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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re N.J. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.V.,

Defendant and Appellant.

E055954

(Super.Ct.No. SWJ010410)

OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso,
Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant
and Appellant.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County
Counsel, for Plaintiff and Respondent.

I

INTRODUCTION¹

Mother appeals from a judgment terminating her parental rights involving four children. Mother argues that the juvenile court abused its discretion in not applying the parent-child benefit exception (§ 366.26, subd. (c)(1)(B)(i)) when terminating parental rights. We reject the single issue asserted on appeal and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

Mother was the subject of three previous referrals in 2005, 2006, and 2007.

A. Detention Report

The Department of Public Social Services (DPSS) filed an original dependency petition in October 2010, alleging serious physical harm, failure to protect, severe physical abuse, no provision for support, and abuse of sibling. (§ 300, subs. (a), (b), (e), (g), and (j).) The four children who are the subjects of the petition are N.J. born in December 2004, A.G. born in December 2005, A.J. born in September 2007, and L.V. born in February 2009. N.J.'s father is unknown. The three other children have different fathers.

The petition alleged that L.V.'s father, S.V., was hitting and slapping A.G., causing facial bruises. S.V. used inappropriate discipline on all the children, including hitting, cursing, forcing them to stand against a wall, and locking them in a bedroom

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

while denying them the use of the bathroom. Mother was not protecting the children. Mother and S.V. engaged in domestic violence, which they denied. The family home was unsanitary and infested with cockroaches. Mother and A.G. had tested positive for methamphetamine when he was born in 2005. Mother was abusing controlled substances, including methamphetamine. In the past, S.V. had served four years in prison for possession of a controlled substance and he was still using methamphetamine and marijuana. Mother suffered from untreated mental problems. The other three fathers were not supporting their children.

The detention report elaborated on the allegations of the petition. Unless they cleaned their rooms, the children were being locked in their rooms for hours without food and being denied use of the bathroom. The bedrooms smelled of urine and feces. When A.G. escaped through a window one night, S.V. hit him hard enough to leave a red handprint on his face. To discipline them, S.V. made A.G. and A.J. stand with their noses against a wall for an entire day. Mother had not intervened because she was afraid of S.V.'s drug use and violence. Mother may also have been using drugs. The house was infested with cockroaches and the parents were keeping two pit bulls.

In an interview with the social worker at the time of the detention, mother said she had married S.V. two years ago. All four children lived with them and mother had no contact with the other three fathers. Mother said she had a good relationship with S.V. She denied that they used drugs or abused alcohol. She admitted disciplining the children by spanking them with a belt and giving them timeouts in the bedroom or standing with their noses against the wall, as well as locking them in their bedrooms at night. She

explained A.G., age four, had crawled out a window at night and was playing outside. S.V. had punished A.G. by spanking him and giving him “wall time” for several hours. Mother denied inflicting bruises or marks on the children.

The bedroom shared by A.G. and A.J. reeked of urine and was sparsely furnished with piles of clothing and trash. Mother insisted the boys preferred to urinate on the floor rather than use the bathroom although she admitted locking them in their bedroom. The bedroom shared by N.J. and L.V. also displayed piles of clothes and the smell of urine. Mother said L.V. would remove her diaper and urinate. Only N.J., age five, did not urinate on the floor. There were holes in the walls and door which mother blamed on the children playing. The parents’ bedroom, the bathrooms, and the laundry room contained safety hazards and were cluttered with dirty clothes and overflowing trash. The kitchen was filthy and cockroaches were crawling everywhere.

S.V. had been arrested for possession of drugs and domestic violence and served four years in prison before he was discharged from parole in 2009. S.V. had been a foster child. In prison, he had completed parenting and anger management classes. S.V. admitted arguing with mother, whom he said was depressed because of her father’s death in a car accident in 2007. The parents locked the children in their bedrooms at night to prevent them from leaving their rooms. S.V. thought the children urinated on the floor to irritate the parents. The parents did not withhold food. S.V. punished A.G. with spanking and wall time but S.V. did not hit A.G. in the face. S.V. used marijuana but he did not have a substance abuse problem.

