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

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

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

B.S.,

Defendant and Appellant.

F066368

(Super. Ct. No. 515916)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Ann Q. Ameral,
Judge.

Elysa J. Perry, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, Robin Gozzo and Carrie M. Stephens, Deputy
County Counsel, for Plaintiff and Respondent.

B.S. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to her two-year-old son, J.S. Mother contends the juvenile court erred in failing to apply the beneficial sibling relationship and beneficial parent-child relationship exceptions to termination. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has two children, a four-year-old daughter, Isabelle S., and J., the subject of this appeal. Isabelle and J. are half-siblings. Mother suffers from a developmental disability and has a history of child neglect. In June 2009, the Stanislaus County Community Services Agency (agency) received a report that there were dog feces, urine and cockroaches on the floor of mother's home. The reporting party stated that formula had to be provided for then six-month-old Isabelle as there was none there for her. The agency substantiated that mother had neglected Isabelle and referred mother for community services. The agency investigated mother for neglect again in March 2010 after receiving information that then 15-month-old Isabelle was underweight and malnourished and could not walk. She had dried feces on her bottom and a rash, as well as severe lung and ear infections. Mother told the investigating social worker that she used methamphetamine. The agency referred mother for voluntary services.

In April 2010, mother was admitted for residential drug treatment at Nirvana Women of Hope (Nirvana). After completing residential treatment, she was admitted to Redwoods Family Center (Redwoods), a clean and sober facility and to First Step Perinatal Drug and Alcohol Treatment Program (First Step) for outpatient treatment. In September 2010, mother gave birth to J. The staff at Nirvana, Redwoods and First Step reported that mother was unwilling or unable to bathe herself and the children, change their clothing and provide proper medication dosing for them. Staff had to wake her up when J. needed to be fed or changed. On one occasion, mother took J. to daycare with

¹ All statutory references are to the Welfare and Institutions Code.

feces stains on his clothes and formula stains on his blanket. He had feces in the creases of his legs, armpits and ears, and “goop” in his eyes. Redwoods staff reported that as long as mother was closely supervised, she was able to properly care for the children; however, despite several months of parenting education and support, she was not able to do so independently.

These dependency proceedings were initiated in October 2010 when the agency took then 21-month-old Isabelle and one-month-old J. into protective custody and filed a dependency petition on their behalf alleging that mother’s developmental disability and drug use caused her to neglect them. (§ 300, subd. (b).) The petition also alleged that the children’s alleged fathers failed to provide for them and that the fathers’ whereabouts were unknown. (§ 300, subd. (g).)

In October 2010, at the detention hearing, the juvenile court appointed an attorney and a guardian ad litem for mother and ordered the children detained. The agency placed them in foster care.

The agency reported that mother’s primary challenge in reunifying with the children was her struggle to independently provide for their basic needs. To assist her, the agency referred her for one-on-one parenting sessions at Aspira Pro Families (Aspira). In addition, mother was participating in parenting labs at First Step and was eligible for supportive services through Valley Mountain Regional Center (VMRC) such as assistance with shopping and transportation to her medical appointments once she was living independently. However, VMRC does not provide hands-on assistance with the children. Consequently, the agency stressed the importance of mother demonstrating “a solid foundation of recovery and a solid grasp of basic parenting” before leaving clean and sober living to obtain a residence of her own.

In November 2010, the juvenile court exercised its dependency jurisdiction and ordered a plan of reunification for mother that required her to complete parenting instruction through First Step and mentoring through Aspira. It also required her to

participate in a 12-step program, submit to random drug testing and continue to reside in clean and sober living for at least three months and demonstrate her ability to parent and care for her children before she moved out. The agency was given discretion to allow overnight visits at Redwoods.

During the first six months of services, mother remained at Redwoods and was in recovery. However, she still had not demonstrated the ability to safely parent the children. Specifically, she was not able to multi-task and anticipate risks or danger to the children. On one occasion, for example, mother was reading a book to Isabelle with Jonathon in close proximity, when another child walked up and started kicking Jonathon. Mother continued to read to Isabelle and did not redirect her attention to protect Jonathon. It was only after the parent-mentor intervened that mother turned and said something to the other child.

Also during this interim period, Isabelle's father, James, appeared and was participating in reunification services.

In May 2011, at the six-month review hearing, the juvenile court found that mother had made fair progress in her services plan and continued reunification services for her and James to the 12-month review hearing, which it set for November 2011.

In the interim, mother completed outpatient drug treatment and the program requirements at Redwoods. She participated in supportive services through VMRC and actively participated in mentoring services through Aspira. She also demonstrated improvement in such parenting skills as changing the children's diapers more consistently and regularly feeding them; however, she had not progressed to the point that she could supervise them both. Consequently, in its report for the 12-month review hearing, the agency recommended that the juvenile court terminate mother's services and continue James's services.

