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

In re JORDAN A., a Person Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

TERI A.,

Defendant and Appellant.

F063551

(Super. Ct. No. 08CEJ300008)

OPINION

THE COURT*

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

Valerie N. Lankford, 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., Cornell, J., and Franson, J.

INTRODUCTION

Teri A. (mother) appeals from the juvenile court's order finding that the beneficial parent-child relationship exception is inapplicable to her case and terminating her parental rights to her son, Jordan A. We reject mother's contention and affirm the juvenile court's orders.

FACTS AND PROCEEDINGS

Earlier Proceedings

On September 9, 2010, a petition was filed by the Fresno County Department of Social Services (department) pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j),¹ alleging that Jordan A., recently born, was at substantial risk of physical harm because mother had, in the past, neglected and physically harmed Jordan's older half-siblings. Although mother received reunification services for her older children, she failed to reunify with them.² Mother also had a history of engaging in relationships that led to domestic violence and exposed her older children to an unsafe environment.³

Jordan was detained on September 15, 2010. Because mother met the criteria set forth in section 361.5, subdivision (b)(10), she was not offered reunification services. Mother was permitted reasonable, supervised visitation with Jordan.

Jurisdiction and addendum reports were prepared by the department in October 2010. The department requested that the juvenile court find the allegations in the petition true. The department further stated that mother came within the criteria of section 361.5,

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

² Jordan has four older half-siblings: K.W., O.L., A.L. and J.L. At the time the petition was filed on behalf of Jordan, the respective ages of the half-siblings were 12 years old, 8 years old, 5 years old, and 2 years old.

³ Jordan's father is not a party to this appeal.

subdivisions (b)(10) and (b)(11). On multiple occasions in October 2007, the department received referrals that mother physically abused O.L. by hitting him hard enough to cut his lip and hitting him on his lower back. Mother also hit O.L. on the leg. In November 2007, mother slapped O.L. on the right side of his face. In December 2007, mother was seen slapping O.L., leaving marks on his face.

In February 2008 and April 2008, the juvenile court found true allegations that O.L. suffered serious physical harm as a result of being hit by mother and that mother had a history of using inappropriate punishment such as slapping with an open hand on the mouth and face, and socking the child on the leg. The court found the other children at risk of also suffering physical harm by mother. O.L. was suffering severe emotional damage as evidenced by his angry outbursts, verbal abuse, and self-destructive and aggressive behaviors. O.L. was fighting with his siblings and adults. He and the other children were at serious risk as a result of O.L.'s behavior.

In June 2008, mother was ordered into family reunification services for O.L. and into family maintenance services for her other three children. In September 2008, a protective custody order was issued for K.W., A.L. and J.L. and they were detained. In December 2008, allegations in a section 387 petition regarding K.W., A.L., and J.L. were found true. In February 2009, mother was ordered into reunification services as to those three children.

The services mother received included parenting classes, a domestic violence inventory evaluation with recommended treatment and a mental health assessment with recommended treatment. Mother received a mental health assessment and a psychological evaluation in early 2010. During the psychological examination, mother did not accept any responsibility or accountability for the reasons that led to her children's removal from her care. Mother asserted that the claims of abuse were false. The psychologist found mother qualified for a diagnosis of Personality Disorder, NOS

(not otherwise specified), and that this condition likely contributed to mother's dysfunctional interactions with her children. Mother showed very little self-awareness.

In September 2009, mother's reunification services for O.L. were terminated and he was placed into long-term foster care. In August 2010, mother's reunification services for the other three children were terminated and a section 366.26 hearing was set for those children.

At the jurisdiction hearing for Jordan on November 16, 2010, the juvenile court found the allegations of the petition to be true. The court did not order reunification services for mother. The department's report for the disposition hearing recommended that reunification services be denied to mother pursuant to section 361.5, subdivision (b)(10), because the court had previously ordered the termination of reunification services for Jordan's older half-siblings due to mother's failure to reunify with them after completing services. Mother did maintain regular visits with Jordan. Mother fed Jordan, changed his diapers, and had appropriate interactions with him.

An addendum report prepared by the department in January 2011 noted that Jordan did not appear to have a significant relationship with his mother. The social worker explained that mother's prognosis for reunification was poor due to her significant history of child abuse issues, lack of adequate parenting skills, mental health issues, and difficulty with anger management. Mother also had an unstable lifestyle, poor decision making skills, and an inability to take responsibility for her actions.

At the conclusion of the disposition hearing on April 13, 2011, the juvenile court denied mother reunification services finding that the bypass provision of section 361.5, subdivision (b)(10) was applicable to mother. The case was referred to an assessment by the department for a section 366.26 hearing. Mother was notified of her right to appeal the juvenile court's rulings.

