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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.P. et al, Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.L. et al.,

Defendants and Appellants.

E060945

(Super.Ct.Nos. J249443 & J249913)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,

Judge. Affirmed.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and
Appellant father.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant, mother.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION¹

Mother, A.L., and father, A.P., both born in 1996, are teenagers. Their first child, C.P., was hospitalized after suffering multiple serious fractures while in parents' custody. Their second child, M.P., was removed at birth. Parents appeal separately from the orders of the juvenile court denying their petitions for reunification services and terminating their parental rights. We hold the juvenile court properly denied reunification services for the parents and terminated parental rights.

II

FACTUAL AND PROCEDURAL BACKGROUND

CFS² filed an original dependency petition on May 16, 2013, alleging that C.P., then nine months old, had suffered multiple injuries while in the custody of her parents. (§ 300, subds. (a), (b), (e), and (i).) C.P. was hospitalized with numerous fractures in various stages of healing, including fractures of the left and right tibia, right and left clavicle, a right rib, and the right jaw. She had difficulty crawling, standing, and

¹ All statutory references are to Welfare and Institutions Code section unless stated otherwise.

² Children and Family Services, County of San Bernardino.

walking. Her parents could not explain how she had been hurt. The court detained C.P. and removed her from her parents. The court ordered weekly supervised two-hour parental visitation.

A. Jurisdiction and Disposition

In its jurisdictional/dispositional report in June 2013, CFS recommended the parents not receive reunification services. Mother, born in November 1996, was 16 years old. Father, born in June 1996, turned 17 years old in June 2013. C.P. had been born in July 2012. Father offered various implausible explanations for C.P.'s injuries. Mother was pregnant again and her delivery date was in June 2013.

M.P. was born on June 4, 2013. Mother and father were arrested on June 12, 2013. CFS filed a second dependency petition, alleging failure to protect and to support, and abuse of sibling. (§ 300, subds. (b), (g), and (j).) The court detained M.P. and removed him from his parents. M.P. was placed in a different foster home than his sister, C.P. The court ordered supervised weekly two-hour parental visitation.

On June 27, 2013, CFS changed its recommendation for mother to receive reunification services because she had passed a lie detector test about the circumstances of C.P.'s injuries. In the jurisdictional/dispositional report dated July 2013, CFS recommended mother receive reunification services and father not receive services. Both parents had been incarcerated although mother had been released. The parents denied the allegations against them but could not offer any plausible explanations for C.P.'s injuries. Both parents denied abusing drugs. They were also both in the eleventh grade.

During a polygraph test and interview, father admitted he had accidentally injured C.P. by playing too roughly and that mother was not aware of C.P.'s injuries. Father described being frustrated with C.P. when he was changing her diaper and other times when he may have handled her too roughly.

At the jurisdictional hearing on July 10, 2013, the court found true most of the allegations except for (i)-7—involving mother and C.P.— and (g)-3—involving mother and M.P. The court disagreed with the recommendation that mother should receive reunification services.

At the dispositional hearing on July 30, 2013, under the bypass provisions, the court denied both parents reunification services as not benefiting the children. (§ 361.5, subd. (c).) In denying services, the court said, “I know that [the parents] are both very young, and they were not prepared to become parents, but they made a decision to have . . . not one, but two children. With that comes responsibility . . . both of you have to nurture the children and make sure that they’re safe. . . . I’m not going to allow you to practice parenting on two small little human beings who can’t talk to others and can’t tell others when they get their leg broken or they are thrown off the bed or fall off the bed, or they’re gasping or bleeding. I’m not going to allow either one of you to have access . . . to these two little babies. It’s not going to happen. There will be no reunification services for either of you.” The court made written findings that there was clear and convincing evidence the children would not benefit from reunification services based on

their age, severe physical harm to C.P., and no reunification services for either sibling. (§ 361.5, subds. (b)(5), (6), (7), and (c).)

