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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

E055825

(Super.Ct.No. RIJ118915)

OPINION

APPEAL from the Superior Court of Riverside County. Martin H. Swanson,
Judge, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant
and Appellant.

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

No appearance for Minor.

T.C. (Mother) appeals from the juvenile court's order terminating her parental rights to her son, B.L. Mother contends the juvenile court erred by terminating her parental rights because (1) the court should have applied the beneficial parent-child relationship exception to termination (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).);¹ and (2) the court should have ordered legal guardianship or long term foster care. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

B.L. is male and was born in 2005; he was four years old at the time of the detention in this case. Mother had three other children. Two of the children were voluntarily placed for adoption around 2002, via a private adoption agency. Mother did not have contact with those two children due to the adoptions. Mother voluntarily gave the third child, J.C., to Mother's aunt (Aunt) when J.C. was two months old. Aunt then obtained legal guardianship of J.C., and Mother no longer had contact with J.C.

B. DETENTION

On November 5, 2009, law enforcement executed a search warrant at Mother's residence. The narcotics task force found one gram of methamphetamine on top of a dresser in a bedroom. There was only one bedroom in the residence, and it was shared with B.L. Mother admitted the methamphetamine belonged to her. Mother and her boyfriend, who were both on probation, were under the influence of methamphetamine.

¹ All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

Mother and her boyfriend were arrested. B.L. was at daycare during the arrest.

Approximately two weeks prior to November 5, B.L.'s father, A.L. (Father), was incarcerated in Chino Prison for a parole violation.²

A social worker from the Riverside County Department of Public Social Services (the Department) met B.L. after Mother's arrest. B.L. did not have any bruises or marks on his body, but he did have feces in his underwear and a strong body odor. B.L. said he is not spanked or hit, but he saw Mother and Father yell and hit one another. B.L. cried when describing the domestic violence. B.L. did not appear to know about drugs.

The social worker met Mother at the Sheriff's holding cell. Mother cried and explained, "I know I should not be using methamphetamine, but my circumstances are really bad. My husband just went back to prison because he was beating me. I called his parole officer and had him arrested the next day. Every time things are bad I use drugs. I can't stop." Mother admitted smoking methamphetamine just prior to the law enforcement officers' arrival at her residence. Mother said she had relapsed into using methamphetamine approximately two weeks prior—when Father struck her.

The social worker spoke to Mother's boyfriend, E.S. E.S. said he came to Mother's residence to consume drugs and engage in sexual intercourse with Mother. E.S. admitted using methamphetamine. The Department removed B.L. from Mother's care, and placed him in a foster home. Mother asked that B.L. be placed with her father (Grandfather) and stepmother (Grandmother). Grandfather agreed to care for B.L. The

² Father is not a party to this appeal.

following day, B.L. was placed with Grandfather and Grandmother (collectively “Grandparents”).

The social worker spoke with Aunt and J.C. Aunt said Mother dropped J.C. off at her house, but never came back to pick her up and had not made any effort to see her. Aunt has been unable to adopt J.C. because Mother will not appear in court. Aunt said Mother had been consuming drugs since Mother was a teenager, and Mother “sold” her two other children, by “adopt[ing] them out for money.”

On November 9, 2009, the Department filed a petition alleging (1) Mother failed to protect B.L. due to her chronic drug abuse, (2) Mother and Father failed to protect B.L. due to their domestic violence (§ 300, subd. (b)), and (3) Mother and Father left B.L. without any provision for support due to being incarcerated (§ 300, subd. (j)).

The juvenile court found continuing B.L. in Mother’s care would place B.L.’s physical health in substantial danger, and/or that B.L. was suffering severe emotional damage. The juvenile court ordered B.L. be detained. The juvenile court ordered various services for Mother, such as drug testing, parenting classes, drug treatment, and counseling. The court also ordered visitation a minimum of once per week.

C. JURISDICTION/DISPOSITION

As a result of the November 5, 2009, search, Mother was charged with (1) possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)); (2) selling or furnishing a controlled substance (Health & Saf. Code, § 11379, subd. (a)); and (3) being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). Mother was convicted of all the charges. Mother also had

convictions in 2009 for (1) possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), and (2) possession of burglary tools (Pen. Code, § 466). Mother had various other convictions related to drugs, alcohol, and traffic violations dating back to 1999.

