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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

E057004

(Super.Ct.No. RIJ1100010)

OPINION

APPEAL from the Superior Court of Riverside County. S. Patricia Spear, Judge.
(Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Johanna R. Shargel, 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.

M.M. (Mother) appeals after the termination of her parental rights to T.M. at a Welfare and Institutions Code section 366.26¹ hearing.² Mother claims on appeal as follows: (1) the juvenile court erred by failing to apply the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i), and (2) termination of her parental rights on the basis of poverty and homelessness was erroneous.

I

PROCEDURAL AND FACTUAL BACKGROUND

A. *Detention*

Mother gave birth to T. in December 2010. T. was premature but in good health, and there were no drugs in her system. T. was transferred to Riverside Community Hospital on December 27, the same day that Mother was discharged from the hospital. T. was ready for discharge three days later, on December 30. The hospital attempted to contact Mother, but the information that she provided was inaccurate and her phone had been disconnected. Mother did not visit the hospital after Mother's discharge. Mother had contacted the hospital two days after she was discharged and reported that she was attempting to get a car seat for T. but never came back to the hospital.

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

² The identity of T.M.'s father is unknown.

Mother had not provided the name of T.'s father to the hospital. The maternal grandparents reportedly lived in Rialto, but Mother claimed they were out of town until January 2011. Mother contacted the hospital in late December. She claimed she was hospitalized and did not know when she would be discharged. She was advised that T. was ready for discharge. Mother provided no contact information and said she would call back.

The hospital contacted the Riverside County Department of Public Social Services (the Department). On December 31, 2010, a social worker came to the hospital for T. Mother called the hospital while the social worker was present. Mother provided a telephone number and address in Corona to the social worker. Mother had diapers, blankets, and clothing. She reported she did not have a car seat. She was asked if she had money to purchase formula but indicated she was planning to breastfeed. Mother was informed that T. might not breastfeed this long after birth. Mother said she had not visited T. because she was suffering from back pain. Mother did not know who T.'s father was and thought that T. was four to five weeks early. Mother was advised that T. was being placed in foster care and that the Department would assess Mother's living situation the following day in order to place T. in her care.

On January 1, 2011, the social worker contacted Mother. Mother claimed she was staying at a friend's house and had purchased the necessary items for T. Mother's friends did not want the Department inspecting their house. Mother agreed to meet the social worker at the Department's offices. She was informed to bring her pain medication so

that they could confirm the reason she failed to visit T. Mother stated she was just taking ibuprofen.

Mother arrived with a car seat. She explained that she had been told that she did not have to visit T. at the hospital. She also said she had back pain and a cold. Mother began crying when asked about the identity of T.'s father. When asked if T. was the product of a sexual assault, she said she did not want to talk about it. Mother was asked if she would consider voluntary surrender of T., but she said it was "God's plan" for her to have the baby. Mother reported that she had no family she could live with and probably could not move to a shelter with a newborn baby. Since Mother's current home could not be assessed, and because the Department was concerned that Mother had not visited T. at the hospital, T. was detained. Mother was referred to numerous services for housing and to attempt to get supplies for T.

A visit between Mother and T. was supervised on January 2. Mother was appropriate during the visit but appeared unemotional. Mother still could not authorize an inspection of the home in which she was residing. Mother could not find other housing. A phone number given for the maternal grandparents had been disconnected.

On January 4, 2011, the Department filed a section 300 petition. It alleged under section 300, subdivision (b) that Mother lead a transient lifestyle, had limited provisions to care for an infant child, and was unable to provide a stable living environment. In addition, it alleged pursuant to section 300, subdivisions (b) and (g) that the father was unknown and thus could not be contacted to provide for T.

A hearing was held on January 5, 2011. The juvenile court found a prima facie case and ordered T. detained.

B. *Jurisdictional/Dispositional Reports and Hearing*

In a jurisdictional/dispositional report filed on February 4, 2011, the Department recommended that T. remain outside the home and that Mother receive reunification services.

Mother was present at the detention hearing and was informed of the date for the jurisdictional hearing. However, since that date, the Department had been unable to contact her for an interview. Mother called the Department after working hours and left messages despite being advised that she should call during normal working hours. She had cancelled a visit with T.

