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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.T. et al.,

Defendants and Appellants.

E059426

(Super.Ct.No. RIJ1100975)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Defendant
and Appellant mother.

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

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

I

INTRODUCTION

Mother and father's (parents) abuse of drugs, domestic violence, and mental health issues led to the Riverside County Department of Public Social Services, Child Protective Services (DPSS) removing parents' five-month-old daughter, K.T., from their care. Mother and father appeal the order terminating parental rights on the ground the juvenile court erred in rejecting the beneficial parent relationship exception to terminating parental rights. Father does not assert any substantive arguments, other than by joining in mother's contentions on appeal.

We conclude parents forfeited their objection on appeal to the juvenile court rejecting the parent relationship exception because parents did not raise the objection in the lower court. Furthermore, parents have not demonstrated the parent relationship exception applies. The judgment is therefore affirmed.

II

FACTS AND PROCEDURAL BACKGROUND

Parents met in 2009 and, in June 2011, were living together with their daughter, K.T. (born in January 2011). On June 22, 2011, mother or a neighbor reported to law enforcement that father had choked mother for finding drugs on him. Father fled from his home before law enforcement arrived but later returned. Law enforcement warned mother that if father returned, K.T. could be removed from her home. On June 27, 2011,

CPS (Child Protective Services) received a 10-day referral for general neglect of K.T. The choking incident was reported to the CPS, and also that parents had a long history of abusing methamphetamine. In addition, it was reported mother was breastfeeding K.T. while abusing drugs.

CPS investigated the matter and confirmed that parents had a long history of abusing drugs, particularly methamphetamine. Mother claimed she had been sober since her pregnancy with K.T. but had a history of relapsing. Parents had a history of domestic violence, as well. Parents also had criminal histories and each suffered from bipolar disorder. Mother took medication for her bipolar condition.

The CPS social worker noted that, when visiting the family home on July 7, 2011, mother appeared to be bonded to K.T. During a visit by the social worker on July 19, 2011, mother suffered an “emotional melt down.” She started crying and said she had been in an argument with father. Mother admitted she had used methamphetamine two days earlier. While crying uncontrollably, mother said she was depressed and needed help. Mother conceded she and father had had three prior incidents of domestic violence but they did not occur in front of K.T.

On July 21, 2011, mother was taken to the hospital under Welfare & Institutions Code, section 5150¹ for her depression. Father had left home July 18, 2011, and was arrested and incarcerated for burglary. CPS detained K.T. and placed her with maternal grandmother (grandmother).

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

Juvenile Dependency Petition for K.T.

On July 21, 2011, CPS filed a juvenile dependency petition on behalf of K.T., under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition alleged parents failed to supervise or protect K.T., and failed to provide her with regular care due to parents engaging in domestic violence, mental illness, substance abuse, and father's incarceration. The following day, the juvenile court ordered K.T. detained. Reunification services were offered to parents and parents were granted supervised visitation twice a week.

Jurisdiction/Disposition Hearing

Parents reportedly suffered from long-term mental health and substance abuse problems. They also frequently engaged in verbal arguments and physical fights. Mother started using drugs in 2004. She remained sober for three years, but relapsed in 2008. She went to a three-month drug abuse treatment program but after she completed the program, she relapsed in 2009. Mother abused drugs on and off until she discovered she was pregnant with K.T. in May 2010. She relapsed again in June 2011 and July 2011.

On August 16, 2011, father enrolled in a drug abuse treatment program but by September 3, 2011, he had left the program, moved back with mother, and placed himself on the waiting list for another recovery program in Los Angeles. Father violated his probation conditions by not informing probation of leaving the substance abuse program in Los Angeles and returning to Riverside.

During the jurisdiction/disposition hearing on September 21, 2011, the juvenile court found jurisdiction over K.T. under section 300, subdivision (b), and ordered her removed from parental custody. Parents were ordered to comply with their case plans, which required parents to participate in counseling, complete courses in parenting, substance abuse, and domestic violence, submit to random drug testing, undergo a medication evaluation, and take medications as prescribed. The court also ordered reunification services for parents and authorized visitation to continue as previously ordered.

Six-Month and 12-Month Review Hearings

On December 21, 2011, mother tested positive for methamphetamine. Father also tested positive for methamphetamine use and was noncompliant with his case plan. He continued to engage in domestic violence, missed some visits with K.T., often argued with mother during the visits, and attended at least one visit under the influence of methamphetamine. In January 2012, father was incarcerated again for having four warrants for burglary, grand theft, and a probation violation. His projected release date was December 14, 2012. Mother continued to maintain a relationship with father while he was incarcerated in Banning. Mother continued to visit the children, although her visits were sporadic.

K.T. was doing well in grandmother's care and was in good health, with the exception she suffered from gastroesophageal reflux disease, asthma, and ear infections. During the six-month review hearing in April 2012, the court continued services for

mother but terminated them as to father because he had not made any progress on case plan and was still incarcerated.