The parents were allowed weekly two-hour visitation. Ultimately, the parents' writ proceedings were dismissed.

B. Section 366.26 and Section 388

In December 2013, the two children were placed with the maternal grandmother (MGM). The parents had participated in appropriate supervised visitation. The section 366.26 report recommended a permanent plan of adoption.

In February 2014, mother filed a form JV-180 request to change court order, asking for family reunification services. Mother had completed counseling and courses in domestic violence, anger management, and parenting, and had worked as an afterschool volunteer. In the interim review report dated March 2014, CFS recommended the court grant the mother's request based on her progress.

In March 2014, father filed a form JV-180 request to change court order, asking for family reunification services and increased visitation. Father had completed counseling and courses in parenting, anger management, and domestic violence. He had worked at a job and done well in high school.

In April 2014, CFS recommended both parents' requests be denied based on the extreme severity of C.P.'s still unexplained injuries. At the hearing on April 7, 2014, the CFS social worker testified that "because of the severeness and multiple injuries done at different times, the recommendation was for support for the 388 was withdrawn. [*Sic.*]"

CFS recommended termination of parental rights and implementation of a permanent plan of adoption. The MGM wanted to adopt the children. The MGM and her husband were already parenting six minor children, ages five to 16. The MGM was employed as a teaching assistant. Her husband was a forklift operator. Their home was large and comfortable. They did not abuse drugs and rarely drank alcohol.

Mother testified she wanted to become a veterinarian technician. She believed she had benefited from counseling and classes and learned to be a better parent and to protect her children. She was no longer involved with the father. She believed father had injured C.P. by “roughhousing” and acknowledged she had not protected C.P.

Father testified that he was not involved with mother and he had been convicted of child abuse and neglect. He was on probation, attending courses in parenting, child abuse, and anger management, and receiving counseling. He was learning to be a better parent. He was graduating from high school and working as a “sign spinner.” He planned to attend college to become a probation officer. He admitted he unintentionally hurt C.P. while “playing” with her when he was frustrated or angry. He broke her rib, leg, and clavicle.

The court found mother had not shown a change of circumstances and she had either participated in the abuse or been complicit with father. Father did not fully admit how he had caused C.P.’s injuries. The court found the parents’ youth was not a reason to grant the section 388 petitions. The court also found that, in spite of the parents’ visitation, it was in the children’s best interests to terminate parental rights and, by clear

and convincing evidence, they would be adopted. The court terminated parental rights and made adoption the permanent plan.

III

BYPASS OF REUNIFICATION SERVICES

Mother argues the record does not offer clear and convincing evidence to justify bypassing reunification services at the dispositional hearing. The court did, in fact, base its order on oral and written finding of clear and convincing evidence that the parents were responsible for C.P.'s injuries and the children would not benefit from and should not receive reunification services. Both children were under the age of five. C.P. was severely injured by father and not protected by mother. Parents never received services for either child. No benefit to the children was established. (§ 361.5, subds. (b)(5), (6), (7), and (c).) The record supports the juvenile court's findings based on clear and convincing evidence. (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1194.)

Notwithstanding the court's express findings, the mother failed to preserve the issue on appeal because she did not file an extraordinary writ as required by statute. (§ 366.26, subd. (d)(1) and (2).) Because mother did not file a writ, we disregard her arguments based on *K.F. v. Superior Court* (2014) 224 Cal.App.4th 1369, 1384-1388, a writ appeal. We reject mother's contentions regarding the bypass of reunification services.