The social worker interviewed N.J. who called his brothers “stinky” because “they pee on the floor.” He admitted S.V. and mother cursed and locked the children in their rooms. S.V. yelled at mother and hit her. S.V. hit A.G. when he left his bedroom at night. A.G. and A.J. were forced to stand at the wall for a long time when they were in trouble. N.J. said S.V. hit the door and walls with his fist.

A.G. complained he and A.J. were locked in the bedroom and denied the bathroom. When A.G. climbed out the window, S.V. slapped him and made him stand at the wall almost all day. Mother and S.V. fought and S.V. hit her. A.G. was pale and dirty with a scarred forehead he could not explain.

A.J., age three, agreed they were locked in their bedroom at night. He was pale, dirty, and needed a bath. L.V. was too young to interview but she had food smeared on her hands and face and she was very dirty.

Both parents agreed to take drug tests. The social worker gave them referrals and informed them about detention procedures. The maternal grandmother initially declined to take the children and they were placed with foster parents. The court detained the children on October 14, 2010.

DPSS filed an amended petition in November 2010, striking and amending the allegations so that the petition alleged failure to protect, no provision for support, and abuse of sibling. (§ 300, subds. (b), (g), and (j)).

B. Jurisdiction/Disposition

The jurisdiction/disposition reports repeated most of the information from the detention report. There was some confusion about whether S.V. had hit A.G. or A.J.

S.V. claimed A.G. had hit A.J. The children were placed together in a foster home. Parents declared their willingness to do whatever was required to recover the children.

At the jurisdictional hearing, the court made true findings on the amended petition and the children were adjudged dependents of the juvenile court. Mother's case plan included programs in domestic violence, in-home services, and parenting, as well as individual therapy and drug testing. Visitation was Tuesday and Thursday for two hours. A six-month review hearing was scheduled for May 5, 2011.

C. The Six-Month Status Review Report

The children had been placed together with the maternal stepgrandmother and her husband in December 2010.

In May 2011, the parents were renting a three-bedroom house in Hemet for \$750 a month. Mother was receiving biweekly unemployment benefits of \$340 and some income from cleaning houses. S.V. was mowing lawns. S.V. did not pay support for two other daughters, ages seven and eight. Parents had been evicted from their previous home and their car was repossessed.

N.J. was in good health and attending kindergarten but he had been diagnosed with Adjustment Disorder and he had missed scheduled therapy appointments. A.G. was attending preschool. He had asthma and eczema and he needed counseling for "tantrumming behaviors." A.J. attended preschool. He had asthma and speech difficulties. A.J. was also diagnosed with Adjustment Disorder and problems with tantrums and needed therapy. L.V. was in good health.

Mother was attending a domestic violence/anger management program with mixed results. Mother was inconsistently attending therapy for chronic depression (dysthymia). Mother was not participating successfully in in-home services or attending parenting and substance abuse programs. S.V. was refusing to participate in any reunification services. DPSS concluded the parents would present a risk to the children and that services should be terminated.

D. Termination of Reunification Services

In June 2011, DPSS reported that S.V. had been arrested and charged with felony possession of a firearm and participating in a criminal street gang. S.V. pleaded guilty and was sentenced to two years eight months in prison.

Mother had completed the domestic violence/anger management program but she had been discharged from therapy for too many “no-shows.” Mother had not completed programs for in-home services, parenting, and substance abuse. She did not participate in drug testing. Mother had made little progress toward reunification, The children were bonded as a sibling group. The maternal grandmother asked the children be removed from her home.

At the six-month review hearing on June 21, 2011, mother blamed her failure to complete her case plan on S.V., who was a violent person and had threatened her if she tried to comply with the programs. With S.V. in prison, mother believed she could fulfill her plan. The court expressed doubt about why she could finish one program and not any other. The court terminated services and set the matter for a contested section 366.26 hearing.

E. Section 366.26 Selection and Implementation

In October 2011, DPSS reported that mother was living with a friend and working as a bartender's assistant for tips. She participated in supervised visitation twice a month and desired to continue working on her case plan. S.V. was in prison.