Mother completed her residential substance abuse treatment program on April 30, 2012, and enrolled in an aftercare program. Mother reported that her recent seven-month span of maintaining sobriety was the longest period of sobriety she had achieved since 2004. In July 2012, mother gave birth to a son, J.T.² CPS filed a juvenile dependency petition as to J.T. based on the pending juvenile dependency proceedings as to K.T., and mother's criminal history and history of domestic violence and substance abuse. At the detention hearing in July 2012, as to J.T., the juvenile court permitted J.T. to remain in mother's custody.

In CPS's addendum report filed in August 2012, CPS recommended that K.T. be returned to mother's care. Mother had been compliant with her case plan and had suitable housing for her children. CPS expressed concerns mother would reunite with father after he was released from prison.

During the 12-month review hearing as to K.T. on August 9, 2012, the court found mother had made satisfactory progress and was consistently visiting K.T. The court ordered K.T. returned to mother's care, with family maintenance services provided to mother. Reunification services were denied as to father, who was still incarcerated. The court authorized supervised visits for father upon his release from prison. Father was

² This appeal is only as to K.T.

released from prison two weeks later, on August 22, 2012. He immediately enrolled in an inpatient treatment program.

On September 19, 2012, CPS filed section 387 supplemental petitions alleging that mother had relapsed on methamphetamine on September 7, 2012. Because she was struggling with depression and her medications were not working, she self-medicated with methamphetamine. Mother stated that seeing father when she dropped the children off for visitation with father, triggered her relapse. On September 17, 2012, CPS placed K.T. and J.T. in protective care. In November 2012, the children were placed with their maternal aunt (aunt) and uncle, who was willing to adopt K.T. Mother visited the children weekly for two hours.

At a contested review hearing for K.T. and contested dispositional hearing on the section 387 petition, held on December 10, 2012, the court ordered a section 366.26 hearing as to K.T. and terminated reunification services, since mother had already received in excess of six months of services for K.T. As to J.T., the court authorized an additional six-months of services for mother. The court authorized supervised visitation of J.T. and K.T. in accordance with the previous visitation orders of one-hour visits twice a week. Mother's visits were changed to one two-hour visit a week.

Section 366.26 Hearing as to K.T.

CPS reported in the section 366.26 hearing report and addendum report, filed in March and June 2013, that K.T. appeared well-adjusted and happy in her aunt's home. She was bonding with her aunt and uncle and their children. K.T. did not exhibit separation anxiety from her parents and did not ask for them, other than right after she

had visits with them. K.T.'s aunt and uncle were willing to adopt K.T. They were also willing to consider allowing contact between K.T. and parents after adoption.

Mother missed or cancelled at least six visits (three in January 2013 and three in February 2013). She also appeared to be on drugs when she showed up for a visit in February 2013. Therefore, during a review hearing in April 2013, the court ordered mother's visits reduced to one visit per month, with additional visits subject to the caregiver's approval. Father's visits remained twice a month. Father's attorney noted that father was visiting twice a month, although he missed a couple of visits, and parents had separated. K.T.'s aunt informed the court that neither parent had made their visits. Father had not seen the children for over a month.

During the section 366.26 hearing as to K.T., on July 8, 2013, the court found K.T. adoptable. The court concluded none of the exceptions to adoption applied and terminated parental rights.

III

BENEFICIAL PARENT RELATIONSHIP EXCEPTION

Mother contends the juvenile court erred in rejecting the parent relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i).

A. Forfeiture

CPS argues parents forfeited their objection to the trial court rejecting the parent relationship exception, because parents did not raise it in the lower court. We agree.

A party on appeal cannot successfully complain the trial court failed to do something which it was not asked to do. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587,

603.) Furthermore, failure to object below forfeits the issue on appeal. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641-642.) At the section 366.26 hearing, parents' attorneys did not argue that the parent relationship exception to termination of parental rights applied. Counsel merely objected "for the record" to termination of parental rights, without asserting that the parent relationship exception or any other exception applied. Therefore, parents forfeited their contention, raised for the first time on appeal, that the parent relationship exception applies.

Nevertheless, even assuming the issue was not forfeited, we conclude the juvenile court did not err in rejecting the parent relationship exception to termination of parental rights.

B. Applicable Law

At the section 366.26 hearing, the juvenile court's task is to select and implement a permanent plan for the dependent child. When there is no probability of reunification with a parent, adoption is the preferred permanent plan. (§ 366.26, subd. (b)(1); *In re Marina S.* (2005) 132 Cal.App.4th 158, 164.) If the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the juvenile court must terminate parental rights, unless one of several statutory exceptions applies. (§ 366.26, subd. (c)(1); *In re Marina S.*, at p. 164.)

