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**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re NEVAEH B., a Person Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

VANESSA S.,

Defendant and Appellant.

F063360

(Super. Ct. No. 09CEJ300322)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Jane A. Cardoza,
Judge.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,
for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J., and Detjen, J.

INTRODUCTION

Vanessa S. (mother) appeals from the juvenile court's finding that the beneficial parent-child relationship exception is inapplicable to her case and the order terminating her parental rights to her daughter, Nevaeh B. We reject mother's contention and affirm the juvenile court's order.

FACTS AND PROCEEDINGS

Earlier Proceedings

On December 22, 2009, a petition was filed by the Fresno County Department of Social Services (department) pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ alleging that Nevaeh B., then 22 months old, was admitted to the hospital on December 19, 2009, after suffering serious physical harm inflicted non-accidentally by mother. The injuries included swollen bruising on both sides of Nevaeh's face that extended to her hairline. The injuries occurred under mother's care and she was unable to provide a reasonable explanation for Nevaeh's injuries. The petition alleged Nevaeh was at a substantial risk of suffering further non-accidental injury in mother's care. The petition also alleged that mother failed to protect Nevaeh.²

The social worker's report stated that when Nevaeh was admitted to the hospital, mother stated that Nevaeh hit her face on the bathtub and the entertainment center. Relatives told authorities that mother's boyfriend kicked Nevaeh in the stomach and threw her against the television. Family members reported Nevaeh had been seen with bruises in the past that were not reported and mother had made statements that she needed a break from Nevaeh. Mother also told relatives that she had "lost it" with

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

² Other allegations, including an allegation pursuant to section 300, subdivision (g), were alleged as to Nevaeh's father, who is not a party to this appeal.

Nevaeh in the past. Relatives further reported that mother had a substance abuse problem. In October 2009, mother and her boyfriend were found in the boyfriend's car along with drugs and drug paraphernalia. On December 23, 2009, the court ordered that Nevaeh be detained. Mother was offered reasonable visitation and reunification services.

On March 9, 2010, the parents waived their rights to a contested jurisdiction hearing and submitted the matter on a mediation agreement.³ Under the mediation agreement, mother's services were to include a mental health assessment, random drug testing, a domestic violence evaluation, and anger management and parenting classes.

The department's report for the disposition hearing recommended that mother receive reunification services even though she met the criteria for the bypass provisions of section 361.5, subdivision (b)(6). Shanna Wilson, MA, LMFT, conducted a mental health assessment of Nevaeh. Nevaeh's first foster parents had difficulty managing Nevaeh's behaviors. The second foster mother reported that Nevaeh suffered from night terrors and would awake hourly. After three weeks in her new placement, Nevaeh's sleep disruptions were improving. Visitations with her father and paternal grandmother, however, were causing an increase in Nevaeh's symptoms.

Wilson stated the foster mother reported several of Nevaeh's symptoms; those symptoms were consistent with a child exposed to trauma and disruptions in her early attachment formation. Nevaeh responded to the foster mother's cues and engaged in reciprocal play. Wilson told the social worker that, given Nevaeh's age and significant

³ On February 2, 2010, a first amended petition was filed adding the allegation that on December 10, 2009, Nevaeh was found to have multiple linear bruises on her back, which she obtained in mother's care and that mother had no reasonable explanation as to how Nevaeh was injured. The department withdrew the new allegation in the first amended petition and ordered continuation of reunification services. The petition was amended to state that mother provided multiple reasonable explanations as to how Nevaeh sustained her injuries.

risk factors, Wilson strongly suggested the court establish a permanent plan for Nevaeh as soon as possible.

Mother completed a substance abuse program and was participating in a less intensive outpatient substance abuse treatment program. Mother completed a mental health assessment in early March 2010 and was referred to a therapist for ongoing individual treatment. Mother was participating in a parenting class, but she was dropped from the class for missing too many sessions. Mother was going to begin a new parenting class starting in May 2010. Mother also missed four consecutive group therapy sessions and three additional group sessions. Mother failed to take scheduled drug tests on March 3 and 19, 2010. The social worker noted that mother had not ameliorated the conditions that necessitated Nevaeh's dependency.

Through the middle of April 2010, mother was consistently visiting Nevaeh. Mother was very affectionate with her daughter. Mother told Nevaeh that she loved and missed her. Mother played well with Nevaeh. The social worker described mother's visits as positive and the relationship between child and parent to be close and loving. The department recommended that mother continue receiving reunification services. At the disposition hearing on May 12, 2010, the juvenile court found mother's progress on her plan was moderate. The court ordered the continuation of mother's reunification services.