The children were healthy and functioning well. Mother was visiting twice a month and there was mutual affection with the children but mother seemed overwhelmed and often observed the children without engaging them in play or interacting with them. Mother lacked suitable housing or employment.

The children were placed in a prospective adoptive home on November 14, 2011. By February 2012, the children and the prospective adoptive family had established a strong reciprocal bond. The children called the prospective adoptive parents "Mommy" and "Daddy." The parents own a home and have three older biological children. The father is a San Diego social worker and possesses a master's degree. The mother is a homemaker. They are family-oriented in their activities and enthusiastic about the subject four children. The children were thriving in the new home. A.J. asked to remain there "forever."

At the contested section 366.26 hearing, mother offered the stipulated testimony that she had consistently visited the children twice monthly, bringing crafts, games, and movies, and celebrating their birthdays with cupcakes. She loved her children and she believed they shared a bond.

The juvenile court rejected mother's argument that the beneficial relationship exception to adoption applied. Even though mother loved the children and behaved

appropriately, their relationship did not outweigh the children’s need for permanency with the adoptive family. The court found the adoption was in the children’s best interests and none of the statutory exceptions to adoption applied. Therefore, the court terminated mother and all fathers’ parental rights.

III

TERMINATION OF PARENTAL RIGHTS

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*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).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) In this case, mother argues the juvenile court should have applied the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). The beneficial parental relationship exception applies when there is “a compelling reason for determining that termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To show that the exception applies: “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.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 [“It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.”].)

The parent must also show that the parent-child 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. 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.’” (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother has the burden of establishing the applicability of the exception. (See *In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)

In reviewing challenges to a trial court’s decision as to the applicability of these exceptions, we will employ the substantial evidence or abuse of discretion standards of review depending on the nature of the challenge. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) We will apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues, such as whether the parent has maintained regular visits with the child (for the beneficial parental relationship exception). However, a challenge to the trial court’s determination of questions such as

whether, given the existence of beneficial parental relationship, there is a compelling reason for determining that termination of parental rights would be detrimental to the child “is a quintessentially discretionary determination.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review such decisions for abuse of discretion. (*Ibid.*) In the dependency context, both standards call for a high degree of appellate court deference. (*Ibid.*; *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

In arguing that the beneficial parental relationship exception applies, mother points to the following facts. The children were removed from the parents after spending their early formative years in mother’s care. In November 2010, mother’s neighbor wrote a letter approving of mother’s care of the children. The children enjoyed mother’s biweekly visits and demonstrated affection for her. Mother also asserts that she filled a parental role by, for example, bringing the children toys and cupcakes.

The foregoing facts may offer some evidence of an emotional bond between mother and the children and of pleasant visits between them. On the other hand, the children expressed the wish not to return to mother’s care. Furthermore, mother had done virtually nothing to improve as a parent or to ameliorate a history of punitive discipline and failure to protect and provide for the children. Mother has not succeeded in establishing a significant benefit to her children.

Even if the children would benefit from continuing the parent-child relationship with mother, the court must still select adoption as the permanent plan unless it finds there is a compelling reason for determining that termination of parental rights would be detrimental to the children. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court’s finding

that no such compelling reason exists is a matter within the court's discretion. The only detriment identified by mother caused by the termination of parental rights is the severance that would necessarily be caused by the end of the children's relationship with mother. Finally, there was no evidence by any counselor, therapist, social worker, or other person indicating that the termination of parental rights would be detrimental to these children.

In contrast, an abundance of evidence established the attachment of the children to their prospective adoptive family. The children are already calling the parents "Mommy" and "Daddy" and interacting with the older siblings. The adoptive parents promise to offer the children a permanent and stable home with financial security. The adoptive father, a San Diego social worker, is well-positioned to understand and address the early trauma suffered by the children. The children, in fact, are already flourishing in their new environment.

In view of the lack of persuasive evidence of a benefit or that the termination of parental rights would be detrimental to the children, we conclude that the court did not abuse its discretion in concluding that the beneficial-parental-relationship exception did not apply and terminating parental rights.

IV
DISPOSITION

We affirm the appealed orders.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.