In a report filed in late October 2011, a court appointed special advocate (CASA) for the children reported they were doing very well in their foster home. The foster

parents expressed the opinion that it was not in Isabelle's best interests to be separated from J. The CASA also expressed concern about separating the children, observing they were happy together, smiled at each other, and looked for one another when the other was not present. The CASA also noted that Isabelle had overnight visits with James from Thursday through Monday, and the foster parents observed Isabelle had some behavioral problems after long visits away from the foster home.

In November 2011, the 12-month review hearing was continued and conducted as a contested hearing in February 2012. At the contested hearing, the juvenile court continued services for mother and James to the 18-month review hearing, which it set for April 2012.

In its report for the 18-month review hearing, the agency recommended that the juvenile court terminate mother's services. Mother continued to have extreme difficulty with multi-tasking and parenting the children at the same time. She had been observed numerous times caring for one child while ignoring or neglecting the other. On one occasion, while focused on Isabelle, mother kept J. in a bouncy chair for such a long time that First Step staff intervened and insisted she take him out.

On another occasion, during a community visit at the local library, mother did not appear to notice when Isabelle walked right between her and J. and out of the children's center. When Isabelle was completely out of mother's sight, the social worker alerted mother to what happened. Mother immediately got up and started running around the library to find Isabelle, leaving J. alone and unattended.

In April 2012, the 18-month review hearing was continued and conducted as a contested hearing in June 2012. In an addendum report for the hearing, the agency noted that mother, who had moved out of Redwoods without first informing the agency and was residing with relatives, made no effort to prepare the home for visitation. In addition, she was unable to supervise both children during community visitation. On one notable occasion, mother was carrying J. and holding Isabelle's hand as they entered a

crosswalk. Midway through the crosswalk, Isabelle pulled free and ran toward the sidewalk. The social worker ran after Isabelle and grabbed her by the hand. Asked why she let go of Isabelle's hand, mother explained that she directed Isabelle to run ahead to the sidewalk so that she would not get hit by a car.

At the contested 18-month review hearing on June 11, 2012, the juvenile court ordered Isabelle returned to James's custody under a plan of family maintenance. The court terminated mother's reunification services as to both children and set a section 366.26 hearing as to J. This court upheld that decision in *B.S. v. Superior Court* (Aug. 9, 2012, F065114).

The agency prepared a "366.26 WIC Report" in advance of the section 366.26 hearing. In the report, the agency recommended the juvenile court find J. likely to be adopted and order termination of parental rights. The report noted that J. had been living with his prospective adoptive parents since October 2010, when, at the age of one month, he was removed from mother's custody. J. had a strong bond with his prospective adoptive parents and called them "mommy" and "daddy." They were experienced parents who were raising J. and their other two children in a nurturing, stable environment.

The agency further reported that mother had continued to visit J. since the 18-month review hearing in June 2012, and had visited him twice a month in July and August 2012. The visits were reduced to once a month in September 2012, with the final visit anticipated to occur in October 2012.

In October 2012, the section 366.26 hearing was continued and conducted as a contested hearing on December 13, 2012. At the hearing, mother testified she had visited J. regularly and described their relationship as good. In mother's opinion, J. recognized her as his mother and shared a bond with her, explaining he called her mom and gave her hugs and kisses during visits.

Asked why she felt it would be detrimental to J. if her parental rights were terminated, mother responded, “Because then he won’t know me. He won’t see me.” Mother thought it was important for J. to see her because she was his mom. She was also concerned about J.’s relationship with Isabelle and wanted him to visit his sister.

After closing arguments, the juvenile court found mother had not met her burden of establishing the beneficial parent-child relationship and beneficial sibling relationship exceptions to termination of parental rights. Having found J. likely to be adopted, the juvenile court terminated parental rights. The court explained its ruling, in part, as follows:

“Well, I agree that this is a sad situation. I have never doubted for a minute that [mother] loves both of her children very, very much. And it’s been difficult, because I think mother has tried very hard to learn the things that she needed to learn, and unfortunately, she just has not been able to obtain those skills necessary to be able to convince the appropriate individuals that she is able to safely care for both of the children... [¶]

“...And I have no doubt that the visits between mother and [J.] have indeed been positive.

“My difficulty is that I’m required to find, and it’s the parent’s obligation to prove that it would actually be so detrimental to the child to terminate the parental relationship that the detriment that the child would suffer is more serious than the benefit the child would receive in having permanence through adoption. And that detriment is a strong showing and it has to be based more on just having good relationships, having playful visits, and the visits being good. But there’s a lot more that’s required, and unfortunately mother has simply not met her burden to prove that that detriment outweighs the benefit that the child would receive in adoption.

“Also, as far as the sibling exception, it is important to note that [J.] was placed outside of the mother’s home when he was extremely young, and quite some time ago Isabelle was placed with her father on a trial visit. So [J.] and Isabelle, although they’ve spent some time together, much of their lives they have really been living in two separate homes. And so I don’t see that there’s been any finding in this case that the sibling exception applies.

“So it’s heart-breaking, but I really have no choice but to follow the law and to go ahead and adopt the Agency’s findings and recommendations.”