Mother appeared to have no stable housing as she had reported at different times living with friends or in a hotel. Her current residence had not been evaluated because Mother would not allow the Department to conduct the evaluation. T., meanwhile, was developing normally.

Visits had occurred between Mother and T., supervised by the foster mother. The foster mother reported that Mother was affectionate but appeared uncomfortable. Mother had requested to take T. to the bathroom alone but was not allowed to by the foster mother. Mother's current residence and circumstances were unknown to the Department.

A first addendum report was filed on March 8, 2011. On February 28, 2011, Mother had registered for a shelter. The shelter was a nighttime shelter and only

provided mats on the floor for sleeping. There were no cribs provided at the facility. On February 2, 2011, Mother was referred to two shelters that provided transitional housing and would be appropriate for her and T. There was space in one of the shelters for Mother and T. Mother failed to contact the shelter and gave no reason to the Department for not doing so. Mother had been referred to a parenting education class but had not attended. Visitation was appropriate, however, and Mother appeared to have a bond with T.

The Department reported that Mother's housing remained unstable, and she was not able to adequately provide for T. Mother had no other support; if she stayed in a nighttime shelter, she would have to spend the day on the street. The Department was concerned that it had provided mother with referrals to shelters that would create stable housing for herself and T., but she failed to enroll.

At a hearing on the petition conducted on March 11, 2011, the juvenile court recommended placement of T. with Mother if a suitable home evaluation could be conducted.

On March 21, 2011, the Department filed an ex parte application and order for continued out-of-home placement. Mother had found housing accommodations at the Circle of Hope Shelter in Corona. However, this was a night shelter only. As of March 16, 2011, there was no transitional housing that could accommodate her and the baby available at the Circle of Hope shelter. Mother was mailed several referrals for transitional housing that would take her and T.

According to a social worker who supervised visits between T. and Mother, Mother exhibited some disturbing behaviors. Mother had blocked the social worker's view of T. on occasions. Mother also frequently asked to take T. into the bathroom alone. The visits were moved to the Department due to these concerns. It was recommended that T. remain in foster care.

The jurisdictional/dispositional hearing was conducted on March 23, 2011. Mother's counsel advised the juvenile court that Mother was trying to find a shelter to house her and the baby. Mother disagreed with the wording in the petition that she was leading a "transient lifestyle." The Department argued that Mother did not have stable housing despite numerous referrals and did not have provisions for T.

The juvenile court expressed that it was more concerned with Mother's behavior during visitation. It was also concerned that Mother was unavailable to T. in the hospital when she was born. It found the allegations in the petition true, amending "transient" to "unstable housing." Mother was granted six months of reunification services. The juvenile court allowed the Department to provide more visitation, and all services were available to Mother.

C. *Six-Month Review Report and Hearing*

In the six-month status review report filed on September 2, 2011, it was recommended that reunification services be continued for Mother. It was also recommended that Mother undergo a psychological evaluation. Mother continued to advise the Department that she did not know the name of T.'s father.

Mother reported she was living at a shelter in Corona. She had a room and claimed to have access to a telephone, but the social worker had never been able to contact her at the number. Mother reported she had a part time job as a tutor and made \$500 to \$1,000 a month. Mother's phone number had been out of order since July 2011.

T. was eight months old and developing normally. She had been with her current foster mother since February 8, 2011, and they had bonded. The foster mother was interested in adopting her.

Mother needed additional time to complete her services. During some visits, Mother had overfed T., and the baby had vomited later. Mother had been attending counseling since May 28, 2011. The therapist had reported that Mother was working hard to get T. back. Mother had completed nine out of 14 weeks of a parenting classes. Visits between Mother and T. had been appropriate. Mother fed T. and changed her diaper. She also played with her.

The Department was still concerned that Mother was not forthcoming about her living situation. Although she claimed to find housing on July 1, 2011, she did not tell the social worker until August 30, 2011. The Department recommended that, once Mother's living situation could be approved, unsupervised and overnight visits should be granted. Mother would have to show she could remain in contact with the Department.