A report prepared by the department in January 2011 noted that mother was enrolled in parenting classes in February and May 2010, but was dropped from the program after missing the first three sessions of the first class and later missing multiple sessions of the second class. Mother started parenting classes again in August 2010, but had missed two classes as of late October 2010. In March 2010, mother began to see a therapist, but was dropped as a patient because she consistently missed treatment sessions. In June 2010, mother began to see another therapist, but was again dropped as a patient because she was excessively absent. Mother cancelled her first session with a

third therapist, and did not attend the first two sessions of a parenting therapy group. Although mother had not tested positive for drugs since December 2009, she had missed 16 testing sessions between December 2009 and November 2010.

In June 2010, mother participated in a domestic violence inventory assessment and was referred to a 52-week child abuse/batter's treatment program in August 2010. Since enrolling in the program, mother attended four sessions and missed six sessions. In mid-October 2010, a staffing was held with mother because she was at high risk of being dropped from the program. Mother agreed to attend the program without further unexcused absences. By the end of October 2010, however, mother failed to complete assignments and missed classes. Although mother was not dropped from the program, she was instructed to attend the next class in early November 2010.

Mother was not visiting Nevaeh on a regular basis since August 2010. Mother was good about setting up appointments for visits but often called the day before or the day of an appointment to cancel visits with Nevaeh. Mother's conduct with Nevaeh during visits was appropriate. In its status review report, the department concluded that as of November 2010, it would be detrimental for Nevaeh to be returned to mother. Although mother's housing was stable, the department was concerned about who would be allowed in and around the home.

The department noted that while mother had love for Nevaeh, she was easily overwhelmed and discouraged about completing her services. Mother was receptive to suggestions from her social worker, but was still unable to stay on track with her services. The department recommended termination of reunification services to mother.

An addendum report prepared by the department in January 2011 stated that on December 1, 2010, mother completed her parenting class. Since mid-October 2010, mother was attending weekly therapy sessions with a new therapist. A spot drug test of mother on January 12, 2011, was found positive for opiates. Mother accounted for the

test by providing documentation from a medical provider that she was taking Vicodin. Mother failed to take two subsequent random drug tests.

After missing six classes, mother was regularly attending domestic violence classes since early November 2010. Since November 2010, mother's visitation with Nevaeh was regular and her conduct with Nevaeh was appropriate. The department revised its original recommendation for mother and recommended that the court continue mother's reunification services. At the conclusion of the six-month review hearing, the juvenile court continued reunification services for mother.

The department's report for the 12-month review hearing was prepared in February 2011. Mother failed to appear for three random drug tests at the end of January 2011 and one at the beginning of February 2011. Although mother consistently attended domestic abuse classes, mother failed to take responsibility for the injuries Nevaeh suffered and blamed her former mother-in-law for making accusations against mother and taking Nevaeh to the hospital.

In late December 2010, the social worker called mother when mother failed to show for a visit with Nevaeh. Mother told the social worker she had just woken up and would be on her way to the visit. The social worker waited for mother for an additional 35 minutes but had to terminate the visit when mother failed to appear. The following week mother called to apologize, explaining that she had fallen back to sleep. Mother failed to appear for two scheduled visits with Nevaeh in January 2011. The social worker explained that mother missed visits for being ill, making appointments during scheduled visit times, and not being able to wake up for visits.

The department's report noted that although mother was able to keep a steady home, the detriment of returning Nevaeh to mother was significant. Mother had only recently started to work, in therapy, on the issues that made Nevaeh a dependent of the court. Mother had not completed her child batterer's treatment program, with an additional 34 classes to complete the program. Mother failed to comply with the required

three Narcotics Anonymous/Alcoholics Anonymous meetings per week, having attended only four meetings since January 12, 2011. Mother also failed to consistently drug test and to consistently visit Nevaeh.

The social worker concluded that mother failed to show the capacity and ability to complete the objectives of treatment or to provide for Nevaeh's safety. Mother lacked consistency in achieving the objectives of reunification. The department recommended that mother's reunification services be terminated. On March 18, 2011, the juvenile court terminated reunification services for mother, ordered a bonding study for the minor, and set the case for a section 366.26 hearing.

