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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.P., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

E062188

(Super.Ct.No. RIJ119014)

OPINION

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

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, and Anna M. Marchand, Deputy County
Counsel, for Plaintiff and Respondent.

Appellant J.P. (father) appeals from a juvenile court's order terminating parental rights as to his child, J.P. (the child). Father claims that the beneficial parental relationship exception applied. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ He also argues that the court erred in failing to consider legal guardianship instead of adoption. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 30, 2013, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of the child, who was six years old at the time. The petition alleged that she came within section 300, subdivision (b) (failure to protect). The petition included the allegations that father² and the child's mother (mother)³ abandoned the child in the care of the maternal grandmother, father and mother (the parents) had unresolved substance abuse issues and continued to abuse methamphetamine and alcohol, the parents exposed the child to a detrimental living environment and were unable to provide her with a safe and stable residence, the parents failed to meet the child's basic need for food and medical care, and the parents took the child to known drug houses and left her outside while they abused drugs inside. The petition further alleged that the parents had a dependency history regarding the child,

¹ All further statutory references will be to the Welfare and Institutions Code, unless other indicated.

² The juvenile court in a previous dependency case found father to be the presumed father of the child.

³ Mother is not a party to this appeal. Thus, this opinion will focus on father.

including allegations related to substance abuse. They were provided with reunification services and family maintenance services from 2009 to 2011, and they successfully reunified. Although the dependency was terminated, the parents failed to benefit from the services provided, as they continued to abuse and/or neglect the child.

The social worker filed a detention report and stated that DPSS received a referral on October 21, 2013, alleging general neglect. The social worker reported that the family lived in an old motor home on someone else's property. The motor home had no bathroom or running water. The family had to use a faucet outside for water. The child had to use a bucket for a toilet sometimes, and she only showered once a week. There was no food in the home. When the police went to visit the home, mother admitted using marijuana and methamphetamine. She appeared to be under the influence at the time. The social worker subsequently interviewed the child. When asked about food in the home, she said she ate "little scrapes of leftover pretzels" because that is all they had. The child said that when they got money for food, her parents would just use it to buy cigarettes. She said she sometimes got leftovers from the people who lived inside the main home on the property. Otherwise, the child's family would mostly "go to the fruit trees" to eat.

A detention hearing was held on October 31, 2013, and the court detained the child and placed her in the temporary care and custody of DPSS. The court ordered visitation at a minimum of once a week.

Jurisdiction/disposition Report and Hearing

The social worker filed a jurisdiction/disposition report dated November 25, 2013, and recommended that the parents be denied reunification services pursuant to section 361.5, subdivision (b)(13).⁴ Both parents had extensive substance abuse histories and had resisted prior court-ordered treatment during a three-year period prior to the filing of the recent section 300 petition. Even though the parents were previously offered reunification and maintenance services in their prior dependency case, they had failed to benefit from such services, as evidenced by their recent use of controlled substances. According to mother, she and father began using again approximately one year ago.

The social worker reported that father had not made himself available for questioning thus far. Father also had not made contact with DPSS to set up visitation. The paternal grandmother informed DPSS that father was arrested on an outstanding warrant on November 2, 2013. The social worker visited him at the jail, and he said he was supposed to be released on November 18, 2013. Father contacted DPSS that day to schedule his interview. He was offered an appointment the following morning but said he needed to seek medical attention for his broken hand.

⁴ Section 361.5, subdivision (b)(13), provides that reunification services need not be provided when the court finds that “the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

The social worker filed an addendum report on January 2, 2014, and changed her recommendation to reunification services for father. The social worker interviewed father, who denied any recent drug use. He submitted on demand to a saliva test and tested negative for all substances. He stated that he and mother were no longer together, and that she lied when she reported they were recently using methamphetamine together. Father admitted that the motor home where the child lived was unsafe and unsanitary. However, he said that they had full access to the main house on the property where the motor home was parked. He said the people who resided in the main home would cook breakfast and lunch for them. Father insisted that there was plenty of food for the child to eat. Father said he did not have a job, and he was broke.

The social worker filed another addendum report on February 6, 2014, recommending that father be denied reunification services. The social worker reported that father was arrested on January 3, 2014, for possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), possession of methamphetamine for sale (Health & Saf. Code, § 11378, subd. (a)), and felony violation of probation (Pen. Code, § 1203.2, subd. (a).) The social worker further reported that the child had been placed with the maternal stepaunt since October 29, 2013. The social worker visited her at that home, and the child told her she liked her current placement, even though she missed her parents. The child said all of her needs were being met. She also stated that she wanted to be adopted by her current caregiver. The child understood that adoption meant that she would live “with different parents, but call them mom and dad.”

A contested jurisdiction/disposition hearing was held on February 27, 2014. The court found that the child came within section 300, subdivision (b), and declared her a dependent of the court. The court denied father reunification services. The court set a section 366.26 hearing and ordered visitation for father to be once every two weeks. The court also authorized telephone contact with the child.