Under section 366.26, subdivision (c)(1)(B)(i), the parent relationship exception may apply when a 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); see *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 ["parent has the burden

to show that the statutory exception applies.”].) 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“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.”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) The relationship that gives rise to this exception to the statutory preference for adoption “characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; see also *In re K.P.* (2012) 203 Cal.App.4th 614, 621.) The juvenile court may consider the relationship between a parent and a child in the context of a dependency setting, but the overriding concern is whether the benefit gained by continuing the relationship between the biological parent and the child outweighs the benefit conferred by adoption. (*In re*

Lukas B. (2000) 79 Cal.App.4th 1145, 1155-1156; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

C. Standard of Review

California courts have disagreed as to the applicable standard of review for an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. Most courts have applied the substantial evidence standard of review. We agree with the view expressed in the recent decision, *In re K.P.*, *supra*, 203 Cal.App.4th at pages 621-622, “that the review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. . . . [W]hether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists . . . is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citations.] This “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,’ is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]” (*Ibid.*, quoting *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We likewise apply the composite standard of review here.

D. Discussion

Mother argues the order terminating parental rights must be reversed because she shared a close bond with K.T., and K.T. will suffer undue detriment if visits and other contact with mother are terminated. Mother suggests that the permanent plan of guardianship would be more appropriate than adoption. We disagree. Parents have not established a compelling reason for applying the parent relationship exception. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at pp. 1349-1350.) “‘The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.’ [Citation.]” (*Id.* at pp. 1348-1349, quoting *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) It is not enough simply to demonstrate “some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349.)

Here, the record shows that, although mother consistently visited K.T. during the initial 13 months of the court proceedings, leading to the return of K.T. to mother, after mother relapsed on drugs and her children were removed a month later in September 2012, parents failed to maintain regular visitation and contact thereafter. Parents missed scheduled visits and did not maintain consistent contact with her. Even when father was not in prison, he did not consistently visit K.T. Mother missed or cancelled at least six visits (three in January 2013 and three in February 2013). Grandmother informed CPS

that she believed that in January and February 2013, mother was once again abusing drugs.

As a consequence of mother missing visits, in April 2013, mother's supervised visitation was reduced to one visit a month. Father was granted two supervised visits a month. By the time of the section 366.26 hearing, parents had not visited K.T. for over a month, according to K.T.'s care taker. Evidence of these circumstances was sufficient to support a reasonable finding that parents did not maintain regular visitation and contact with K.T.

Furthermore, based on parents' sporadic visitation, repeated relapsing on methamphetamine, and father's incarceration, the juvenile court could reasonably conclude parents did not occupy a parental role in K.T.'s life and K.T. would not benefit from continuing a relationship with parents. K.T. was removed from parents' care in July 2011, when she was five and a half months old. Parents occupied a parental role in K.T.'s life for a very short period of time while she was in their care. During that time, mother relapsed on drugs. There was evidence father was also abusing drugs. Parents had a long history of using methamphetamine, attempting to rehabilitate, and relapsing.

According to mother, she started using drugs in 2004, maintained sobriety for three years, from 2005 to 2008, attended a substance abuse rehabilitation program, relapsed in 2009, stopped using drugs while pregnant with K.T. in 2010, and relapsed once again in June 2011. Mother rehabilitated in April 2012, relapsed on methamphetamine in September 2012, and was using methamphetamine in January and February 2013. Grandmother confirmed she assisted mother with rehabilitation three

times. Mother acknowledged that the seven-month span she was sober while pregnant with J.T. in 2012, was the longest she had been sober. K.T. was returned to mother in August 2012, because it appeared that she had rehabilitated, but then about a month later, in September 2012, mother again relapsed on methamphetamine and K.T. and J.T. were removed from mother's care. Under these circumstances of parents likely continuing to abuse drugs, K.T. would not benefit from continuing her relationship with parents.

Furthermore, although parents' visits generally went well, parents have not established they occupied a parental role during the visits. The visits were supervised and were only one or two hours long. K.T. was removed from parents care when she was an infant (five and a half months old) and, therefore, although CPS reported mother initially was bonded to K.T., the court could reasonably conclude any parental bond that once existed was no longer close by the time parental rights were terminated, two years after K.T. was removed from parents' custody, particularly since there was evidence visits were sporadic and parents had not visited for over a month at the time of the section 366.26 hearing.

In addition, K.T. reportedly did not exhibit any anxiety from being separated from parents, other than that K.T. would act out after her visits with mother ended. K.T. had established a close bond with her prospective adoptive parents, who were not opposed to allowing K.T. to visit parents. As mother acknowledges, the maternal family was very close, including K.T.'s grandmother, cousins, and four aunts, one of whom was K.T.'s prospective adoptive mother. Mother asserts that, even though the prospective adoptive parents agreed to allow her to visit K.T., this does not guarantee continued visitation.

Nevertheless, the juvenile court may take into consideration K.T.'s aunt's willingness to allow visitation in determining whether termination of parental rights would be detrimental to K.T.

We conclude parents have not established that the parent relationship exception to termination of parental rights applies. They have not met their burden of proving that continuing their parent-child relationship with K.T. promotes the well-being of K.T. outweighs the well-being K.T. would gain in a permanent home with new, adoptive parents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.