A six-month review hearing was held on September 20, 2011. Mother's housing had been inspected. Mother's therapist would decide if she needed further psychological

evaluation. The juvenile court continued reunification services for six months, and unsupervised overnight and weekend visits were authorized.

D. *Twelve-Month Review Report and Hearing*

The Department filed a 12-month status review report on March 5, 2012. It recommended that reunification services be terminated for Mother.

She claimed she was living in a motel on La Sierra Avenue in Riverside. On February 29, 2012, the social worker contacted the motel and was told that Mother was not residing there. The Department did not know where Mother was residing. Mother had been living in a shelter that had been evaluated by the Department. However, less than a week after the evaluation, Mother moved out. Mother stated on February 21, 2012, that she was going to move into an apartment in two weeks.

T. had a one-year check up and was developing normally.

The Department recommended continued out-of-home placement because Mother was “essentially homeless” and was deceptive to the social worker about her living situation. Mother’s therapist had not provided a written recommendation for a psychological evaluation and had provided no updates for Mother. Mother completed her parenting class. Visitation continued to be appropriate.

The Department was concerned that Mother had been deceptive since the beginning of the dependency and continued to lie about her housing situation. Mother had not been able to participate in overnight visits with T. because she did not provide a

location to be evaluated for the visits. Each time the social worker tried to meet with Mother, she had an excuse why she could not meet.

On March 20, 2012, the social worker advised the juvenile court that Mother had been told that she needed to find housing at some point in the process, and if she did, she should have the home evaluated.

A contested review hearing was held on April 26, 2012. Mother was not present. As of the hearing, Mother had not contacted the Department in order for it to complete a home evaluation. Mother requested continued services but presented no affirmative evidence. Mother's reunification services were terminated. A section 366.26 hearing was set.

E. *Section 366.26 Reports and Ruling*

On August 8, 2012, the Department filed a report for the section 366.26 hearing. Mother was believed to be homeless. During a visit with T. on July 17, 2012, she had dirt on her sleeves and was carrying a bag with cans and bottles. Mother stopped attending counseling in March 2012. T. was developing normally.

During visitation, T. was "comfortable" with Mother. The Department stated, "Out of home placement continues to be necessary and appropriate at this time, as the mother . . . is essentially homeless and has not located stable housing and has been deceptive to the social worker about her living arrangements. She has not provided her current address."

On August 23, 2012, the section 366.26 hearing was conducted as will be set forth in more detail, *post*. Mother's parental rights were terminated and T. was freed for adoption. Mother filed a notice of appeal.

II

BENEFICIAL PARENT EXCEPTION OF SECTION 366.26, SUBDIVISION (C)(1)(B)(i)

Mother argues that the beneficial parent exception of section 366.26, subdivision (c)(1)(B)(i) applied, and the juvenile court erred by terminating her parental rights.

A. *Additional Factual Background*

At the section 366.26 hearing, the Department submitted on the section 366.26 report. Mother did not object to the reports. She objected to adoption as the permanent plan and requested guardianship. Mother's counsel argued Mother was homeless due to the economy but had maintained consistent contact. Visitation between Mother and T. had been appropriate. Mother's counsel stated, "So I would ask the Court to find the exception under 366.26(c)(1)(b)(1), parent has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The Department conceded that Mother had maintained regular visitation. However, Mother had never had custody of T., and her visitation was always supervised. There was not an opportunity to establish a positive emotional attachment.

The juvenile court recognized the preference for adoption. It found that T. was adoptable. It then stated that Mother had to show that it was in T.'s best interest to not

terminate parental rights. It stated, “The Court can’t make that finding. The . . . child was removed from birth. Mom didn’t originally take the child from the hospital. She hasn’t been able to establish a home. And I’m not sure why that is. But she hasn’t really been very active in the services. She has . . . discontinued services, but she has visited. [¶] [B]ut the child is very, very young, and so the Court finds that that visitation in and of itself is not a sufficient or compelling reason at all to determine that the benefits of adoption have been outweighed by . . . maintaining mom’s parental rights. So at this point, the Court is prepared to terminate mom’s parental rights.”