By December 10, 2009, Mother was released from jail. Father was scheduled to be released from prison on February 18, 2009. Mother told the Department she began abusing drugs at age 20—Mother was 30 years old in late 2009. Mother said she was sober during her pregnancy with B.L., and remained sober for approximately four years, until the relapse that led to B.L.’s detention. For three years Mother worked at a hospice facility. Mother also worked for three years as a dancer at an adult entertainment club. Father worked as a crane operator. Father described Mother as his best friend and said, “When we’re not on drugs we love to be together.”

Mother visited B.L., but the visits were scheduled to occur in Los Angeles County, and Mother’s drug treatment program only allowed her to leave Riverside County on rare occasions. Mother also said Grandfather was not permitting Mother to visit B.L. The Department contacted Grandfather. Grandfather agreed to set up a visitation schedule with Mother. Mother and Grandfather created a schedule. When Mother visited B.L., B.L. would cry for long periods of time when the visits ended. Grandparents refused to allow Mother to speak to B.L. on the telephone due to B.L. becoming “so upset” about not being with Mother. Mother and Father requested the Department consider placing B.L. with a family friend, S.D.

On February 9, 2010, the juvenile court found Father to be B.L.'s presumed father. The court found untrue the allegation that Mother left B.L. with no provision for support, as Mother was no longer incarcerated, but found the other allegations to be true. The court sustained the petition, and adjudged B.L. a ward of the court. The court ordered B.L. remain outside Mother's custody. The juvenile court authorized overnight and weekend visits with Mother.

D. SIX-MONTH STATUS REVIEW

Mother was living in a home with family friends, and obtained one part-time job at Del Taco and a second job at a concert concession stand. Mother was attending classes to obtain an A.A. degree in sports medicine. Mother attended her parenting classes and individual counseling. The therapist described Mother as a "loving and caring" parent. Mother was also actively participating in her recovery program. Mother was described as "setting a perfect example on how the [recovery] program works." Mother tested negative for controlled substances 28 times. Father was convicted of spousal battery on April 4, 2010, and was incarcerated in Avenal State Prison for eight years. Mother was considering divorcing Father.

B.L. was advanced for his age—at four years, eleven months, he was developing and functioning like a six year old. B.L. appeared happy and responded well to Mother during visits. At therapy, B.L. seemed to enjoy the sessions, but refused to answer questions about Mother and Father. B.L. was moved to S.D.'s home.

Mother consistently visited B.L. every week at S.D.'s home. Mother visited from 10:00 p.m., after her work shift, until Sunday at 6:00 p.m. Mother played with

B.L., read books with him, and worked with him on his Kindergarten workbook—teaching him how to write. During an unannounced visit, a social worker found Mother and B.L. reading a book together. Mother requested unsupervised visits with B.L. The Department authorized two unsupervised visits per week, in addition to the supervised overnight visits. After the unsupervised visits, B.L. had “minor behavioral problems” but they improved each week.

The juvenile court held the six-month review hearing on September 23, 2010. The court found Mother’s progress with her case plan was adequate but incomplete. The court ordered the Department to continue offering Mother reunification services. The court authorized unsupervised daytime visits between Mother and B.L.

E. 12-MONTH REVIEW

Mother obtained a job working 30 to 40 hours per week delivering automotive parts to mechanic shops. Mother was saving money to rent her own apartment, and had begun looking for housing. Mother continued attending classes related to becoming a personal trainer. Mother continued to test negative for drugs and participate in her treatment program; however, Mother admitted relapsing on methamphetamine a “couple months” prior. Mother was permitted to stay in the drug treatment program because she admitted the relapse despite having negative drug test results. Mother’s therapist found that the relapse provided Mother with insight into her addiction issues, and that Mother “found a new perspective on her recovery and goals.” Mother was described as “doing excellent in the parenting program” classes.

B.L. attended kindergarten classes and was doing well with social and academic skills. B.L. had a healthy bond with S.D. B.L.'s therapist said the therapy sessions focused on separation anxiety, severe tantrums, and self-hatred. After being granted unsupervised visitation, Mother attended B.L.'s therapy sessions with him. The therapist found Mother and B.L. had "positive interaction[s]" with one another. B.L.'s behavior continued to improve as he spent more time with Mother. The Department concluded, "There is a substantial probability that the child will be returned home before the next hearing. The mother has had consistent and regular visits with the child and appears to be well bonded with him."

The juvenile court held a 12-month status review hearing on January 10, 2011. The court found Mother's progress with her case plan to be adequate but incomplete. The court ordered the Department to continue providing Mother with reunification services. The juvenile court authorized overnight and weekend visits at Mother's home, pending Mother obtaining a suitable home.

