficial parental relationship exception, which applies when “termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i).) ““The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions. [Citation.]’ [Citations.]” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

“[C]ourt[s] ha[ve] interpreted the phrase ‘benefit from continuing the relationship’ in section 366.26, subdivision (c)(1)(B)(i) to refer to a ‘parent-child’ relationship that ‘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.’ [Citation.]” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

To invoke the beneficial parental relationship exception, “[a] parent must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from the day-to-day interaction, companionship and shared experiences.’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, . . . the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. [Citation.]” (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555, fn. omitted.)

“We review the trial court’s findings for substantial evidence. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228; see also *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) “‘On review of the sufficiency of the evidence, we presume in favor of the order, considering 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.’ [Citation.]” (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 553.) Thus, “a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Bailey J.*, at p. 1314.)

Here, the evidence indicated that the parents had maintained regular visitation and contact. However, it fell short of establishing a “substantial” or significant” positive emotional attachment. At best, it showed “frequent and loving contact” or “pleasant visits.” There was no evidence that the parents continued to occupy a “parental role.” To the contrary, the children “look[ed] to [the maternal grandmother] as a mother” and “sought her out when they needed help . . . , comfort, or reassurance.” And there was no evidence that termination would be detrimental to the children in any way. This is particularly true in light of the fact that the maternal great-grandmother was willing to allow the parents to continue to have visitation, even after adoption.

The mother relies on earlier social worker’s reports that were not before the juvenile court at the section 366.26 hearing. As we already noted, we cannot consider this evidence. We merely observe, therefore, that even if we were to consider it, it still fell short of establishing that the children would be harmed by termination — much less “greatly harmed.”

The mother also argues that “the disruption of a child’s primary parental attachment has been shown to often have devastating long-term affects [*sic*] upon the child’s future emotional development”; she cites two psychology texts (though without providing us with a copy or with any pinpoint citations). The citation — complete with the misspelling of “effects” — appears to have been copied from a brief in another case. (See <http://www.oocities.org/three_strikes_legal/Milissa_H_appeal.pdf> at pp. 41-42, as of April 6, 2012.) One of the sources cited actually cuts against the mother’s argument; it

states: “. . . The risks to which children are exposed are as variable in their severity and nature as the vulnerabilities and resiliences with which the children confront them. These considerations make the prediction of outcome extremely difficult.” (Risk, Vulnerability, and Resilience: an overview, in *The Invulnerable Child* (Anthony and Cohler, eds. 1987) pp. 10-11.)¹ In any event, citation to such articles on appeal is no substitute for the introduction of *evidence* in the trial court.

For these reasons, we conclude that the juvenile court did not err in declining to find that the beneficial parental relationship exception applied.

III

DISPOSITION

The order appealed from is affirmed.

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RICHLI

J.

We concur:

RAMIREZ

P.J.

KING

J.

¹ Available at <http://books.google.com/books?id=tp4NKEfh5pcC&lpg=PA3&ots=sbZuxv7UaP&dq=%22risk%20vulnerability%20and%20resilience%20an%20overview%22&pg=PA3#v=onepage&q=%22risk%20vulnerability%20and%20resilience%20an%20overview%22>, as of May 10, 2012.