DISCUSSION

I. No beneficial sibling relationship exception

Mother contends the juvenile court erred in failing to apply the beneficial sibling relationship exception to termination of parental rights. Mother asserts J. “lived with Isabelle for his entire life,” they shared a strong sibling bond, and separating them “would surely cause [J.] trauma.”

Once the juvenile court has terminated reunification services, its focus shifts to the child’s needs for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If, as here, the child is likely to be adopted, adoption is the norm. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)) The statutory presumption is that termination is in the child’s best interests and not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342 (*Lorenzo C.*))

The juvenile court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances in section 366.26 provides a compelling reason for finding that termination of parental rights would be detrimental to the child. (*Celine R., supra*, 31 Cal.4th at p. 53.) Further, it is an opposing party’s burden to show that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The sibling relationship exception to terminating parental rights applies when the juvenile court finds there is a compelling reason for determining termination would be detrimental to the child because it would substantially interfere with that child’s sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has a strong bond with a sibling. The court must also consider whether ongoing contact is in the child’s best interests, including the child’s

long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*) The purpose of this exception is to preserve long-standing sibling relationships that “serve as anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.)

“The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption.” (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Similar to the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) The parent must first show: (1) the existence of a significant sibling relationship; (2) terminating parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) After the parent shows a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefits of adoption. (*Id.* at pp. 952–953; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.)

We are aware of the split of authority concerning the standard of review in this context. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 and *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622 [hybrid combination of substantial evidence and abuse of discretion standards; applying substantial evidence test to determination of the existence of a beneficial sibling relationship and the abuse of discretion test to issue of whether that relationship constitutes a compelling reason for determining that termination would be detrimental to the child]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*) [substantial evidence test—“On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference

and resolving all conflicts in support of the order”]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [abuse of discretion test].)

Our conclusion in this case would be the same under any of these tests because the practical differences between the standards are “not significant,” as they all give deference to the juvenile court’s judgment. (See *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) “[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling.... Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.’ ... ”” (*Ibid.*)

J. may have had a bond with Isabelle, shared a home with her for a large portion of his young life, and had common experiences with her. To establish the beneficial sibling relationship exception, however, mother was required to establish severing the sibling relationship would cause J. detriment. Here, there is no evidence J. would suffer any harm, let alone *trauma*, without a continued relationship with Isabelle. Although the CASA’s October 2011 report recorded friendly interactions between the siblings and expressed concerns about separating them, the report also reflected the siblings had already begun to spend *considerable* periods of time apart each week (Thursday through Monday) when Isabelle stayed with her father with no reported negative effects on J. Moreover, Isabelle was returned to her father’s custody under a plan of family maintenance in June 2012. Therefore, by the time of the section 366.26 hearing in December 2012, J. had presumably been living apart from Isabelle for a period of six months. Thus, contrary to mother’s assertion, the evidence supported the court’s observation that the children had spent *much* of their lives living in separate homes. We note in this regard that mother introduced no evidence that J. was harmed by these periods of separation from his sister or that he would benefit more from ongoing sibling contact than from adoption. On this record, we are unable to conclude no judge could

reasonably have made the order that the juvenile court made here in finding mother failed to establish the beneficial sibling relationship exception and terminating parental rights.

II. No beneficial parent-child relationship exception

Mother also contends the juvenile court erred in failing to apply the beneficial parent-child relationship exception. Mother asserts she maintained regular and consistent visitation with J., she had a strong emotional bond to him, and occupied a parental role towards him. Mother further asserts that “[t]he service providers helped [her] learn how to care for [J.]’s needs, including feeding him, changing him and making sure he was provided the necessary stimulation to grow into a healthy child.”

The beneficial parent-child relationship exception in section 366.26, subdivision (c)(1)(B)(i), involves a two-part test; did the parent maintain regular visitation and contact with the child, and would the child benefit from continuing the relationship.

For the beneficial relationship exception to apply,

“the parent-child relationship [must] promote the well-being of a child to such a degree that it outweighs 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.)] A juvenile court must therefore: ‘balance ... 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.’ [Citation.]” (*Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1342.)

There is no question that mother maintained regular visits with J. and her testimony suggested the visits were pleasant, loving occasions for both of them. However, interaction between a natural parent and child will always confer some incidental benefit to the child. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Consequently, a parent must demonstrate more than pleasant visits or frequent and loving

contact for the beneficial parent-child relationship exception to apply. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 953–954.)

Here, there is no evidence that J. had a substantial, positive emotional attachment to mother or that he would be greatly harmed if their relationship was severed. Mother’s assertion that she was a “parent-figure” to J. is belied by the record, which reflects that, despite her good intentions and participation in extensive parent training, mother remained insufficiently attentive to J. and unable to parent him appropriately without constant direction and supervision. On this record, the juvenile court could reasonably find J.’s need for permanence outweighed the benefits he would derive from a continued relationship with mother and we have no difficulty concluding the court properly terminated parental rights.

DISPOSITION

The order terminating parental rights is affirmed.

HILL, P. J.

WE CONCUR:

CORNELL, J.

FRANSON, J.