F. 18-MONTH REVIEW

On March 10, 2011, Mother and Mother's probation counselor informed the Department that Mother relapsed into abusing methamphetamines. Mother explained that she relapsed due to feeling overwhelmed, "trying to balance too many things at once," and associating with the "wrong people in the neighborhood." Mother was incarcerated for 14 days, due to being on probation, and released on March 22. Mother began residing at an inpatient substance abuse treatment center on March 23, 2011. Mother was scheduled to be released from the inpatient program on May 6, 2011.

Mother planned to move into a sober living home, where children were also permitted to reside. Mother also planned to return to her job delivering automotive parts.

Mother completed her domestic violence class and attended individual counseling. Mother's probation counselor said she had seen "tremendous growth" in Mother prior to the relapse, but she still believed in Mother and would fight for Mother to stay in the treatment program. Mother was making "good" progress in the inpatient program. Mother said that if she were not permitted to reunify with B.L., then she would want Grandparents to adopt B.L.

B.L. was developing well for a five year old; he enjoyed playing basketball and riding his skateboard. Mother told B.L. that she "would be going away for some time, that she loved him, and [she] also apologized to him." B.L.'s therapist said it was "not a good idea" for Mother to have made the foregoing comments to B.L. B.L. began acting out more after the conversation with Mother. B.L. suffered from encopresis—voluntary or involuntary passage of stools in a child who had been toilet trained, which soils the child's clothes. B.L. said "he really enjoys spending time with his mother." B.L. liked spending the night with Mother during overnight visits and said "he wants to live with [Mother] again."

On May 9, 2011, the juvenile court held the 18-month review hearing in the case. The juvenile court found it necessary to continue B.L.'s placement outside of Mother's care, due to B.L. being at substantial risk of detriment if returned to Mother. The court found Mother's progress with her case plan to be inadequate and incomplete. The juvenile court terminated Mother's reunification services.

G. TERMINATION

On July 13, 2011, Mother was residing at a sober living home and working in concessions at local concerts. Mother's car was repossessed while she was in the inpatient program. On July 21, 2011, Mother tested positive for methamphetamines and was arrested for a probation violation. Mother was sentenced to jail for 365 days; Mother was required to serve six months of that time in the jail's drug treatment program, and serve the remaining time in a probation treatment program.

On August 8, 2011, B.L. was moved to Grandparents' home. B.L. was developing normally for a six year old. B.L. remained an active child who enjoyed karate and riding his skateboard. B.L. continued to suffer encopresis when he felt nervous or after contact with Mother. B.L.'s therapist opined that the encopresis was the result of B.L. feeling "stressed out." Grandparents were committed to adopting B.L., and B.L. appeared happy in Grandparents' home. Since Mother's reunification services were terminated on May 9, her visits with B.L. became sporadic. Mother was incarcerated on July 21, 2011, and she did not visit B.L. after that point.

On January 5, 2012, the juvenile court held a hearing concerning the termination of Mother's and Father's parental rights. Mother requested the juvenile court consider legal guardianship as opposed to termination, due to the bond she shared with B.L. Mother asserted legal guardianship would be best, because "if [M]other were to be able to eventually get custody of this child, it would not disrupt this child's life," because B.L. would be staying with Grandparents and Mother would continue to be a presence

in B.L.'s life. Father also argued in favor of legal guardianship. Father asserted, "The child is with the maternal grandparents and will always have ties to the parents."

B.L.'s attorney asserted adoption was the better choice because B.L. needed permanence. B.L.'s attorney argued the parent-child bond exception did not apply because Mother was "no more than a friendly visitor." The Department asserted the parent-child bond exception did not apply because Mother's visits were sporadic, and once she was incarcerated there were no visits.

In issuing its ruling to terminate Mother's and Father's parental rights, the juvenile court said, "I think [B.L.] is fortunate in that the proposed p[ro]spective adoptive parents are part of [his] biological family, and as such, [h]e's not going to lose contact with that biological family. As [B.L.'s attorney] points out, permanency on the long term is what the law prefers. And even though, [Mother's attorney], you make the argument for the guardianship being a plan of permanency, it is. But as you also argue, it could be changed. And the law prefers that we not change if we don't have to change. So I am going to deny the request to establish a legal guardianship and go forward. ¶¶ With this, I would expect that [B.L.] will continue to have a relationship with the mother given the proposed adoptive parents."

The juvenile court went on to explain the problems that led to the dependency had not been resolved, and thus B.L. had not been returned to Mother's custody. The court found terminating Mother's parental rights would not be detrimental to B.L., and that adoption would be in B.L.'s best interests. The juvenile court terminated Mother's and Father's parental rights to B.L.

