

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent;

H.F. et al.,

Defendants and Appellants.

E065829

(Super.Ct.No. SWJ1300758)

OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge.

Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and
appellant H.F. (mother).

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant Jo.K. (father).

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

In 2013, five children came to the attention of the Riverside County Department of Public Social Services (DPSS) due to reports the children were running in the streets, unsupervised and undressed, and that the mother was overwhelmed. A dependency petition alleging mother H.F. had mental health problems, among other acts of neglect, and that the alleged fathers, including Jo.K. (as to S.C.), and Je.K. (as to E.C.), failed to protect, and failed to provide support for the children, was filed. Jurisdiction was established and the parents were given reunification services. The two older children, S.C. and E.C., were placed with mother's brother, the middle three children, Iz.F., Z.F., and R.F., were placed with their paternal grandmother.

A sixth child, T.F., was born during the pendency of the proceedings and was placed with another paternal relative. Reunification services were eventually terminated, and a hearing on the selection and implementation of a permanent plan (Welf. & Inst. Code, § 366.26)¹ was conducted. The court terminated parental rights as to S.C., E.C., and T.F. The court established a guardianship as to Iz.F., Z.F. and R.F., appointing their

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

paternal grandmother as legal guardian. Mother of S.C., E.C., and T.F., and Jo.K., father of S.C., appealed.

On appeal, Jo.K. challenges the order denying his petition to modify the court order terminating services and referring his children for a hearing pursuant to section 366.26, as well as the judgment terminating his parental rights. Mother also challenges the order terminating parental rights, arguing that legal guardianship would have protected the siblings' interests in maintaining visitation where the relatives did not get along. We affirm.

BACKGROUND

The five older children (S.C., E.C., Iz.F., Z.F., and R.F.) came to the attention of DPSS in October 2013, after it was reported that the children were constantly left unsupervised outside the home, sometimes as late as 11:00 p.m., dirty, unkempt, and sometimes naked. The children were known to go to the homes of neighbors seeking food, and father I.F.² (father of Iz.F., Z.F., and R.F.) had been heard yelling at mother. Because mother would not permit the responding social worker to enter the home, the social worker contacted law enforcement to conduct a welfare check on the children. Upon entry, the social worker found the home to be dirty, smelling of urine, with trash and rotten food. Three of the children, Iz.F., Z.F. and R.F., were running throughout the residence without redirection by mother, who appeared overwhelmed. One child, Iz.F.,

² I.F., father of Iz.F., Z.F., R.F., and T.F., is not a party to this appeal. He will only be mentioned where necessary for context and chronology.

had a bump on her forehead caused by a falling panel from a book case. The two older children, S.C. and E.C., were living with the maternal grandparents.

Mother denied that the children were allowed to run around outside unsupervised, claiming they were monitored through an open door. She also admitted she had been involuntarily detained pursuant to section 5150, and had been prescribed medication, but she was not compliant with taking the medication. The social worker learned that a prior referral had been made, and that mother had been offered services through the Safe Care program for two months, but had not participated for the last three weeks due to her suffering a miscarriage. The social worker who had worked with mother through the Safe Care Program indicated that mother had appeared receptive, but did not appear to be practicing what she was taught.

Originally, DPSS intended to keep the children with mother and father I.F. with maintenance services, but on October 28, 2013, the social worker re-interviewed the parents and learned that mother had been molested by her father when she was 10 years old, but that her mother did not believe the allegation. The allegation involved fondling and digital penetration by the maternal grandfather. Despite this fact, mother had left her daughter S.C. and son, E.C., in the care of the maternal grandparents. Father I.F. reported that as recently as one year prior to the instant referral, he had seen the maternal grandfather fondling, groping, and “humping” mother from behind.

Additionally, the social worker learned that the father of Iz.F., Z.F. and R.F., was found to have an extensive criminal history for domestic violence and unlawful sex with

a minor (Pen. Code, § 261.5). For this reason, at a Team Decision Meeting (TDM), the decision was made to remove the children from the home and place them in protective custody.

A dependency petition was filed alleging general neglect based on mother's unresolved mental health issues, failure to supervise, and leaving the children with an inappropriate caretaker. As to father I.F., the petition alleged he had anger issues and neglected the children. As to father Jo.K., the petition alleged he failed to provide necessities.

