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

In re RONALD C., a Person Coming Under the
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

STEPHANIE M.,

Defendant and Appellant.

F070728

(Super. Ct. No. JD116917-00)

OPINION

APPEAL from an order of the Superior Court of Kern County. Louie L. Vega,
Judge.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Jennifer E. Feige, Deputy County
Counsel, for Plaintiff and Respondent.

Appellant Stephanie M. (mother) appeals from the December 2014 order terminating her parental rights (Welf. & Inst. Code,¹ § 366.26) to her son, Ronald C. Mother contends the juvenile court erred in (1) denying her section 388 petition to place Ronald in her care, and (2) failing to apply the “beneficial relationship” exception to adoption. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2008, mother, who had a 15-year history of substance abuse, ingested methamphetamine while pregnant with Ronald. Ronald tested positive for the drug at the time of his birth a few days later. Mother also maintained a relationship with Ronald’s father, Ronald C., Sr. (father), despite the parents’ long history of domestic violence with father as the primary perpetrator. Consequently, the Kern County Department of Human Services (the department) placed Ronald and his sister, Alisha C. (not a subject of this appeal), into protective custody and initiated the underlying dependency proceedings.

At a combined jurisdictional/dispositional hearing in May 2008, Ronald was adjudged a dependent of the juvenile court under section 300, subdivision (b), due to the parents’ methamphetamine and domestic violence issues. The court placed Ronald with father under a family maintenance plan and ordered reunification services for mother. The court also ordered supervised two-hour visits with mother to occur twice a week.

In April 2009, the juvenile court terminated mother’s reunification services, finding clear and convincing evidence that she had failed to participate regularly and make substantive progress in her court-ordered treatment programs.

In July 2009, Ronald was again detained, this time due to father’s use of methamphetamine. Ronald was placed in a foster home until August 2010, when he

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

entered into a plan of legal guardianship with his adult sister, Brittney R. At this time, the court also ordered supervised one-hour visits with the parents to occur once a month.

In February 2014, Ronald was detained based on information Brittney had allowed Ronald to live with the parents, despite her knowledge of their ongoing problems with domestic violence and substance abuse and having been previously warned not to allow unsupervised contact. Additionally, Ronald reported that his parents would often fight. In January 2014, Ronald's father pled no contest to misdemeanor battery based on an incident in which he choked mother to the point she urinated on herself and nearly passed out.

At a combined jurisdictional/dispositional hearing in April 2014, the juvenile court set aside the legal guardianship and reinstated dependency jurisdiction. In August 2014, the court set a section 366.26 hearing for December 12, 2014, to select and implement a permanent plan for Ronald.

On November 24, 2014, mother filed a section 388 petition requesting placement of Ronald and termination of dependency jurisdiction or placement with family maintenance services, alleging she expected to complete her case plan by the time of the section 366.26 hearing. Other changed circumstances the petition alleged were that mother had been testing negative for drugs and she had separated from father. The petition asserted that placement with mother would benefit Ronald by allowing the already strong bond between them to grow and flourish.

On December 12, 2014, the department filed a report for the section 366.26 hearing conducted the same day. The report did not directly address mother's section 388 petition. However, it recommended that the juvenile court find Ronald adoptable and terminate parental rights.

According to the report, the foster parents were very motivated to adopt Ronald and to provide him with a safe, secure, and stable home. The foster family had become

attached to Ronald and incorporated him into their extended family. Ronald had also formed a very close bond with his foster mother's six-year-old daughter.

When the adoption assessor interviewed Ronald in late August 2014, Ronald said he understood he was no longer living with his parents because they fought and he did not feel safe when they fought. At one point, Ronald became "teary-eyed" recalling an incident, occurring when he was six years old, when "his father kept picking his mother's head up and then would slam it on the ground." Ronald stated that one of the reasons he liked living with his foster parents was because they did not fight. However, if he could choose to live anywhere, he would choose to live with mother and father, so long as they did not fight.

When interviewed by a social worker in mid-October 2014, Ronald reported that he would prefer to stay with his foster parents because he liked living with them and their daughter and felt safe with them. Ronald explained he would like to live with his parents if he could, but he got really scared when they would fight.

In its report for the section 366.26 hearing, the department acknowledged the attachment that existed between mother and Ronald due to mother's consistency in maintaining regular contact and visitation with him. The department also reported that mother was attentive, affectionate, and interacted appropriately with Ronald during visits.

Despite these positive visits, the department opined that, in the likelihood Ronald was adopted and parental rights terminated, the benefit of adoption and severing the parent/child relationship would outweigh any detriment to Ronald and his well-being. The department explained that mother and father had a 22-year relationship marred by domestic violence, substance abuse and alcohol abuse and noted the most recent episode of domestic violence occurred in July 2014. After Ronald was removed from mother's care at the time of his birth, mother had failed to finish her case plan and, therefore, the child had never legally resided with her. In addition, Ronald currently regarded his

prospective adoptive parents as the primary parental figures in his life and had consistently been stable with them.

Mother's section 388 petition was set for the same date as the section 366.26 hearing. At the hearing on December 12, 2014, mother's counsel informed the juvenile court that mother had "completed everything at this point" and referred the court to documentation showing mother had recently completed a 13-week parenting and neglect class, in addition to the other programs documented in her original petition. Counsel also noted that mother continued to have clean drug tests. Upon further inquiry by the juvenile court, mother's counsel stated that mother and father had been separated for two months.

