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

In re D.B. et al., a Person Coming Under the
Juvenile Court Law.

STANISLALUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

F067195

(Super. Ct. Nos. 516231 & 516232)

OPINION

THE COURT*

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

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

* Before Levy, Acting P.J., Cornell, J. and Peña, J.

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D.A. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to her son D.B. Mother contends the juvenile court erred in finding the beneficial relationship exception did not apply to prevent termination of her parental rights. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2011, D.B. (born Nov. 2000) and his half-brother I.A. (born Dec. 2007), first came to the attention of child protective services in Merced County and were taken into protective custody due to mother leaving them in the care of their maternal grandfather who was found to be under the influence of alcohol and PCP and unable to supervise them safely. At the time, mother was incarcerated and unable to care for the children. Mother admittedly had an extensive history of substance abuse, which included recent methamphetamine use, and involvement in violent relationships. She had been incarcerated numerous times and was on probation in two different counties.

In January 2012, the juvenile court in Merced County exercised jurisdiction over D.B. and I.A. pursuant to section 300, subdivision (b), granted reunification services to mother, and recommended transferring the case to Stanislaus County where mother was living with her new boyfriend.

At a hearing on February 2, 2012, the juvenile court in Stanislaus County adopted all the prior orders from Merced County, granted mother weekly visitation with the children, and set a transfer-in review hearing for February 17. D.B.'s father, D.B., (father), appeared for the first time at the February 17 hearing and the matter was continued.

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

In April 2012, the juvenile court accepted the transfer-in from Merced County, ordered reunification services for mother and father, therapeutic visitation for father, and supervised visitation for mother. At the hearing, D.B. expressed the wish to visit mother twice each week. The Stanislaus County Community Services Agency (agency) did not oppose D.B.'s request and the court granted the agency discretion to increase mother's weekly visits.

In early May 2012, the agency filed a report for the six-month review hearing reflecting that mother had visited the children at their caretaker's residence once each week in April following the transfer-in hearing and that the visits went well. At the six-month review hearing, the juvenile court found the progress made by mother and father had been limited and adopted the agency's recommendation to continue reunification services and weekly visitation.

In late October 2012, the agency filed a report for the 12-month review hearing, recommending that the juvenile court terminate reunification services and set a section 366.26 hearing. At the time, D.B. and I.A. were living with a relative caretaker in Merced, with whom they had been placed in mid-August 2012. Mother visited the children almost weekly in May, June, and July. However, after she failed to show up for her scheduled visit on August 8, visitation was suspended until such time as mother contacted the social worker. At the time of the October report, mother had not requested any visits or kept in regular contact with the social worker.

Mother reportedly had one visit with the children at a family birthday party in early September 2012. Their relative caretaker noted the children appeared to be very happy to spend time with mother. However, she also noted mother had some minor parenting problems in that mother and D.B. "interacted more like pals" than parent and child. The caretaker also intervened when mother asked D.B. to take I.A. to the bathroom. She explained to mother that it was not D.B.'s responsibility and that she should take I.A. to the bathroom because she was the adult and caretaker.

Mother failed to appear at the 12-month review hearing in November 2012.² At the conclusion of the hearing, the juvenile court found mother had not been participating regularly nor made substantive progress with the services provided. The court terminated reunification services and set a section 366.26 hearing in early March 2013.

In late February 2013, the agency filed a section 366.26 report recommending termination of parental rights and selection of adoption as the permanent plan for D.B. and I.A. The agency reported it was very likely the children would be adopted by their relative caretaker, who was very committed to providing permanency to both children. In addition, D.B. told a social worker on more than one occasion that he wanted the caretaker to adopt him and to continue living with her. He had also done better in this placement than in his previous placements. D.B. reportedly understood the permanence of adoption and had been consistent in his expressed desire to be adopted.