Section 366.26

The social worker filed a section 366.26 report dated June 30, 2014, and recommended that the court find adoption to be the permanent plan. She also recommended that the court continue the section 366.26 hearing for 90 days to allow DPSS to complete the preliminary adoption assessment. The social worker reported that father visited the child on December 7, 2013, following his release from incarceration. He also attended a visit on December 28, 2013, but then did not have any visits between that visit and the jurisdiction/disposition hearing held on February 27, 2014. After that hearing, visits were scheduled for March 1, 2014 and March 15, 2014, but father failed to show or contact DPSS. No other visits were scheduled after that, since father did not contact DPSS or the caregiver to set up visits. The social worker recommended the termination of parental rights since both parents had not maintained consistent contact with DPSS or the child. During that reporting period, DPSS had no contact with the parents. The maternal stepparent and uncle, with whom the child was residing, were committed to adopting the child. The child was closely bonded with them.

At a hearing on June 30, 2014, the court continued the matter to allow time to complete the preliminary adoption assessment.

The social worker filed an addendum report dated September 29, 2014. The social worker reported that a visit was scheduled for August 16, 2014, at the parents' request. Both parents cancelled the visit the day before. Another visit was scheduled for August 22, 2014, and father participated. He was appropriate during the visit, and the child enjoyed the time. Father was also appropriate at a visit on September 20, 2014. The social worker drove the child back to her placement after that visit, and the child told her she was happy to see her father. The child also said she was looking forward to the next court hearing because she wanted to officially become part of her current caregivers' family. She was very excited about being adopted, having a permanent family, and becoming a big sister to the caregivers' two children.

The court held a section 366.26 hearing on September 29, 2014. Father testified and said that he was the child's primary caretaker before she was removed. His last visit with the child was the previous weekend, and the child gave him a hug and was glad to see him. Father said that, in the last seven months, he had no phone contact with the child and had only seen her twice. He also said he had trouble getting in touch with the social worker to arrange visits. Father testified that he had a close bond with the child simply because he loved her and she loved him. Father's counsel then argued that the beneficial parental relationship exception applied to this case because father believed there was a bond. Father's counsel asked the court to recognize the bond and consider legal guardianship, rather than adoption.

After considering all the evidence, the court noted that, when this case was initiated, father was authorized to visit the child every two weeks, which would have

given him the opportunity to see her at least eight times, from March 2014 to June 2014. Then, starting at the June 30, 2014 hearing, the visits were reduced to one per month, meaning that he had the chance to visit with her a total of at least 11 times. However, father apparently had only visited the child two or three times. The court also noted that the child had expressed her desire to be adopted, and that she deserved permanency. The court then found it likely that the child would be adopted, terminated parental rights, and ordered adoption as the permanent plan.

ANALYSIS

The Beneficial Parental Relationship Exception Did Not Apply

Father contends that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) 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 a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the 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 phrase “benefit from continuing the relationship” refers to a parent/child relationship that “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 Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) It is the parent’s burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

Father contends that the court erred in not applying the beneficial parental relationship exception, in light of the close bond and love he shared with the child. He asserts that the child loved him, was always happy to see him, and that she shared a “primary attachment” with him, “even if visitation was not completely consistent during these proceedings.” However, the beneficial parental relationship exception applies only when the 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).) Father cannot overcome the fact that he failed to maintain regular visitation with the child. He freely admits that his visitation “was not perfectly consistent.” Indeed, the record shows father visited the child on December 7, 2013 and December 28, 2013, but then did not have any visits between that visit and the jurisdiction/disposition hearing

held on February 27, 2014. After that hearing, visits were scheduled for March 1, 2014 and March 15, 2014, but father failed to show or contact DPSS. No other visits were scheduled after that, since father did not contact DPSS to set up visits. The next time he visited was on August 22, 2014, and then on September 20, 2014. Father claims that his visitation was “sufficient” for the beneficial parental relationship exception to apply. However, section 366.26, subdivision (c)(1)(B)(i), explicitly requires that the parent “maintain[] *regular visitation* and contact with the child.” (Italics added.) By his own admission, father’s visitation was inconsistent.

Father additionally asserts that his visits were always appropriate, and the child enjoyed seeing him. Even so, his interactions with the child do not even begin to demonstrate that this relationship with him promoted her well-being “to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) Father has not proffered any evidence to support a finding that the child had a “substantial, positive emotional attachment such that [she] would be greatly harmed” if the relationship was severed. (*Ibid.*)

We further note that the child was thriving in her prospective adoptive home. She was attached to the prospective adoptive parents and expressly stated that she wanted to officially become part of their family. She was very excited about being adopted, having a permanent family, and becoming a big sister to the prospective adoptive parents’ two children. The child understood that adoption meant that she would live “with different

parents, but call them mom and dad.” Moreover, the prospective adoptive parents were willing, able, and eager to meet the needs of the child on a permanent basis.

In light of the evidence, we conclude that the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) did not apply here. Accordingly, we also reject father’s claim that the court should have ordered legal guardianship, since he satisfied his burden to show that the beneficial parental relationship exception to the preference to adoption existed.

DISPOSITION

The order is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.