Section 366.26 Termination Proceedings

Nevaeh's therapist, Shanna Wilson, wrote a letter, in April 2011, to review Nevaeh's clinical progress since beginning treatment with her current risk/adopt foster parents. Wilson had been treating Nevaeh for a year, seeing her with her risk/adopt foster parents once a week since December 2010. Since beginning Nevaeh's treatment, Wilson had noticed a decrease in Nevaeh's overall level of anxiety. Nevaeh also showed an increase in her ability to sustain age appropriate play, to tolerate distress and to function more appropriately in her daily routines. Nevaeh had begun to form stable and trusting relationships with her risk/adopt foster parents. The risk/adopt foster parents demonstrated good insight into Nevaeh's mental health needs and appeared motivated to continue building their understanding of the best ways to support Nevaeh's needs.

It was Wilson's clinical opinion that Nevaeh's placement with her risk/adopt foster parents was critical in helping her to begin to address the problems she was experiencing due to her early trauma exposure and multiple disrupted attachment experiences. Wilson stated it would be a significant loss for Nevaeh if she were removed from her current placement. Such a change would impact Nevaeh's daily functioning and her overall progress toward attaining her treatment goals.

In June 2011, Dr. Laura Geiger, a licensed psychologist, conducted a bonding study of mother and Nevaeh. Dr. Geiger stated that mother and Nevaeh had a parent-child relationship. Dr. Geiger found mother had adequate skills in the areas of structure, nurture, challenge and engagement. Dr. Geiger noted, however, that mother had “several areas in which she could use some improvement.” Mother was depressed, believing she lacked competent parenting skills. Dr. Geiger noted that according to the record, mother’s progress in her reunification services was only moderate.

Dr. Geiger described mother as emotionally devoted to her daughter while also requiring improvement in concrete parenting skills. According to Dr. Geiger, Nevaeh appeared to be emotionally attached to mother. When Nevaeh was at times overactive, she was able to be calmed and nurtured by mother’s interventions. Dr. Geiger believed Nevaeh had a substantial, positive emotional attachment to mother that would be greatly harmed if the parent-child relationship were to be terminated. Dr. Geiger noted there was a relative grandmother who was willing to care for Nevaeh in a guardianship, which would give Nevaeh access to mother. Dr. Geiger recommended guardianship with the grandmother “with a long-term plan of two to three years for mother to be able to address her feelings of incompetence about her parenting skills....”

Observing the interaction between mother and Nevaeh with regard to structure, Dr. Geiger noted that mother had adequate skills and established clear structure while doing several tasks with Nevaeh. Mother maintained her parental status, set limits, and did not allow things to become overly disorganized or chaotic. In the category of engagement-intrusion, Dr. Geiger observed that mother’s underlying depression caused her to have a lack of energy. Mother’s emotional sadness reduced her ability to be lighthearted and playful with Nevaeh.

In the assessment category of challenge, or the ability of a parent to stimulate the child’s development, Dr. Geiger found mother’s skills to be adequate. Mother could work harder on verbally acknowledging her child’s efforts and praising her. On the topic

of mother's nurturing skills, Dr. Geiger found mother to be very comfortable with the verbal and nonverbal skills needed to nurture Nevaeh. Dr. Geiger described mother's nurturing skills as adequate to good.

Dr. Geiger recommended that mother be referred to a psychiatrist for evaluation of her depression and receive psychotherapy to address mother's depression and for her to gain the parenting skills she needs. Dr. Geiger recommended that mother enter group therapy for emotional support and to gain parenting strategies. Dr. Geiger also recommended that mother consider retaking parenting classes, attend treatment for domestic violence victims, become involved in community support systems, and continue with all court orders.

An addendum report by the department was prepared in August 2011. The department noted that Nevaeh had been in the foster care system since December 2009 and mother had not ameliorated the reasons why Nevaeh became a dependent of the court.

The prospective adoptive parents exhibited excellent abilities to provide structure and daily routines for Nevaeh, who looked to them as her mother and father. Although Nevaeh was very independent, she allowed the prospective adoptive parents to set limits for her and they had implemented techniques to give her age appropriate consequences for negative behavior. Nevaeh reached for hugs and kiss from her prospective adoptive parents.

The prospective adoptive parents held, hugged, kissed, and comforted Nevaeh. Nevaeh smiled and laughed when she played with her prospective adoptive mother. Nevaeh told her prospective adoptive mother that she wanted to stay with her forever but still wanted to be able to see "mommy Vanessa." The prospective adoptive parents stimulated Nevaeh's developmental growth by providing her with activities that encouraged learning. They read books to Nevaeh and sang songs with her. The social

worker noted that mother was also very affectionate and comforting with Nevaeh during her visits.

