

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
FIFTH APPELLATE DISTRICT**

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

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CRYSTAL C.,

Defendant and Appellant.

F067570

(Super. Ct. Nos. JJV0658998B,
JJV0658998C)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Tulare County. Jennifer Conn Shirk, Judge.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, and John A. Rozum and Jason Chu, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

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

Crystal C. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to her children, Isaac and Genesis. Mother contends she established that termination would be detrimental to the children because of their beneficial parent-child relationship (§ 366.26, subd. (c)(1)(B)(i)). We disagree and will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 20, 2011, Isaac was born with methamphetamine in his system. Mother admitted she had used drugs regularly throughout the pregnancy and had failed to receive prenatal care for that reason. Her six-year-old son, Ivan, lived with his father, and her one-year-old daughter, Genesis, lived with her maternal grandmother, who had been taking care of Genesis for seven months due to mother's drug use. Mother had also been living with the grandmother for about two months. Mother would leave the grandmother's home for periods of time to use drugs, then return home while under the influence. When the social worker told mother at the hospital that the children would be placed in temporary custody, mother showed no reaction. The social worker did not observe mother hold or attempt to bond with Isaac at the hospital.

The Tulare County Health and Human Services Agency (agency) filed a petition pursuant to section 300, subdivision (b), alleging that mother and Isaac both tested positive for controlled substances at the time of Isaac's birth, that mother used methamphetamine throughout her pregnancy and exposed Isaac in utero, that mother received no prenatal care, and that mother's substance abuse rendered her unable to provide regular care for her children and placed them at substantial risk of serious physical harm or illness.

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

At the jurisdiction hearing on January 19, 2012, the court found the allegations true.

On February 16, 2012, mother was granted family reunification services. The court ordered supervised visits with the children two times per week for one hour.

On May 31, 2012, Isaac and Genesis were moved to the home of their half brother, Ivan, and his father and stepmother (the foster parents). Mother's visits for three hours every Saturday were attended by the foster parents, but were no longer supervised by the agency. According to the foster parents, the visits appeared to go well. Mother interacted with the children and showed them affection, although she was unable to pay for anything. Mother was compliant with her visits and said she enjoyed the unsupervised visits.

In July 2012, mother nearly completed her outpatient substance abuse plan, but she failed to comply with the plan. She did not show up for all of her random drug tests, but the tests she did take were negative. Although she stated she had learned the importance of being sober to provide her children a stable and loving home, she admitted during a drug abuse assessment that she had used methamphetamine. The court then required that her visits again be supervised.

On January 4, 2013, an agency team meeting was held and the team determined that mother had not been compliant with her case plan and was not able to provide stable housing for Isaac and Genesis. Mother had not received credit for attending aftercare classes because she had arrived late, and she had not appeared for several random drug tests. Furthermore, she had no permanent home. She was planning to speak with an aunt about living arrangements and, if that failed, she was going to a shelter. Mother had, however, been consistent with the visits and they were going well.

The children were doing well with the foster parents, who stated they wished to adopt the children if mother failed to reunify with them. The foster parents were

concerned that mother did not have a home for the children and lacked the money to provide for them.

The social worker recommended that mother receive another six months of reunification services.

But on January 4, 2013, mother tested positive for drugs and admitted using methamphetamine. As a result, the social worker recommended that mother's reunification services be terminated and her visits be reduced to twice a month for two hours.

On January 18, 2013, mother failed to show up for another drug test.

On January 30, 2013, the court terminated mother's reunification services but ordered visitation once a week for three hours. The court set a hearing pursuant to section 366.26, for May 15, 2013.

On April 12, 2013, in preparation for the section 366.26 hearing, the social worker noted that the only contact or relationship between the children and mother since December 21, 2011, was the weekly three-hour visits. The social worker had observed the visits for two months. She stated that the children would enter the visit calmly, attend the visit, then leave without protest. Mother appropriately brought food and gifts, then gave most of her attention to Genesis. Mother told the social worker that Genesis did not want her to hold Isaac and would cry and misbehave if mother did not hold her all the time. The social worker observed that mother kissed and hugged Genesis and told her she loved and missed her, but generally did not interact with Isaac beyond giving him a bottle and changing his diaper. Genesis had frequent tantrums when she did not get her way and mother had difficulty managing her behavior. At the visits, Isaac frequently said the name of the foster mother. When the visits were over, the children happily returned to the foster parents.

The social worker noted that mother had been about 20 minutes late for visits on March 21, April 1, and April 8, 2013. The last of these visits was cancelled. The social

worker offered mother a different time to give her more time to walk from the bus station, but she answered that she did not want to change the time because it would look bad for her in court. The social worker believed that although mother and the children enjoyed the visits, continuing them was not beneficial because adoption was the permanent plan. The social worker recommended that the visits be terminated.

The social worker also reported that the foster parents had become attached to the children and the children had bonded with them. The children appeared happy and content with them. When the children heard the foster parents' names, they would immediately look for them and smile at them. The children called them "mami" and "papi," and they followed the foster mother everywhere she went, crying for her if she disappeared for a moment. The children had also become close to their half brother, Ivan. The foster parents wished to adopt the children and raise them with Ivan.

On May 28, 2013, the social worker filed an addendum report stating mother had called and arrived late for the visit on May 20, 2013. Again, on May 28, 2013, she called the social worker less than an hour before the visit start to say she had woken up late and could not make it by 10:00 a.m. The social worker told her the visit had to be cancelled.