The section 366.26 report also noted a number of behavioral problems D.B. had exhibited relating to mother. His caretaker reported that D.B. saw mother at the time of the 12-month review hearing and she told him she was going to take a smoke break. D.B. went outside to look for her and burst into tears and became angry when he was unable to find her. The caretaker and her sister then took the children to Taco Bell, where D.B. wanted to wash his hands but was fearful they would leave while he was in the restroom. He was frantic and kept insisting they would abandon him.

The section 366.26 report further reported that mother recently had been in jail. D.B. expressed relief to his caretaker that mother was in jail because he knew where she was and did not have to worry about her. D.B. often spent his days at school worried

² Later the agency obtained information that mother was on the premises of the courthouse at the time of the 12-month review hearing, but she did not come into the courtroom because she was afraid she had an outstanding warrant.

about mother and believed he did not have to worry about mother now as she was safe in jail.

Following mother's release from jail in late January 2013, she contacted the social worker and requested a visit with D.B. The visit occurred in February and was supervised by the caretaker. The caretaker also supervised phone visits. During a phone visit in early February, the caretaker overheard mother asking D.B. "what they told him" and "if he turned on her yet." The next day D.B. was suspended from school.

The section 366.26 report concluded that mother had failed to address the issues that led to the removal of her children and placed them at risk. She appeared to have little insight into how her on-and-off involvement in their lives negatively affected them, especially D.B. On the other hand, it was very likely they would be adopted by their relative caregiver, who came forward after learning they had been moved from another relative's home into a foster home. The caretaker made it clear she was family and committed to the children. She had allowed them to continue having normal family interactions, visiting with grandparents and other relatives. She had also willingly supervised visits requested by mother and father.

At the contested section 366.26 hearing in early March 2013, the juvenile court terminated mother's parental rights and selected adoption as the permanent plan. The court explained its ruling, in part, as follows:

"Well, obviously this is a difficult case, because I sit here and see [D.B.] with his mother, and obviously, no doubt, [D.B.] loves his mother. And he has the right to love his mother. Nobody is saying that he shouldn't love his mother.

"What I'm very concerned about, though, in reading the report is that it sounds to me in reading the report that really [D.B.] is more the parent in this relationship in that he's the one that's always worried about his mom, and it's like I think he feels the responsibility of having to take care of his mother. And there's one incident in the report where he ran out because—and was very upset because mom wasn't around

“And it’s like it seems like he has had a huge responsibility put on his shoulders to feel like he needs to take care of mom and protect her, and he should never have been put in that situation. We wouldn’t be here if mom would have done what she was supposed to do. But she hasn’t. And it certainly doesn’t bode well she’s only got 75 days clean when the children have been removed from her care approximately 18 months ago. It’s extremely sad. [¶] ... [¶]

“Even though the Court does see that [D.B.] loves his mother, the Court does not find that the parent/child beneficial exception applies, because I don’t see that the mother has really been providing parenting on a regular basis for [D.B.]

“This Court believes that mother has attempted to influence [D.B.]’s decisions in what to tell the social worker. And it also seems like that [D.B.] was actually doing much better a few months ago before the mother started getting in the picture again. [¶] ... [¶]

“And so I don’t see that [D.B.] is—would be harmed by termination of the relationship, and I believe that there would be more benefit if he were to be adopted by someone who was there for him day in and day out and that’s willing to do the work that a parent will do.

“So the Court finds it would not be detrimental to terminate the parental rights and to allow the adoption to proceed. The Court orders that the best permanent plan for both of these young men is adoption.”

DISCUSSION

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.)

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.)

To avoid termination of parental rights under the beneficial relationship exception, the juvenile court must find “a compelling reason for determining that termination would be detrimental to the child” due to the circumstance that “[t]he 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).) It is the parent’s burden to prove the exception applies. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*))

The Court of Appeal in *Autumn H.*, *supra*, 27 Cal.App.4th 567 defined a beneficial parent/child relationship as one that “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.” (*Id.* at p. 575.) “[T]he court balances 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.” (*Ibid.*)

A parent must show more than frequent and loving contact or pleasant visits for the exception to apply. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re C.B.* (2010) 190 Cal.App.4th 102, 126; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527 (*I.W.*)) “The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, at p. 555.)

