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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.G., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.T.,

Defendant and Appellant.

E063584

(Super.Ct.No. J241651)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin,
Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,
for Plaintiff and Respondent.

Defendant and appellant M.T. (mother) appeals the termination of her parental rights to her son, E.G, following a Welfare and Institutions Code¹ section 366.26 hearing. She contends the juvenile court erred by failing to apply the parental and sibling benefit exceptions of section 366.26, subdivisions (c)(1)(B)(i) and (c)(1)(B)(v). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

E.G. came to the attention of San Bernardino County Children and Family Services (CFS) in November 2011 when he tested positive for methamphetamine at his birth. He was diagnosed with a heart defect. Mother admitted using drugs and refused to have E.G. in the hospital room with her. A visit to mother's home found it to be dirty and E.G.'s half siblings² to be disheveled, dirty, not appropriately dressed for the weather, and infected with lice. On November 15, 2011, CFS filed a section 300 petition based on mother's substance abuse problem, unsafe lifestyle, and lack of parenting skills. The juvenile court found a prima facie case for detaining E.G.

In the jurisdiction/disposition report filed on December 2, 2011, CFS reported that mother was unable to adequately parent and provide a safe environment due to her drug use and transient nature. E.G. had been released from the hospital and was placed in a foster home while his half siblings were placed in a different foster home. Mother admitted the allegations of the section 300 petition. The juvenile court sustained the petition and ordered reunification services for mother. Her reunification plan included

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

² E.G. has three older maternal half siblings who are not parties to this appeal.

general counseling, parenting classes, substance abuse counseling, inpatient drug treatment, outpatient drug treatment, random drug testing, and attending 12-step meetings.

In the six-month review report filed on June 19, 2012, CFS reported that mother was participating in her case plan and continued to test negative for drugs. She regularly visited her children multiple times each week. E.G. had heart surgery and was living in the foster home of Ms. S.,³ while his siblings had been placed with the maternal great aunt. E.G. was very attached to Ms. S., who was attentive to his special needs. The court continued reunification services for mother and ordered unsupervised weekly visitation.

According to the 12-month review report filed on December 14, 2012, mother completed a majority of her case plan, but lacked proper housing and had no means of support. CFS recommended gradually transitioning the children to her care, with E.G. to be the last to transition due to his medically fragile nature. Mother had unsupervised visits with E.G. separately from his half siblings. However, Ms. S. stated to a public health nurse that mother had stopped attending doctor visits for E.G., arrived late for visits, and had no interaction with E.G. regarding the administration of his medications, bathing, etc. Ms. S. opined that mother had more interest in taking pictures of E.G. to post on her Facebook. The public health nurse was concerned that mother had (1) poor consistent communication with Ms. S. regarding E.G., (2) unreliable transportation, and (3) an unstable living situation. The juvenile court authorized CFS to return E.G.'s half

³ E.G. has been placed with Ms. S. since November 2011.

siblings to mother on an extended visit for up to 30 days, and return E.G. to mother's care for an extended visit for up to two weeks.

In the 18-month review report filed on May 7, 2013, CFS expressed concerns regarding mother's inability to explain signs and symptoms to watch for as to E.G.'s heart condition, and mother's belief that E.G. was fully recovered. E.G. was considered medically fragile due to his heart condition; he required close monitoring and frequent doctor visits. After the public health nurse explained this information to mother, she was able to articulate it. Mother's weekly unsupervised visits with E.G. were going well, with E.G. appearing comfortable and content in mother's presence. Sibling visitation was held separately and went well. The prognosis of mother's reunification with E.G. was looking "excellent." Upon CFS's recommendation, the juvenile court ordered E.G. to remain with Ms. S. under a permanent plan of long-term foster care with a minimum of one unsupervised visit per week for eight hours.

Mother's visits with E.G. gradually increased to overnight and extended weekends beginning on June 28, 2013. However, on August 25, 2013, during an extended visit, E.G. suffered second-degree burns on his head and leg and was taken to the emergency room. Visitation was suspended while CFS conducted an investigation. On August 28, 2013, mother tested positive for methamphetamines. She "fully admitted to using [drugs] . . . and was open to any substance abuse services recommended." She was attending Narcotics Anonymous meetings and was referred to an intensive outpatient substance abuse program. Mother admitted that it was difficult to be a single parent to four children. She opined that it would be better if E.G. "was with family and she could still

have a relationship with him.” She stated that it was “really hard with [E.G.] too.” By October 25, 2013, when the investigation revealed that E.G.’s burns were accidental, the juvenile court ordered unsupervised day visits for mother with the ability for overnight and weekend visits upon CFS’s approval.

In the status review report filed on July 8, 2014, CFS recommended that a section 366.26 hearing be set to establish a permanent plan of legal guardianship for E.G. Ms. S. reported that E.G. had been crying and saying “no, no” on the way to visits with mother and his half siblings since the grandparents began the weekend visitation. However, the social worker observed positive interaction between E.G., mother, and his half siblings. CFS recommended legal guardianship, given the fact that mother and the half siblings were an integral part of E.G.’s life. Ms. S. remained committed to providing permanency to E.G.

A section 366.26 hearing was set, and on July 29, 2014, mother filed a section 388 petition seeking return of E.G. to her care. The court denied the petition because there was no new evidence or changed circumstances.

On August 8, 2014, CFS informed the court that mother was not following through with counseling or drug testing. E.G.’s half siblings told police that several people were sleeping at the mother’s home. The half siblings were removed and placed with their maternal great-aunt under a plan of legal guardianship. Based on CFS’s recommendation, the court modified mother’s visits to be supervised, one time per week for two hours. Mother missed three visits during September and October 2014, which did not appear to upset E.G. Rather, he appeared to be impartial towards mother and

primarily played on his own during the visits. The section 366.26 report filed on November 3, 2014, recommended changing E.G.'s permanent plan from guardianship to adoption.