IV

SECTION 388 PETITIONS

We review the denial of a section 388 petition for an abuse of discretion, exceeding the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re S.J.* (2008) 167 Cal.App.4th 953, 959-960.) Section 388, subdivision (a), allows a parent to petition the court for a different order based on change of circumstances or new evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 49.) The court shall conduct a hearing if it is in the best interests of the child. (§ 388, subs. (a)(2) and (d); *In re Kimberly F.* (1999) 56 Cal.App.4th 519, 529.) The factors to be considered are the seriousness of the problem causing the dependency; whether it can be or has been removed or ameliorated; and the strength of the relative bonds between the children and their parents and caretakers. (*Id.* at pp. 529, 532.) The child's interest in permanency and stability outweighs the parents' interest in reunification. (*Stephanie M.*, at p. 317; *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

Whether the burden of proof is clear and convincing evidence or preponderance of evidence (*In re L.S.*, *supra*, 230 Cal.App.4th at p. 1194), neither parent could show the required change of circumstances or new evidence based on this record. At the April 2014 hearing, father testified that he had handled C.P. roughly when he was angry and frustrated. In spite of C.P.'s serious injuries, father still claimed he did not realize that she had been hurt. Father's only contact with the children for a year had been a weekly two-hour visit. Father was graduating from high school, living with his parents, and

working at a low-wage job although intending to enroll in college. Although he may have demonstrated some progress, father did not offer any real evidence that he would not be abusive in the future or that he had changed his circumstances enough to support a finding that reunification services would allow him to reunify with his children.

Mother's contact with the children was also limited to two hours a week although the children were living with her mother, the MGM. Mother had been incapable of protecting C.P. Mother never fully explained the injuries. The record does not establish that reunification services would be effective. The juvenile court did not abuse its discretion by finding no change of circumstances for mother as well as father.

The parents also did not make a credible showing of a benefit to the children from reunification services. C.P. lived with the parents for only nine months. M.P. never lived with the parents. Both children lived with the MGM since December 2013. Their interest in permanency and stability far outweighs the parents' interest in reunification services.

V

TERMINATION OF PARENTAL RIGHTS

A combined substantial evidence and abuse of discretion standard of review applies when we review the applicability of the parental benefit exception to the termination of parental rights. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) At the conclusion of the section 366.26 hearing, mother submitted on CFS's recommendation and did not object to termination of parental rights. The mother's

acquiescence in the CFS recommendation constitutes a waiver of the issue on appeal. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589-590.)

Adoption is preferred permanent plan unless the court finds the parental benefit exception applies when the parents have maintained regular visitation and contact and the child will benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) “The parent has the burden of showing that continuation of the parent-child relationship will 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.)” (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.) The factors the court considers are the child’s age, the portion of the child’s life spent in the parent’s custody, the quality of interaction between parent and child, and the child’s particular needs. (*Autumn H.*, at p. 576.) A parent must be more than a friendly relative or visitor. (*In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548.)

The trial court properly found that the benefits of a permanent, stable home with the MGM and her husband, the prospective adoptive parents, outweighed any possible detriment the children might suffer if the parental rights were terminated. (*In re Zachary*

G. (1999) 77 Cal.App.4th 799, 811-812; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51-53.)³ As of April 2014, C.P. was less than two years old and M.P. was less than one year old. Almost certainly they regarded the parents as nothing except friendly playmates. The parents did not have a parental relationship with the children. The supervised two-hour weekly parental visit “bears no resemblance to the daily nurturing that marks a strong parent-child relationship.” (*In re Jamie R., supra*, 90 Cal.App.4th at p. 774.)

On review, we may not reweigh the evidence and substitute our judgment for that of the trial court. (*In re Casey D., supra*, 70 Cal.App.4th at p. 53.) The argument that adoption is not in the “best interests” of the children is without merit: “There is no ‘best interests’ exception to the termination of parental rights. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165, fn. 2.)” (*In re Jamie R., supra*, 90 Cal.App.4th at p. 774.)

VI

DISPOSITION

The juvenile court did not abuse its discretion in denying the parents’ petitions for reunification services and terminating their parental rights. We affirm the orders of the juvenile court.

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CODRINGTON

J.

³ Mother’s argument about legal guardianship (§ 366.26, subd. (c)(1)(A)) was not raised below or until her reply brief.

We concur:

McKINSTER
Acting P. J.

MILLER
J.