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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.F., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.S.,

Defendant and Appellant.

E057579

(Super.Ct.No. RIJ119208)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew Perantoni,
Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

B.S., defendant and appellant (hereafter father), appeals from the trial court's order under Welfare and Institutions Code section 366.26¹ terminating his parental rights to his then seven-year-old daughter, K.F. Father contends the so-called beneficial parental relationship exception to parental rights termination applies in this case. We disagree and, therefore, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are undisputed. Riverside County Department of Public Social Services—Child Protective Services (CPS) filed a section 300 petition in January 2010 with respect to then four-year-old K.F. after the child's mother overdosed on heroin and was found unconscious on the floor of the bathroom of the maternal grandmother's home. Father had been living with the mother and K.F. in the maternal grandmother's home since November 2009 and identified himself at the detention hearing as the child's primary caretaker.

At the detention hearing, the trial court detained K.F. only with respect to the mother and left the child in the custody of father. Father and K.F. continued to live with the maternal grandmother. On February 22, 2010, the trial court conducted the combined jurisdiction and disposition hearing at which it ordered reunification services for the mother and family maintenance for father.²

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

² Mother is not a party to this appeal.

In April 2010, CPS filed a supplemental petition after father passed out in a fast food restaurant. He had four-year-old K.F. with him. When the police arrived, they discovered father had outstanding arrest warrants and took him into custody. According to K.F.'s paternal grandfather, father had a serious drug problem. The trial court detained K.F., removed her from father's custody, and placed her in a foster home. At a jurisdiction hearing in June, the trial court sustained the petition and ordered reunification services and visitation for father.

At the six-month review hearing on the first amended petition, in September 2010, the trial court found that father's progress toward reunification had been unsatisfactory and ordered continued reunification services. According to the social worker's report for that review hearing, father had only one visit with K.F. between June and September 15, 2010, initially because the social worker was unable to contact father in order to arrange a visit, and later because father entered a residential drug treatment program. During their one visit, father was appropriate with K.F. and she was affectionate with him. The social worker reported that K.F. was thriving in foster care; she felt loved and safe in the foster home. K.F.'s caregivers were interested in adopting her.

Father made progress toward reunification with K.F. over the next six months. He consistently visited with K.F., who in turn looked forward to his visits and was affectionate with him. At the 12-month review hearing on March 23, 2011, the trial court ordered six additional months of services for father, although it terminated the mother's reunification services. Father continued to progress. As a result, in July 2011, the trial

court authorized CPS to place K.F. with father and ordered family maintenance services. That placement occurred on September 12, 2011.

Father was arrested on a parole violation for possession of firearms in January 2012. CPS returned K.F. to the care of her foster family after removing the child from father's custody and filed a second supplemental dependency petition on January 31, 2012. The trial court sustained that petition on March 14, 2012, and this time the court denied reunification services to father. The trial court set a section 366.26 hearing for July 12, 2012.

After several continuances, the trial court conducted the contested selection and implementation hearing on November 9, 2012. Father testified at that hearing, among other things, that he had not visited K.F. since she was removed from his custody the second time, in March, because he was concerned for her welfare. Specifically, father said he had learned in parenting classes when children go "through this multiple loss over and over that they can be traumatized" and, as a result, might never bond with their caregiver. Father wanted K.F. "to have stability in her life where she had been taken from her mother, taken from [father], given to the foster people, taken from them, given back to [father], taken from [father] and given to the foster people."

Father testified that although "realistically" he knew this would be the outcome, he nevertheless acknowledged that he had a special bond and relationship with K.F. For that reason, father asked the trial court not to terminate his parental rights and instead order guardianship as the permanent plan for K.F.

The trial court, after making the necessary findings, terminated father's parental rights and ordered adoption as the permanent plan.

Father appeals from that order.

DISCUSSION

Father, as noted previously, contends the trial court erred in terminating his parental rights because the exception to termination under section 366.26, subdivision (c)(1)(B)(i) applies in this case. We disagree.

The pertinent legal principles are well settled. Once the court terminates reunification services, the focus of juvenile dependency proceedings is on the needs of the child, and specifically on the need for a stable, permanent home. Therefore, adoption is the statutorily preferred permanent plan for a dependent child. If the court finds that the child is adoptable and is reasonably likely to be adopted, the court must terminate parental rights and order the child placed for adoption unless the court finds that one of the exceptions set out in section 366.26, subdivision (c) applies. (§ 366.26, subd. (c); *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Under section 366.26, subdivision (c)(1)(B), the court may decline to terminate parental rights, even if it finds the child is adoptable and there is a reasonable likelihood that the child will be adopted, if the court finds one of several statutorily specified "compelling reason[s] for determining that termination would be detrimental to the child." The statutorily specified compelling reason, or exception, at issue here is that "[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).)

The parents have the burden of demonstrating that the so-called beneficial parental relationship exception applies. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) In order to meet that burden, the parents must demonstrate both that they have 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 also *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.)

A. Standard of Review

“Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination. 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 or sibling relationship, a substantial evidence challenge

to this component of the juvenile court's determination cannot succeed.” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

“The same is not true as to the other component of these adoption exceptions. The other component of both the parental relationship exception and the sibling relationship exception is the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies.” (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

B. Analysis

Father concedes he did not have any contact with K.F. after she was removed from his custody in January 2012. By the time of the November 2012 selection and implementation hearing, K.F. had not had any contact with father for 11 months, or “nearly a year” as father candidly puts it. Father also acknowledges that this lapse in contact with K.F. “[a]t first blush . . . would appear to be fatal to his claim.” Nevertheless, he contends, despite the near year-long gap, the evidence was sufficient to

support a finding on the “contact” requirement of the beneficial parental relationship exception.

Father cites the fact that “with the exception of a year,” K.F. purportedly had been in his almost exclusive care since her birth in 2005 until her initial removal in January 2011; he maintained regular visits with K.F. during the times she was in foster care. According to father, by the time of the section 366.26 hearing, K.F. was seven years old, and for six of those years, “86 percent of the child’s life,” father had maintained contact with K.F.

Father did not maintain regular contact with K.F., his contrary claim notwithstanding. As set out above, in addition to the near year-long gap, father did not have contact with K.F. for nearly four months after four-year-old K.F. was removed from his custody in April 2010. According to the social worker’s report for the section 366.26 hearing, father said he was “so traumatized by [K.F.’s] removal from his care that he does not believe he could see her without becoming extremely upset in her presence.”

We will not belabor the issue, however, because, even if we were to conclude father maintained regular contact and visitation with K.F. despite the significant gaps in contact, we nevertheless would conclude the evidence is insufficient to support a finding under the beneficial parental relationship exception.

As previously discussed, “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." (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

According to the social worker's report, by the time of the section 366.26 hearing, K.F. was seven years old. She referred to her foster home as her "real home," and called her foster parents, "Mom and Dad." K.F. told the social worker that she did not want to return to her father's custody; "she feels he is undependable." K.F. also told the social worker that she wanted to stay with her foster caregivers and be adopted by them.

These facts, which are undisputed, do not compel a conclusion that severing K.F.'s relationship with father "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Therefore, father has not met his burden of demonstrating the existence of facts to support a finding under the beneficial parental relationship exception. Absent such a showing by father, he cannot demonstrate that the relationship constitutes a compelling reason for determining that termination of father's parental rights would be detrimental to K.F. (§ 366.26, subd. (c)(1)(B).) In short, the trial court did not abuse its discretion by terminating father's parental rights in this case.

DISPOSITION

The order terminating father's parental rights with respect to K.F. is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.