On January 2, 2014, the parents submitted on the first amended petition, which was sustained. The court declared the children to be dependents of the court, finding that they were persons described by section 300, subdivision (b), and (g) (as to E.C.'s alleged father Je.K.). The court also found that Jo.K. was the presumed father of S.C. The children were removed from the custody of all parents, and reunification services were ordered for mother and both fathers, I.F. and Jo.K.³ DPSS was given authority to allow unsupervised visits for mother and father I.F.

The parents were married in October 2013, but father I.F., continued to be unemployed, so the paternal grandmother provided them with housing and support. In April, 2014, S.C. and E.C. were placed with their maternal uncle. The three younger children were placed with their paternal grandmother.

³ The minute order for the jurisdiction does not mention the order granting services, but does provide that parental failure to participate in services might result in termination of services.

Prior to the six month review hearing, the social worker was unable to contact the father of S.C. due to his telephone being disconnected. However, Jo.K. had participated in therapy and in Safe Care services, as well as Alternatives to Domestic Violence. He visited S.C. regularly after she was placed with her uncle, despite a four-hour bus ride, and S.C. reported she liked visiting him, but she did not feel completely comfortable in his presence and did not want to increase visits. Visits between mother and all her children was considered less than adequate because she was unable to redirect them when they engaged in inappropriate behavior. Nevertheless, at the six month review hearing, held on July 2, 2014, six additional months of services were ordered.

On August 2, 2014, mother gave birth to T.F., and three days later, she was placed in foster care. A dependency petition was filed as to T.F., alleging mother had unresolved mental health issues, she had an ongoing case in which she had not reunified with any of her children, and that T.F.'s siblings had been abused or neglected, placing her at risk. She was detained in foster care.

On December 11, 2014, mother and father I.F. submitted on the petition on the basis of the social worker's reports, without objection. T.F. was declared a dependent on the basis of neglect (§ 300, subd. (b)), and because she was at risk due to the neglect of her siblings (§ 300, subd. (j)). The disposition hearing was continued for several months in order to coincide with the status review hearing pertaining to the older children.

On December 16, 2014, the social worker submitted a status review report for the upcoming 12-month review hearing, pursuant to section 366.21, subdivision (f).

Attached to the report were two psychological evaluations of mother, questioning mother's ability to provide care for the children, and recommending against return of custody. Dr. Suiter's evaluation also indicated she was not likely to benefit from reunification services given her lack of insight, unwillingness to take medication, and inability to accept responsibility. As to father Jo.K., the social worker noted he had completed services and visited regularly, but he had a history of being unstable and did not have an address of a home that could be assessed or approved. When interviewed by the social worker, S.C. stated she cared about her father, Jo.K., but she felt he was not able to take care of her and she preferred to remain in placement with her maternal uncle.

The report for the status review hearing revealed that visits between children and the parents were marginal. The children were loud and out of control, but the parents did not attempt to redirect their behavior. When the parents did attempt to redirect them, the children ignored their parents. Mother seemed to focus her attention on the infant T.F., and did not engage with her other children. The social worker remained concerned about mother's mental health because her therapist reports she had limited insight and coping skills, still seemed depressed, but declined medication.

On April 2, 2015, T.F. was eventually placed with a paternal cousin. Monthly visits between the siblings were held in a supervised setting, but the social worker expressed concern that the visits would continue on a regular basis due to interpersonal differences among the relative caregivers.

At the status review hearing (for the older children) held on June 10, 2015, the social worker's reports were admitted without objection. The court terminated family reunification services as to all parents and scheduled a hearing pursuant to section 366.26. Regarding the dispositional hearing for T.F., the court denied reunification services and set a section 366.26 hearing, also.

Pending the hearing to select and implement a permanent plan for Iz.F., Z.F. and R.F., who had been placed with the paternal grandmother, the decision was made to appoint the paternal uncle, who resided with the paternal grandmother, as legal guardian for the children. The paternal grandmother had difficulty handling the children in her care, but agreed to the placement so father I.F. would not get angry. There were concerns about the paternal grandmother's ability to maintain boundaries with the parents, because she allowed them to move into her house, and financially supported them, causing her to move in with another son. Father I.F. appeared to bully his mother. It was thus decided that paternal uncle G.F. would be considered as the adoptive parent.