There is a split of authority concerning the standard of review in this context. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*) 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]; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [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.*) Moreover, a substantial evidence challenge to the juvenile court’s failure to find a beneficial relationship cannot succeed unless the undisputed facts establish the existence of a beneficial parental relationship, since such a challenge amounts to a contention that the “undisputed facts lead to only one conclusion.” (*I.W.*, *supra*, 180 Cal.App.4th at p. 1529; *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

Mother did not meet her burden of showing termination of parental rights would be detrimental to D.B. under the beneficial relationship exception for two reasons. First, she did not maintain regular visitation and contact with D.B. After she missed two of her scheduled visits in late June and early August 2012, the agency suspended visitation until

such time as she contacted the agency. In late October, the social worker reported that mother—who was permitted *weekly* supervised visits with her children—had not requested any visitation since visits were suspended. The only reported visit between mother and D.B. at the time of the 12-month review hearing in November, occurred at a family birthday party in September 2012. The next reported visit did not occur until February 2013. At the section 366.26 hearing, mother testified that after the 12-month review hearing, she visited the children and talked to them on the telephone as much as she could. However, according to the offer of proof accepted by the juvenile court, D.B.’s caretaker could not recall any face-to-face visits occurring in either December 2012 or January 2013, although she did recall one visit taking place in November 2012.

Even assuming mother started visiting the children fairly regularly at the beginning of the proceedings and again after the 12-month review hearing, the record still provides ample support for the conclusion that mother did not maintain regular visitation and contact with D.B. for purposes of applying the beneficial relationship exception to termination of parental rights. There can be no real dispute that mother did not visit her children on a regular basis during a four-month period between August and November 2012. In the context of dependency proceedings, which are governed by a strict and expedited time table, four months is a significant amount of time.

While mother acknowledges “she did not take advantage of all of her visits,” she nonetheless insists she met her burden of showing she maintained regular visitation with D.B. because, “given his age and the depth of their existing bonds,” what visits they did have were “sufficient to maintain their strong bonds and close relationship.” Mother cites no authority for, and we are unconvinced by, her suggestion that evidence of less than regular visits can satisfy a parent’s burden of showing regular visitation and contact with the child if irregular visits appear to be enough to maintain a bond between parent and child.

Mother's argument appears to go more to the second prong of the beneficial relationship exception on which she also failed to meet her burden. Mother was not able to show how continuing the relationship she had with D.B. would outweigh the well-being, security, sense of belonging and other potential benefits he would gain in a permanent home if he were adopted. D.B.'s relative caretaker had provided stability for him since August 2012 and was willing to adopt him. That D.B. enjoyed and wished to continue his visits with mother does not outweigh his need for permanence and stability. (See *In re Brian R.* (1991) 2 Cal.App.4th 904, 924 ["pleasant ... visits are, by themselves, insufficient to mandate a permanent plan other than adoption"].)

Moreover, there was compelling evidence in the record that mother did not have a healthy parent/child relationship with D.B. As the juvenile court noted in its ruling, there was evidence D.B. occupied more of a parental role towards mother. D.B. worried about mother a lot and expressed relief when she was incarcerated because he knew where she was and felt she would be safe. The caretaker also observed that mother treated D.B. like a "pal" during their visit at the family birthday party in September 2012, and mother asked D.B. to do things that the parent would normally do, such as take his younger brother to the restroom. On the other hand, there was evidence that D.B. had a positive and beneficial relationship with his caretaker, who assumed a parental role towards him and his brother, and he *expressly wished* to be adopted by his caretaker, notwithstanding his clear love for mother and desire to continue visiting her.

Substantial evidence supports the juvenile court's conclusion here that the bond mother shared with D.B. was not sufficient to outweigh the benefits to him to have a permanent and stable home, best achieved with adoption, with his relative caretaker. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.