B. *Analysis*

At the section 366.26 hearing, the sole issue “‘is whether there is clear and convincing evidence that the child is adoptable.’ [Citations.]” (*In re Josue G.* (2003) 106 Cal.App.4th 725, 733; see § 366.26, subd. (c).) “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds that termination of parental rights would be detrimental to the child under one of the seven exceptions set forth in section 366.26, subdivision (c)(1)(A) and (c)(1)(B)(i) through (v). (See *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.)

The parental benefit or “beneficial relationship” exception is set forth in section 366.26, subdivision (c)(1)(B)(i). The exception applies where “[t]he parents . . . have maintained regular visitation and contact with the minor and the minor would benefit

from continuing the relationship.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.)

The parent has the burden of proving that the exception applies. (*Ibid.*; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

“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.*, *supra*, 73 Cal.App.4th at p. 827.) “The ‘benefit’ prong of the exception requires the parent to prove 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.’ [Citations.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

The substantial evidence standard of review applies to the evidentiary showing with respect to factual issues, such as whether the parent has maintained regular visits with the child. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) A challenge to the juvenile court’s determination of questions such as whether there is a compelling reason for determining that termination of parental rights would be detrimental to the child is “‘a quintessentially discretionary determination.’” (*Id.* at pp. 1314; see also *In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review such decisions for abuse of discretion. (*Bailey J.*, at p. 1315.)

There is no dispute that Mother participated regularly in visitation. However, Mother failed to show that the juvenile court abused its discretion by finding that the

parent/child bond between T. and Mother was such that they would be irreparably harmed by terminating the relationship.

“The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.) Mother did not show that her relationship with T. was important and beneficial.

T. came to the attention of the Department when Mother did not pick her up from the hospital when she was ready to be discharged. Mother never gave an adequate reason either for her failure to visit T. in the hospital or her failure to pick her up at the time of discharge. She gave different reasons each time she was asked: she did not have a car seat; she had back pain, she was told she did not have to visit the hospital, she had a cold. T. and Mother never bonded after T.’s birth. T. was immediately placed in foster care. She was moved once but was placed with the foster mother for almost her entire life. T. never lived with Mother. T. was a baby who needed nurturing and constant support. Mother provided none of this.

This case is similar to the situation in *In re Bailey J., supra*, 189 Cal.App.4th 1308. There, Bailey was taken from his mother’s custody when he was only two days old due to her and his father having a history of abuse and neglect of their other children. (*Id.* at p. 1312.) Visits between Bailey and his mother were supervised and went well. Bailey

had been placed with the same foster mother since his birth, and she wanted to adopt him. (*Ibid.*) The juvenile court found at the section 366.26 hearing that Bailey would not benefit from continuing the relationship with his mother. (*Bailey J.*, at p. 1313.)

The appellate court found that the juvenile court did not abuse its discretion in refusing to apply the exception. It concluded, “This evidence did not establish that the relationship between the mother and Bailey was a beneficial parental relationship. As Bailey was detained when he was two days old, he spent no part of his life in the mother’s custody. Her entire relationship with Bailey was established through supervised weekly visits. . . . At best, mother’s supervised interactions with Bailey amounted to little more than play dates for him with a loving adult. Their frequent and loving contact was insufficient to show the requisite beneficial parental relationship. For instance, the mother produced no evidence that Bailey looked forward to visits with her or had difficulty separating from her at the end of their visits. While there was no evidence that the visits themselves were detrimental to Bailey, there was also no evidence that Bailey benefitted from these visits. The undisputed evidence did not establish that the mother had a beneficial parental relationship with Bailey.” (*Id.* at p. 1316.)

Here, there was no evidence that there was any bond beyond a playmate or caregiver between T. and Mother. Although Mother took care of T. during the supervised visits, there was no evidence that T. would cry at the termination of the visits or express any emotional attachment to Mother. Mother’s own deception thwarted any attempts by the Department to assist her in establishing a bond with T. Overnight and

unsupervised visits had been authorized, but Mother refused to notify the Department of her living situation.