No witnesses were called to testify at the December 12, 2014, hearing. After listening to the arguments of counsel, the juvenile court denied mother's section 388 petition and adopted the department's recommendations to find Ronald adoptable and to terminate parental rights. The court articulated its orders and findings as follows:

"...At this time, I think the positions taken by minor's counsel and the department are well supported. It's certainly very difficult when we are at this juncture. We're not starting out. This is over a significant period of time. According to the report, these parents have a 22-year history on and off. And apparently it's—at least for the last couple of months, the mother has been separated from the father.

"We also have the issues—you know, it's very difficult when you—the child describes what he has seen and how it impacts him. Watching his father slam his mother's head against the floor, one of the things that—those are just almost indelible. And this child's been in—under protective service of this court for over six and a half years. He's in a place that he feels safe. He's wanted. I think that benefit is—is in his favor of the court making the following rulings:

"The court does not find that the [section] 388 petition should be granted. It is, therefore, denied. The court will follow the recommendations as set forth in the most recent report of December 2nd, which is submitted by the social worker, and the court will at this time

make the following findings and orders based on that information and other information presented to the court today: [¶] ... [¶]

“...The child’s out-of-home placement is appropriate and necessary. There’s clear and convincing evidence the child is likely to be adopted. Parental rights of the mother and father are ordered terminated. The child is declared free from parental care and control...”

DISCUSSION

I. Section 388 Petition

Mother contends the juvenile court should have granted her section 388 petition and placed Ronald in her care and custody. We disagree with mother’s assessment of the law and its application to the record.

Section 388 provides, in pertinent part: “Any parent or other person having an interest in a child who is a dependent child of the juvenile court ... may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court ... for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” (§ 388, subd. (a)(1).)

Whether the juvenile court should modify a previously made order rests within its discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) “““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.””” (*Id.* at pp. 318-319.)

Having reviewed the record as detailed above, we fail to see how mother established that an order placing Ronald in her care would be in the child’s best interests. To understand the element of best interests in the context of a section 388 petition brought, as in this case, after the juvenile court terminated reunification efforts, we look to the Supreme Court’s decision in *In re Stephanie M.*, *supra*, 7 Cal.4th at page 317:

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ (*In re Marilyn H.* [1993] 5 Cal.4th 295, 309), and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. (*Id.*, at p. 302.) A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.”

Simply put, mother’s evidence did not establish that Ronald’s need for permanency and stability would be advanced by a new order placing him in her care at this late stage of the proceedings. Consequently, we conclude the juvenile court did not abuse its discretion by denying mother’s petition.

II. Beneficial Relationship Exception

Mother contends the juvenile court erred in failing to find her relationship with Ronald outweighed the benefits of adoption. We find no error.

Adoption is the preferred permanent plan for dependent children who have not reunified with their parents. (§ 366.26, subd. (b)(1).) Thus, the juvenile court will ordinarily terminate parental rights at a permanent plan selection hearing, if it finds by clear and convincing evidence that a child is adoptable. The termination of parental rights to an adoptable child can be avoided, however, if the court finds “a compelling reason for determining that termination would be detrimental to the child” due to at least one of several statutorily-described circumstances. (§ 366.26, subd. (c)(1)(B)(i)-(vi).) The so-called beneficial relationship exception describes circumstances where “[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).)

In order to prove the beneficial relationship exception applies, a parent must overcome the strong presumption in favor of adoption and show that the relationship between her and the child is so beneficial that its severance would render the termination of parental rights detrimental to the child. (*In re Helen W.* (2007) 150 Cal.App.4th 71,

80-81.) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

“[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re C.B.* (2010) 190 Cal.App.4th 102, 124.) Only in an “extraordinary case” can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child’s needs. (*In re Jasmine D.*, at p. 1350.)

We reject mother’s claim that the evidence is insufficient to support the juvenile court’s finding that the beneficial parental relationship exception did not apply. Historically, courts have applied the substantial evidence standard of review to such determinations. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) More recently, some courts have applied this standard to the juvenile court’s determination whether a beneficial relationship exists, and the abuse of discretion standard to the determination whether the relationship is important enough to preclude adoption. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) Under either standard, we can reverse only ““if we find 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 did.”” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) We cannot make such finding here.

Although mother maintained regular visitation with Ronald, she never advanced beyond visits and did not occupy a true parental role in the child's life. While Ronald loved his mother and enjoyed visits with her, there was no evidence that foregoing that relationship would outweigh the benefit of adoption. "[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) "Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

At the time of the hearing, Ronald was six years old, had never legally resided with mother, and expressed a preference to continue living with his prospective adoptive parents, with whom he had spent five months and who had provided him with a stable, loving family environment. Adoption would continue that stability and security for Ronald. In light of this evidence, the court could reasonably find that mother failed to meet her burden of proving the beneficial parental relationship exception to adoption applied.

DISPOSITION

The juvenile court's order denying mother's section 388 petition and terminating parental rights is affirmed.

HILL, P.J.

WE CONCUR:

GOMES, J.

KANE, J.