Visits between the parents and the children were consistent and, for the most part, positive. However, the father I.F. became angry with the visit supervisor on one occasion when E.C.'s TBS⁴ coach was present; he had become combative with the TBS coach and appeared to be trying to intimidate the coach.

On March 29, 2016, father Jo.K. filed a request to change court order (§ 388 petition). As changed circumstances, the petition alleged that father had signed a

⁴ "TBS" apparently refers to Therapeutic Behavior Services.

lease as of March 25, 2016, and would begin living in the unit on April 25, 2016. To show best interests, the petition alleged that now that father had obtained stable housing, and was in a better position to focus on his relationship with S.C., who had stated in the past that she enjoyed visiting with him.

The hearing on the selection and implementation of the permanent plans for the children took place on April 11, 2016. On the same date, the court considered Jo.K.'s section 388 petition. DPSS submitted on its reports and no parties objected to the court admitting them into evidence. Counsel for S.C. and E.C. proceeded by way of stipulated testimony of those two children. As to the section 388 issue, S.C.'s stipulated testimony revealed that she did not want to live with Jo.K., but that she wanted to continue to have visits, even overnight visits. The parties presented argument and the matter was submitted for decision. The court denied the modification petition.

Regarding the permanency plan for the children, the recommendation as to Iz.F., Z.F. and R.F. had changed to a plan of legal guardianship. At the hearing, the court considered the stipulated testimony of the children, S.C. and E.C., regarding their desire to continue visitation with their siblings. S.C. wished to continue visits also with both her mother and father, while E.C. indicated a desire to continue visits with his mother. Stipulated testimony proffered by counsel for Iz.F., Z.F. and R.F. indicated that wish to maintain relationships with both their parents and their siblings. The court took the matter under submission.

On April 12, 2016, the court issued its ruling on the submitted matter. As to S.C. and E.C., the court found they were adoptable and that no exceptions to adoptability had been established, so the parental rights of mother, father Jo.K, and the alleged father of E.C. were terminated. As to Iz.F., Z.F. and R.F., the court found that their relative caretaker was unwilling or unable to adopt, but is willing and capable of providing stable care, adopting a permanent plan of legal guardianship, appointing the paternal uncle as their legal guardian. As to T.F., the court found she was adoptable and terminated parental rights of mother and father I.F. as to her.

On April 13, 2016, mother appealed from the judgment. On April 15, 2016, father Jo.K. appealed.

DISCUSSION

1. The Court Properly Denied Father Jo.K. 's Section 388 Petition.

Father argues that the court abused its discretion in denying his section 388 petition for modification. He argues that he had established changed circumstances by proving he had obtained housing, thus resolving the primary issue preventing return of his child, S.C., to his custody. He also argues that he established that modification would be in S.C.'s best interests because S.C. enjoyed visits with him. We disagree.

A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317 (*Stephanie M.*))

The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 (*Kimberly F.*.) Generally, the petitioner must show by a preponderance of the evidence that the child's welfare requires the modification sought. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.)

In evaluating whether the petitioner has met the burden to show changed circumstances, the trial court should consider: (1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. (*Kimberly F., supra*, 56 Cal.App.4th at p. 532.) The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion. (*Stephanie M., supra*, 7 Cal.4th at p. 318; *In re S.J.* (2008) 167 Cal.App.4th 953, 959.)

Here, father has not established that his circumstances had materially changed. His petition, filed on March 29, 2016, alleged that he had just signed a lease on March 25, 2016, and would not be moving into the apartment until April 25, 2016. Although father's counsel argued at the hearing that father had moved into the apartment already, the signing of a lease does not establish changed circumstances when the primary problem during the dependency had been instability and lack of stable housing. As of the filing of the petition, he had housing, but it was premature to say he had achieved

stability. His circumstances were more “changing” than “changed.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 49; see also, *In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.)

2. *The Court Properly Terminated Parental Rights.*

a. *There Is Insufficient Evidence of a Strong Sibling Bond, the Interference With Which Would Be Detrimental to the Children.*

Mother argues that the order terminating her parental rights to S.C., E.C., and T.F. should be reversed because adoption of those children by different relatives would interfere with their sibling relationship to their half-siblings, Iz.F., Z.F. and R.F., who are placed with another relative. We disagree.