Section 366.26 Termination Proceedings

The department prepared a report for the section 366.26 hearing in August 2011. Jordan's development was on target. Jordan was a good eater and a happy child who enjoyed laughing, clapping, and interacting with older children in the home of his prospective adoptive parent. The only health concern for Jordan was that he was experiencing eczema, which was treated with lotion. Jordan was also showing delay in learning how to walk. This was being attended to by his prospective adoptive parent.

Mother was on time for her scheduled visits with Jordan and interacted with him appropriately. The department's assessment was that Jordan was a happy, healthy child who was on target for his developmental age and was generally adoptable. The prospective adoptive parent was very diligent in ensuring that Jordan be exposed to, and experience, an environment that stimulated his developmental needs. The social worker observed Jordan to have a nurturing and strong positive relationship with his prospective adoptive parent. Jordan did not share a parent-child relationship with his birth parents even though mother visited with him for four hours per month. The department's report concluded that termination of mother's parental rights would not be detrimental to Jordan. The department recommended that adoption be chosen as Jordan's permanent plan and that mother's parental rights be terminated.

In late September 2011, mother reported that she did not have stable housing. A landlord at an apartment complex was willing to rent an apartment to mother if she could pay \$500 and provide a "Section 8 voucher." Mother did have a stable job at a local hospital and was saving money.

In early September 2011, the social worker talked to the prospective adoptive parent concerning a post-adoption agreement. The prospective adoptive parent talked to a mediator concerning such an agreement, but mother never contacted the mediator so he closed the case. The social worker contacted mother again about a post-adoption agreement and gave mother the mediator's contact number. Mother told the social

worker that she already had the contact number. In late September 2011, mother was given a second referral to the Consortium for Children to develop a post-adoption agreement. In October 2011, the prospective adoptive parent told the social worker that she would be agreeable to an “open adoption” with mother. The prospective adoptive mother would be willing to exchange letters and pictures. She would also be open to scheduling visits between Jordan and mother.

Jordan reached for hugs and kisses from his prospective adoptive parent. The prospective adoptive parent was able to show patience, consistency and structure in her interactions with Jordan. The prospective adoptive parent employed simple, yet effective, techniques to provide Jordan with age appropriate consequences for negative behaviors.

Mother had difficulty redirecting Jordan when he began to throw his toys on the floor. While trying to read to Jordan, he wiggled himself off of her lap. Mother appeared to struggle with teaching Jordan to understand her role as a parent. Throughout her visits, mother was unable to make eye contact with Jordan or to gain his full attention.

Jordan had not established a significant parent-child relationship with mother that, if severed, would cause Jordan harm. The prospective adoptive parent provided Jordan with a loving, nurturing environment that allowed him to thrive in his placement. Jordan looked to the prospective adoptive parent to meet his daily needs for comfort, stability, security, food, clothing and shelter. Jordan “has formed a strong attachment to the prospective adoptive parent and identifies her as the only adult parent in his life.” The department recommended adoption as the permanent plan for Jordan and termination of mother’s parental rights.

At the section 366.26 hearing on October 21, 2011, mother testified that she kept her visitations with Jordan, never missing a visit. Mother described the visits as going really well. Mother read to Jordan, let him crawl around, and he smiled when he looked at her. Mother would rock Jordan to sleep during visits and would sing to him. Jordan

also liked to play with mother. Mother described her parent-child bond with Jordan as strong. Mother explained that Jordan needed her and she could provide him with a loving relationship. Mother could support Jordan and provide for his needs.

At the conclusion of the hearing, the court found that adoption was the best plan for Jordan and that there was clear and convincing evidence Jordan would be adopted. The court ruled that the evidence did not support a finding that the parent-child relationship exception to adoption applied to this case. The court found that it was in Jordan's best interest, and it would not be detrimental to him, to terminate mother's parental rights. The court terminated 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 along with the necessary consequence of 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.)

Although mother painted a very positive portrait of her relationship with Jordan at the section 366.26 hearing, mother had been part of the social services system for several years and failed to reunify with her four older children. The social worker observed a far closer bond to Jordan with the prospective adoptive parent than with mother. Mother struggled to redirect Jordan when he acted defiantly. The prospective adoptive mother had far more successful strategies in soothing and redirecting Jordan's negative behavior. Mother spent hours with Jordan two or three times a month. The prospective adoptive parent cared for all of Jordan's daily needs, including those for nurturing and growth.

There is evidence in the record that mother loves Jordan and that he enjoys her visits with him. 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 Jordan that resulted in a significant, positive emotional attachment of Jordan 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.

DISPOSITION

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