DISCUSSION

A. PARENT-CHILD BOND EXCEPTION

Mother contends the juvenile court erred by terminating her parental rights. (§ 366.26.) Mother asserts the juvenile court should have allowed her to retain her parental rights pursuant to the parent-child bond exception. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

If a juvenile court finds a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights shall not be terminated if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) We review the juvenile court’s decision to not apply the parent-child bond exception for an abuse of discretion.³ (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.)

³ There appears to be a split of authority as to which standard of review is applicable to a decision to not apply the parent-child bond exception—substantial evidence or abuse of discretion. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [Fourth Dist., Div. Three applied the substantial evidence standard]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [Fourth Dist., Div. One applied the substantial evidence standard].) In the “standard of review” section of Mother’s appellant’s opening brief, she describes the burden of proof as “a preponderance of the evidence.” We choose to follow the precedent of *In re Jasmine D.*, (2000) 78 Cal.App.4th 1339, 1351, which explained the abuse of discretion standard is applicable because “[t]he juvenile court is determining which kind of custody is appropriate for the child[, and s]uch a decision is typically review[ed] for abuse of discretion.”

The first requirement for the parent-child bond exception is that Mother maintained regular visitation with the child, thus, we address that issue first. The record reflects that after Mother's reunification services were terminated on May 9, 2011, her visits with B.L. became "sporadic and inconsistent." Mother would sometimes call B.L. and tell him she was planning to visit, but then fail to arrive for the visits. After Mother was incarcerated on July 21, 2011, she did not have any visits with B.L. Given the foregoing evidence, the juvenile court could reasonably conclude Mother did not maintain regular visitation with B.L., because the evidence shows inconsistent visits and then no visits. Thus, the first prong of the parent-child bond exception was not satisfied. As a result, the juvenile court did not abuse its discretion by not applying the exception. In other words, we find no error.

Mother asserts the juvenile court's decision was unreasonable, because "Mother continued to consistently visit with [B.L.] until her relapse." Mother asserts the disruption to her consistent visitation "was regrettable but brief in comparison to the length of consistent visitation and contact that [M]other had with [B.L.] over the life of the case." We agree Mother consistently visited B.L. until her relapse. However, we are reviewing the juvenile court's decision for an abuse of discretion, and there is evidence supporting the juvenile court's ruling, because the record reflects Mother's visitation was inconsistent and ultimately stopped. Given the evidence of irregular visits, the juvenile court's decision was within reason.

In regard to the second prong of the parent-child bond exception, Mother asserts B.L. would benefit from continuing the parent-child relationship. We do not address the

second prong, because we have concluded the juvenile court's decision was reasonable based upon Mother's failure to satisfy the visitation prong.

Within the parent-child bond exception argument, Mother asserts the juvenile court erred by terminating parental rights with "an expectation that the maternal grandparents would adopt [B.L.] and preserve the parent-child bond through visitation after the termination of parental rights." Mother asserts the juvenile court "injected an improper factor into the weighing process, namely, the expectation that [G]randparents would allow [B.L.] to have continued contact with [M]other."

While the juvenile court stated B.L. was "fortunate" to possibly be adopted by relatives, it does not appear that the prospective adoption by relatives was part of the juvenile court's reasoning for terminating Mother's parental rights. Rather, the juvenile court terminated Mother's parental rights because the drug issue that led to the dependency still had not been resolved after two years time. The juvenile court commented that Mother had been offered services, but failed to reunite with B.L. Thus, while the juvenile court expressed a belief that B.L. would be fortunate to stay with his biological family, it appears the juvenile court had an independent reason for terminating Mother's parental rights.

B. LEGAL GUARDIANSHIP

Under a separate heading, Mother asserts, "Because of the relationship [B.L.] had with [M]other, the court should have chosen a permanent plan of guardianship or long-term foster care." Mother's reasoning appears to again rely on the parent-child relationship. As set forth *ante*, Mother's visitation with B.L. was inconsistent prior to

the termination of her parental rights. Legal guardianship and long-term foster care are options when the beneficial relationship exception is applied. (*Sheri T. v. Superior Court* (2008) 166 Cal.App.4th 334, 340.) Since the parent-child bond exception is not applicable in this case, the “legislative preference is ‘for adoption over legal guardianship [and] long-term foster care.’ [Citation.]” (*Id.* at pp. 340-341.) Thus, the juvenile court correctly followed the legislative preference for adoption, given that Mother’s visits with B.L. had become sporadic and then ceased to occur.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.