The social worker observed that the prospective adoptive parents had excellent engagement skills and had been caring for Nevaeh since she was placed with them in October 2010. The prospective adoptive parents were aware of Nevaeh's mental and emotional needs and recognized her specific needs due to her experience with trauma and abuse. The prospective adoptive parents had developed strategies to help Nevaeh understand the role of a parent-child relationship and for developing other appropriate relationships.

The social worker stated that Nevaeh deserved to have a parent-child relationship in the absolute sense, not in a relative sense. Nevaeh had a parent-child relationship with her prospective adoptive parents. Although mother had regular contact with Nevaeh, that contact did not outweigh the benefit Nevaeh would gain from adoption. The social worker acknowledged a relationship between Nevaeh and mother and recommended a post-adoption agreement be ordered to maintain contact between Nevaeh and mother.

Nevaeh's current placement was stable, nurturing, and appropriate. The prospective adoptive parents wanted to adopt Nevaeh and were capable of meeting all of Nevaeh's physical, social, and emotional needs. Nevaeh, who was three years old when the report was prepared, told the social worker that she would like to stay with the prospective adoptive parents forever and still see her mother.

The section 366.26 hearing was conducted on September 21, 2011. Tanesha Brooks, the social worker assigned to Nevaeh's case, testified that she had to require mother to call the department an hour before visitations with Nevaeh because mother had missed several visits and the social worker did not want Nevaeh brought to the department unnecessarily. In August 2011, mother did not make any of her visits with Nevaeh. Mother missed a visit on September 1, 2011, explaining that she was in the hospital.

Dr. Geiger testified that mother and Nevaeh had a very strong parent-child bond. Dr. Geiger's opinion was based on formal observations between mother and Nevaeh that lasted 30 minutes, and another 10 to 15 minutes that occurred before and after the formal observation period. There was further psychological testing with mother that lasted about 40 minutes. Dr. Geiger believed Nevaeh would be greatly harmed if the mother's parental rights were terminated, causing long-term detriment to Nevaeh's emotional and psychological well-being.

Dr. Geiger described how mother had adequate skills and how she interacted with Nevaeh while sharing a snack. Without performing "structured psychometrics," Dr. Geiger acknowledged that there was clearly a positive emotional bond between Nevaeh and her foster parents. Dr. Geiger believed Nevaeh's relationship with mother was strong enough, with such positive psychological and emotional attachment, that it outweighed the benefits of adoption at that time.

On cross-examination, Dr. Geiger conceded that she did not know whether Nevaeh's relationship with her foster parents was actually greater than with mother. Dr. Geiger also conceded that Nevaeh's growth and progress in overcoming the trauma she suffered was due to her placement and therapy with the help of her current care providers.

The court found, by clear and convincing evidence, that Nevaeh would be adopted and that adoption was the appropriate permanent plan for her. The court found Nevaeh's current placement appropriate and that her educational, physical, mental health, and developmental needs were being met. The court found partial viability in Dr. Geiger's bonding study back when it was done, but also found the study to be inherently inconsistent between the degree of the parent-child bond and the recommendations set forth for mother to follow. The court found that Dr. Geiger failed to take into account that Nevaeh was a young child in need of a permanent home. The court ruled it was inappropriate for Nevaeh to have to wait for mother to grow up and acquire the skills

necessary to be an appropriate and responsible parent. The court ordered the termination of mother's parental rights.

DISCUSSION

Mother argues the court erred in finding that the parent-child beneficial relationship exception for termination of parental rights did not apply to this case. We find mother's contention to be without merit and affirm the orders of the juvenile court.

Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability. The purpose of the section 366.26 hearing is to select and implement a permanent plan for the child. The hearing is designed to protect the child's compelling rights to a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. If the child is adoptable, adoption is the norm. The necessary consequence of adoption is the termination of parental rights unless the child's circumstances prove a compelling reason for finding that termination of parental rights would be detrimental to the child. There is a legislative preference for adoption when reunification efforts have failed. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53 (*Celine R.*))

Appellate courts have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that promotes the well-being of the child to such an extent as to outweigh the benefits the child would gain in a permanent home with adoptive parents. Courts balance the strength and quality of the natural parent-child relationship against the security and sense of belonging the new family would provide. If severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment so that the child would be greatly harmed, only then is the preference for adoption overcome and the parents' rights are not terminated. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954 (*L.Y.L.*); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

To meet the burden of proof for the parental benefit exception, the parent must show more than frequent and loving contact or pleasant visits. (*L.Y.L., supra*, 101 Cal.App.4th at pp. 953-954.) The relationship arises from day-to-day interaction, companionship, and shared experiences. The parent must show he or she occupies a parental role in the child's life that results in a significant, positive emotional attachment from child to parent. (*Id.* at p. 954.)

We review the juvenile court's findings concerning the parental benefit exception under the deferential abuse of discretion standard. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) The decision is not reviewed, as mother argues, for substantial evidence that the termination would not be detrimental. To conclude that there was an abuse of discretion, the proof offered must be uncontradicted and unimpeached so that discretion could be exercised only in one way, compelling a finding in favor of the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 (*I.W.*.)

Where the issue on appeal turns on a failure of proof, the question for a reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law. The issue is whether the appellant's evidence was uncontradicted, unimpeached, and of such weight as to leave no room for a judicial determination that it was insufficient to support a finding. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *I.W., supra*, 180 Cal.App.4th at p. 1528.) We review the record in the light most favorable to the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Mother argues that she has great love for Nevaeh and that Dr. Geiger provided evidence from the bonding study that Nevaeh would greatly benefit from a continuing relationship with mother. Mother ignores her own inconsistent visitations with Nevaeh, including no visitation with Nevaeh the month prior to the section 366.26 hearing. Mother ignores the observations of the juvenile court that Dr. Geiger's findings were inconsistent. More importantly, mother does not acknowledge that Dr. Geiger recognized

that mother still did not have adequate parenting skills to have Nevaeh returned to her care. From her testimony at the hearing, it was clear that Dr. Geiger spent less than an hour observing the interactions of mother and Nevaeh. This was not a long observation, and it also did not include observations of Nevaeh with her foster parents.

Dr. Geiger recommended that Nevaeh be placed in a long-term guardianship so that mother could acquire more parenting skills and confidence in being a parent. We agree with respondent that a temporary guardianship lasting two or three years, with a long-term goal of reunification with a parent who has failed in prior attempts to reunify, is not an option available to the juvenile court at a section 366.26 hearing. (Section 366.26, subd. (b); *Celine R.*, *supra*, 31 Cal.4th at p. 53.)

Mother also ignores the opinion of therapist Shanna Wilson that Nevaeh was deeply bonded with her foster parents and due to their interventions, including therapy for Nevaeh, she was beginning to overcome the trauma she had suffered. Wilson noticed a decrease in Nevaeh's overall level of anxiety. Nevaeh was beginning to form stable and trusting relationships with her prospective adoptive foster parents. The prospective adoptive foster parents demonstrated good insight into Nevaeh's mental health needs and were motivated to continue finding the best ways to support Nevaeh's needs.

It was Wilson's clinical opinion that Nevaeh's placement with her prospective adoptive foster parents was critical in helping her to begin to address the problems she was experiencing due to her early trauma exposure and multiple disrupted attachment experiences. Wilson stated it would be a significant loss for Nevaeh if she were removed from her current placement and that such a change would impact Nevaeh's daily functioning and her overall progress toward attaining her treatment goals.

Mother's appeal does not account for the length of time Nevaeh was in foster care. Mother does not account for the many times she failed to take drug tests. Most importantly, mother ignores the many times she cancelled visits with Nevaeh, including all visits during August 2011.

There is no doubt that mother loves Nevaeh and that Nevaeh also has love for mother. The parent-child relationship, however, must arise from day-to-day interaction, companionship, and shared experiences. The parent must show he or she occupies a parental role in the child's life that results in a significant, positive emotional attachment from child to parent. Mother failed to demonstrate, at the section 366.26 hearing, that she occupied a true parental role with Nevaeh that resulted in a significant, positive emotional attachment of Nevaeh to her. Mother failed to show that the juvenile court abused its discretion in rejecting the application of the parental benefit exception to her case. The juvenile court did not err in failing to apply the parental benefit exception to this case or in terminating mother's parental rights.

DISPOSITION

The juvenile court's finding that the parental benefit exception did not apply to this case and the order terminating mother's parental rights pursuant to Welfare and Institutions Code section 366.26 are affirmed.