An adoption assessment concluded that E.G. was likely to be adopted based on his young age, stable placement, and Ms. S.'s commitment to provide a permanent home for him. On December 23, 2014, mother's visits were reduced to one time per month, supervised, for two hours.

In the addendum report filed on March 10, 2015, CFS recommended terminating parental rights and implement adoption for E.G. E.G. had been in the care of Ms. S. since he was eight days old. She described their relationship as "great." Ms. S. intended to adopt E.G. and would continue to allow sibling visitation. Mother had missed her visit with E.G. in January 2015 due to transportation issues.

A contested section 366.26 hearing was held on May 18, 2015. Mother testified that E.G. calls her "mom" and is initially shy at visits but eventually loosens up. Since his birth in 2011, E.G. had participated in approximately six weekend visits. Mother stated that E.G. told her that he loves her, and she believes he is bonded to her and his half siblings.

The social worker, Ms. Pearson, testified that E.G. seemed "worried and apprehensive" about visiting mother since he was burned in her care. Ms. Pearson never heard E.G. call mother "mother." When the half siblings were asked about E.G.'s adoption, the oldest viewed Ms. S. as E.G.'s mother, while the second oldest had no interest in living with E.G. Ms. Pearson opined that E.G. was not bonded with his half

siblings, who were content with knowing that he would not be their brother once he was adopted. Both Ms. S. and the siblings' caregiver agreed to continue to facilitate visits between all of the children after adoption. In Ms. Pearson's opinion, E.G. was absolutely attached to Ms. S. and referred to her as "mom."

Following arguments, the juvenile court found E.G. adoptable, concluded that neither the parental or sibling relationship exceptions applied, and ordered parental rights terminated.

II. DISCUSSION

"Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship' (§ 366.26, subd. (c)(1)(B).)" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*))

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) The parent must show both that a beneficial parental or sibling relationship exists *and* that severing that relationship would result in great harm to the child. (*Id.* at pp. 1314-1315.) A juvenile court's finding that the beneficial parental or sibling relationship exception does not apply is reviewed in part under the substantial evidence standard and

in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental or sibling relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a "compelling reason" (*Ibid.*; see *In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*Bailey J., supra*, at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

A. Parental Relationship Exception

Mother contends that she established the existence of a parental relationship with E.G. through regular contact with him such he would be greatly harmed by the termination of her parental rights. We disagree.

“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.’ [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is

not sufficient to establish the existence of a beneficial parental relationship. [Citation.]” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316.)

Even assuming mother had maintained regular visitation and contact with E.G., it would not establish that she occupied a parental role in E.G.’s life such that the benefits from preserving the parental relationship outweighed the benefits of adoption. E.G. was only eight days old when he was removed from mother’s care nearly three and one-half years prior to the section 366.26 hearing. During that same period of time, E.G. spent no more than six weekends in mother’s custody. E.G. never resided with mother for an extended period of time so as to develop a beneficial parental relationship. At best, mother’s various supervised and unsupervised visits with E.G. amounted to “play dates” for him with a loving adult. Those “play dates” were insufficient to show the requisite beneficial parental relationship. Moreover, there is no evidence that E.G. looked forward to the visits. Rather, the evidence demonstrates that in the year prior to the section 366.26 hearing, he was apprehensive about them. In contrast, Ms. S. had taken care of E.G. his entire life. E.G. was bonded with Ms. S. who has provided for his “physical care, nourishment, comfort, affection and stimulation.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) He called Ms. S., not mother, “mom.” Thus, the evidence fails to show that mother had a beneficial parental relationship with E.G.

B. Beneficial Sibling Relationship Exception

Mother contends the juvenile court erred in failing to apply the sibling relationship exception to adoption. We find no error.

The sibling relationship exception applies where the juvenile court finds that “substantial interference with a child’s sibling relationship” is a “compelling reason” to conclude that adoption would be detrimental to the child. In making this determination, the court should take into consideration “the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

In considering the sibling bond exception, the trial court considered the prospective adoptive parent’s intent to maintain contact between E.G. and his older half siblings. Such consideration was appropriate. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293; *In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1422.) Here, the prospective adoptive parent, Ms. S. was committed to ongoing sibling visitation as demonstrated by her facilitating sibling visits during the case. Mother’s claims to the contrary are not supported by the record. Additionally, the record demonstrates other reasons why the sibling bond exception does not apply. As the trial court observed, E.G. had never lived with his half siblings, with the exception of six weekends, and he had “not shared significant common experiences.” (§ 366.26, subd. (c)(1)(B)(v).) E.G. was born and removed from mother’s care when his half siblings were nine years old, six years old, and three months shy of three years old, respectively. As such, E.G. has no memories of any events shared with his siblings. The older siblings were in agreement with E.G. being

adopted by Ms. S. While mother places great weight on E.G. enjoying his visits with his half siblings, such evidence merely shows that the siblings are good playmates, not that they are intensely bonded to each other.

Moreover, the trial court could reasonably conclude the best interests and long-term emotional interests of E.G. are better served by adoption. (§ 366.26, subd. (c)(1)(B)(v).) At the time parental rights were terminated, E.G. was three and one-half years old and bonded with his caregiver. After parental rights are terminated, the objective is permanence and stability, best advanced through adoption. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

In sum, the court reasonably did not err by declining to apply the sibling relationship exception.

III. DISPOSITION

The order terminating parental rights and placing E.G. for adoption is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

KING

J.