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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.M. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

E055254

(Super.Ct.Nos. J225966 & J225967)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A.

Buchholz, Judge. Affirmed.

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

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

R.C. (hereafter Mother) appeals an order terminating her parental rights to her children B. and V. She contends that the beneficial parental relationship exception applies.¹

We will affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On March 1, 2009, Mother and the children's presumed father were arrested and charged with conspiracy to commit unlawful intercourse with a minor after an incident at a church outing in which they provided a 17-year-old girl with alcohol and solicited her to join in a threesome. Their two children were removed from their custody and were later placed with the children's maternal grandfather and his wife, Mr. and Mrs. H. At the time of the removal, B. was nine months old and V. was five years old.

A petition pursuant to Welfare and Institutions Code section 300² was filed on March 3, 2009. It alleged that the parents had failed to protect the children from potential sexual abuse by Mother's stepfather, who, she alleged, had sexually abused her when she was an adolescent; that the children were at risk for sexual abuse due to the parents' arrests for a sexual crime; and that the parents were incarcerated and unable to care for the children. Mother was also a registered sex offender as a result of a prior conviction

¹ The presumed father is not a party to this appeal.

² All statutory citations refer to the Welfare and Institutions Code.

for oral copulation on a minor. She also had convictions for annoying a child under 18, and an arrest in 2004 for lewd and lascivious acts on a child under 14.

The petition was sustained on April 3, 2009. The court ordered continued placement with the H.'s and ordered reunification services for both parents, with supervised visitation upon the parents' release from custody. The H.'s were eventually declared the children's de facto parents. The children did well in their care.

Although the parents had visited the children regularly and had made some progress in their reunification plans, neither made sufficient progress to demonstrate that they had benefitted from the services. Moreover, as a registered sex offender, Mother was permanently banned from places where children are likely to congregate and would be unable either to allow her children to have friends over or to attend any school functions. Mother's therapists did not recommend returning the children to her custody, but rather recommended liberalized visitation.

On June 21, 2011, after a lengthy contested proceeding, including psychological evaluations of both parents, reunification services were terminated and a permanency planning hearing was set. The family had received more than two years of reunification services, and the court found no extraordinary circumstance which would warrant continuation of services. The court found that the father had not completed his case plan and that although Mother had "made ever[y] effort to engage" in her services, she had not "truly benefitted" from them. The court ordered continued twice weekly supervised visitation between the parents and the children.

The parents filed notices of intention to file a writ petition challenging the termination of their services. Both later withdrew their notices of intention, and the writ proceeding was dismissed.

San Bernardino County Children and Family Services recommended adoption as the children's permanent plan. B., age three, was too young to understand the concept of adoption. Eight-year-old V. told the social worker that she wanted to be adopted by her grandparents. At the section 366.26 hearing, V. testified that she did not want to visit with her mother because her mother was too strict with her. She testified that she wanted to be adopted by her grandparents, or perhaps live with her father.³

The court found the children adoptable and likely to be adopted by their grandparents. It found that the parents had failed to prove that any detriment to the children would result if their parental rights were terminated. Accordingly, it terminated the parental rights of both parents and referred the children for adoptive placement.

Mother filed a timely notice of appeal.

LEGAL ANALYSIS

MOTHER DID NOT MEET HER BURDEN OF PROOF WITH RESPECT TO THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

After termination of reunification services, the focus of juvenile dependency proceedings is on the child's needs, including his or her need for a stable, permanent

³ As we discuss below, the visitation monitor described V.'s interactions with her mother in more positive terms than did V. herself.

home. Consequently, the statutory preference for a permanent plan for a dependent child is adoption, and the court must terminate parental rights and order the child placed for adoption unless one of the exceptions provided for in section 366.26, subdivision (c) applies. (§ 366.26, subd. (c); *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Section 366.26, subdivision (c)(1)(B) provides that even if the court finds that the child is adoptable and that there is a reasonable likelihood that the child will be adopted, the court may nevertheless decline to terminate parental rights if it finds a “compelling reason for determining that termination would be detrimental to the child” including the following: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.36, subd. (c)(1)(B)(i).)

In order to prevail in asserting the parental relationship exception, the parent must demonstrate both that he or she has maintained regular visitation and contact with the child and that a continued parent-child relationship would “promote[] 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 297.) “[T]he parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits . . . the parent must prove he or she occupies a parental role in the child’s life

[Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must also show more than a relationship which may be beneficial to the child to some degree but does not meet the child’s need for a parent. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

On appeal, we review the court’s finding that the exception does not apply under a deferential standard which has been articulated as a substantial evidence/abuse of discretion standard: “Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.” [Citations.]’ [Citation.]” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; see also *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

The burden of proof is on the party seeking to establish one of the exceptions to the adoption preference. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) Mother contends that she met that burden because it was uncontradicted that she visited regularly and frequently with the children and that she had a parental bond with the children. However, she does not address the juvenile court’s finding that she failed to produce any evidence that the children would suffer any detriment if the parent-child relationship were severed.

We agree that there was evidence that Mother shared a parental bond with the children. The visitation monitor who had monitored many of the visits between Mother and the children testified that she observed a bond between them and that the children

were happy to see her and were affectionate with her. The court appeared to agree that there was some degree of parent/child bonding. However, there was no evidence which would meet Mother's burden to show that her relationship with the children would promote the children's well-being to such a degree as to outweigh the benefit the children would gain through adoption. Nor, conversely, was there any evidence that severing the parent/child relationship would deprive the children of a substantial, positive emotional attachment and would result in great harm to the children. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The absence of any such evidence demonstrates that the court properly found insufficient evidence to support a finding that termination of parental rights would be detrimental to either child, as required by section 366.26, subdivision (c)(1)(B). Accordingly, the court did not abuse its discretion in finding the exception not applicable.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.
KING
J.