On May 31, 2013, the court held a contested section 366.26 hearing. Mother testified that she loved Isaac and Genesis. She was living with her aunt, but she planned to get her own home. She said she had been sober since January 2, 2013. Her current visitation with the children occurred every Monday for three hours. When she visited them, she would bring breakfast from McDonald's. She also brought games, balls, cookies, Easter baskets, and other gifts. She would try to get their attention to show them what she had brought and they would play together. She was teaching them to throw a ball. Isaac had begun walking and would independently explore the room. Genesis knew mother better and wanted to be with her. Genesis would run to mother and hug her. Mother would hold, hug, and kiss both children. She disagreed with the social worker's statement that mother gave Genesis attention but "consistently [did] not initiate

interaction or show physical affection towards [Isaac] as she [did] with Genesis.” Mother explained that she tried to get Isaac’s attention throughout the visits and always tried to include him and interact with him. Genesis would come to her and might have received more interaction. Mother explained that she felt attached to both children and her interaction with Isaac was not merely changing his diaper, as the social worker believed. The March 15, 2013, visit was the first that occurred at the agency and mother was nervous. Genesis was cranky and mother had some trouble controlling her, but they all adjusted to the location, and the subsequent visits were fine. Mother had been visiting the children since January 2012. The children enjoyed the visits and thought they were fun. Mother believed the children felt their place was with her.

County counsel argued that Genesis, who was two and one-half years old, had been out of mother’s custody since she was about one year old, and Isaac had never lived with mother because he was detained at the hospital after his birth. Counsel believed that based on the significant time the children had spent outside of mother’s care and the social worker’s description of the visits, the parent-child relationship exception had not been met. Counsel for the children agreed.

The court stated it had reviewed the entire case file and found insufficient evidence that termination of parental rights would be detrimental to the children as set forth in section 366.26. The court found clear and convincing evidence that the children were likely to be adopted. It ordered parental rights terminated and declared the children free from the custody and control of the parents.

DISCUSSION

Mother contends the juvenile court erred by failing to apply the beneficial parent-child relationship exception to the termination of her parental rights. She argues that she maintained a beneficial parent-child relationship with the children through her consistent visitation, which even included unsupervised visitation. She asserts that the juvenile court implicitly recognized the benefit to the children when it ordered continued

visitation even though it terminated reunification services. County counsel responds that mother failed to show the children had a significant emotional attachment to her such that she occupied a parental role in their lives. Based on our review of the record, we conclude the juvenile court properly exercised its discretion in rejecting mother's argument.

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) "Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1)." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) One such exception is the beneficial parent-child relationship exception in section 366.26, subdivision (c)(1)(B)(i), which involves a two-part test: (1) did the parent maintain regular visitation and contact with the child and (2) would the child benefit from continuing the relationship? "The benefit to the child from continuing such a relationship must ... be such that the relationship "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." [Citation.]" (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) "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.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

When a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is whether the juvenile court abused its discretion in so doing. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) Contrary to mother’s argument, this court does not review the juvenile court’s decision for substantial evidence that termination would be detrimental.

Here, there is no dispute mother maintained regular contact with the children and thus satisfied the first part of the two-part test. She failed to establish, however, the second part. While she presented evidence the children enjoyed the time with her and had pleasant visits, she did not establish that she fulfilled a parental role or that severing the parent-child relationship would deprive the children of a substantial, positive emotional attachment.

First, both children had been removed from mother at a very young age—Isaac at birth and Genesis at one year—and had been out of mother’s care for the majority their lives. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 467; *In re K.P.* (2012) 203 Cal.App.4th 614, 622.) And although the record indicates that mother shared a positive relationship with the children during their visits, there is no evidence it “transcend[ed] the kind of relationship the child[ren] would enjoy with another relative or family friend.” (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413.) To qualify under this exception, the bond between the parent and child must be a parent-child bond, rather than the type of bond a child might have with a friendly visitor or non-parent relative, such as an aunt. (*In re Angel B.*, *supra*, at p. 468.) The mere fact that mother provided a relationship that may have benefitted the children to some degree is “simply not enough to outweigh the sense of security and belonging an adoptive home would provide.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81; *In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 449.) The record makes clear that for the significant part of the children’s lives, the foster parents served as the children’s parents and the people who “provided for [their] ‘physical care,

nourishment, comfort, affection and stimulation.’ [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1316.) The agency reported that the foster parents were providing for all the children’s need and providing them with a loving and stable home. The children were happy and content in the foster parents’ presence, called them by parental endearments, and followed the foster mother everywhere. Isaac repeated the foster mother’s name during visits with mother. The children were happily bonded to the foster parents.

Furthermore, mother has cited no evidence suggesting that severing the children’s relationship with her would have a significant, detrimental impact on their well-being. The social worker reported that the children enjoyed the visits, but had no difficulty separating from mother at the end of the visits. The record contains no bonding study or expert evidence suggesting that the children might suffer from a severance of the relationship. The record supports the conclusion that the benefit of a stable, permanent adoptive home for the children outweighed the benefit of a continued relationship with mother, who despite her visitation relapsed twice during her extended reunification period. We find no abuse of discretion.

DISPOSITION

The juvenile court’s orders terminating mother’s parental rights are affirmed.