Termination of parental rights may be detrimental to children where “[t]here would be substantial interference with a child’s sibling relationship, taking 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, 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).)

When considering the sibling relationship exception, the concern is the best interests of the child being considered for adoption, not the interests of that child’s siblings. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) However, the siblings’

relationship with the child to be adopted is not irrelevant. (*Id.*, at p. 823.) Nevertheless, even if adoption would interfere with a strong sibling relationship, the court must weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952-953.) As with the other exceptions to the finding of adoptability the juvenile court examines the sibling bond exception in the context of the child's best interests. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 253.)

Here, the two older children have been placed together throughout their dependency. They resided with their maternal grandparents until after the inception of the dependency, after which they were placed with their maternal uncle. While it appears they visited with their siblings during visitation sessions, the record contains no evidence of "significant common experiences," existing close bonds with a sibling (except as to each other), or the children's long-term emotional interest as compared to the benefit of legal permanence through adoption. S.C. and E.C. have virtually never lived with their other siblings, and had little interaction with their siblings. Prior to DPSS involvement, the siblings did not visit each other and were virtually strangers. In fact, when the children were initially detained, S.C. saw Iz.F. as just another foster child while they were all in the same foster home.

Because of the separate placements throughout their lives, S.C. and E.C. have not shared significant common experiences, nor do they have existing close and strong bonds

with their half-siblings. Expressing a desire to continue to visit siblings does not establish a “strong sibling relationship.”

Mother points to the fact that the relationship between the maternal and paternal relatives of the younger children was strained, and that we should not consider the prospective adoptive parent’s agreement to maintain sibling contact in determining whether adoption of the older children would substantially interfere with the sibling relationship. However, it appears that the vast majority of the strain and tension between the relatives related to the maternal grandmother, who was not the prospective adoptive parent. The social worker’s report for the section 366.26 hearing reflected that all of the prospective adoptive families have agreed to continue the visits to allow continued connection.

There is substantial evidence to support the trial court’s finding that the sibling exception to adoptability was not established.

b. The Juvenile Court’s Finding that No Exceptions to Adoptability Had Been Established Is Supported By Substantial Evidence.

Jo.K., father of S.C., argues that the termination of parental rights should be reversed because the juvenile court erred in finding that the benefit exception to adoptability, pursuant to section 366.26, subdivision (c)(1)(B)(i), did not apply. We disagree.

Section 366.26, subdivision (c)(1), provides that if the court determines, based on the [adoption] assessment and any other relevant evidence, that it is likely the child will

be adopted, the court shall terminate parental rights and order the child placed for adoption, unless one of several statutory exceptions applies. Once the court determines a child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B). (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809, citing *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

One such exception applies when the court finds a compelling reason for determining that termination would be detrimental to the child because 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).) This exception applies only when the relationship with a natural parent 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.) A parent’s “frequent and loving contact” with the child was not enough to sustain a finding that the exception would apply, when the parents “had not occupied a parental role in relation to them at any time during their lives.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) The determination of whether a beneficial parent-child relationship exists is reviewed for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

The parent bears the burden of establishing the exception by a preponderance of the evidence. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529, citing *In re Valerie A.* (2007) 152 Cal.App.4th 987, 998.) “We must affirm a trial court’s rejection of these exceptions

if the ruling is supported by substantial evidence. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.) To establish that the parents have occupied a “parental role,” it is not necessary for a parent to show day-to-day contact and interaction. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) As the court observed in *In re S.B.*, *supra*, if that were the standard, the rule would swallow the exception. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 299.) Instead, the court determines whether the parent has maintained a parental relationship, or an emotionally significant relationship, with the child, through consistent contact and visitation. (*Id.* at pp. 298, 300-301.)

Thus, to overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [italics in original], citing *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.) 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. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467; see also, *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Here, no evidence was presented by Jo.K. at the section 366.26 hearing, other than the stipulated testimony of S.C. That testimony revealed that S.C. did not want to live

with Jo.K., but that she wanted to continue to have visits, even overnight visits. Although S.C.'s counsel argued in favor of guardianship to insure that visits could occur in the future, there was no evidence presented to address the nature or quality of the parent-child bond. Absent evidence of a significant emotional bond, the trial court correctly found that termination of parental rights would not be detrimental.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.