Even if Mother could establish a beneficial relationship, she cannot show that the relationship outweighed “the well-being the child would gain in a permanent home with new, adoptive parents.” [Citations.]” (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.) T. barely knew Mother. T. was bonded to the foster mother, with whom she had been placed since she was only a few days old. The foster mother was committed to adopting T. Based on the foregoing, the juvenile court did abuse its discretion by finding that the parental benefit exception did not apply in this case.

III

POVERTY AND HOMELESSNESS AS REASONS FOR TERMINATING PARENTAL RIGHTS

Mother contends that the juvenile court improperly took into account her homelessness and poverty in terminating parental rights. As argued by the Department, Mother never raised this issue in the lower court at the section 366.26 hearing. At the section 366.26 hearing, Mother argued that the parental benefit exception applied and that the juvenile court should consider guardianship instead of adoption. Mother’s failure to raise the issue that the juvenile court could not terminate her parental rights on the basis

of poverty or homelessness below waives the issue on appeal. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641-642.)³

Moreover, the record establishes that the trial court did not terminate Mother's parental rights on the basis of poverty or homelessness. We agree that "[p]overty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction" (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212), and homelessness is not a reason for terminating parental rights (see *In re P.C.* (2008) 165 Cal.App.4th 98, 103-104, 107). Here, Mother's parental rights were terminated because she abandoned T. at birth and then evaded the Department throughout the dependency proceeding. The Department was unable to place T. with Mother because Mother would provide no information regarding her living situation or anything else. The issue was not whether she could find suitable housing; rather, it was that she refused to provide information to the Department and the court.

Appellant relies on *G.S.R.* to support his claim. In *G.S.R.*, two boys were taken from their mother when she was arrested. (*In re G.S.R.*, *supra*, 159 Cal.App.4th 1 at p. 1205.) A few months later, the boys' father, who had a history of drug abuse and domestic violence, appeared in the proceedings. The father had completed a drug

³ Mother claims in her reply brief that she did not waive this claim because the issue involves the fundamental jurisdiction of the court. However, in her opening brief, Mother raised the issue as an error in terminating parental rights. Mother cannot argue for the first time in the reply brief that the juvenile court lacked jurisdiction. Nonetheless, since the issue is easily resolved on its merits, we will review the claim.

program and a domestic violence program. He was declared a nonoffending parent and granted reunification services. He was unable to take custody of the boys because he rented a room in a house that could not accommodate children. (*Id.* at pp. 1206-1207.) The father maintained visitation throughout the proceedings but could not secure appropriate housing. The only evidence in the record that the father could not obtain suitable housing was the lack of money. The court terminated father's parental rights. (*Id.* at pp. 1209-1210.)

On appeal, the court found that all of the father's issues with domestic violence and substance abuse had been resolved, and the only unresolved matter was his inability to afford housing. The court found, "The record strongly suggests the *only* reason [the father] did not obtain custody of the boys was his inability to obtain suitable housing for financial reasons. But poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction. . . . [I]ndigency, by itself, does not make one an unfit parent and 'judges [and] social workers . . . have an obligation to guard against the influence of class and life style biases.' [Citation.]" (*In re G.S.R.*, *supra*, 159 Cal.App.4th 1 at p. 1212.) "Under these circumstances, we determine [the father]'s due process rights were denied by DCFS' failure to demonstrate sufficient detriment and the juvenile court's failure to find a legitimate basis for deeming him unfit." (*Id.* at p. 1215.)

Here, unlike in *G.S.R.*, Mother had been found to be an unfit parent. Moreover, there was much more to Mother's inability to provide suitable housing than her financial

problems. Mother continued to deceive the Department by refusing to provide proper contact information. Mother was offered at every turn opportunities for suitable housing, but she rejected them. At one point in the proceedings, Mother had reported that she was working, but she refused to give the Department any information as to her living situation. It is not at all clear from the record that she was not finding suitable housing because of poverty. Finally, when the Department finally had evaluated Mother's housing, she immediately moved out and did not remain in contact with the Department.

The juvenile court did not terminate Mother's parental rights on the basis of poverty and homelessness. It had before it clear and convincing evidence that there was a substantial danger to T. if she remained with Mother because Mother continued to be deceptive and evasive. The trial court did not error by terminating Mother's parental rights.

IV

DISPOSITION

The orders of the juvenile court are affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.