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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re T.D. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JESSICA F.,

Defendant and Appellant.

G050476

(Super. Ct. Nos. DP022024,
DP022025, DP022026)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Gary
Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

* * *

On appeal, the mother, Jessica F. contends the benefit exception to the termination of parental rights applies and that the juvenile court erred when it found that it did not. We affirm.

I

FACTS

T.D. was born in 2005, O.D was born in 2008 and Z.D. was born in 2010. They are the three sibling minors in this action. In 2011, the seventh time authorities were called to the home since 2008, the three children were taken into protective custody when the home was found to be in an unsafe and unsanitary condition by a social worker assisted by the Garden Grove Police Department. An Orange County Social Services Agency (SSA) report states: “The children’s parents have engaged in ongoing verbal and physical domestic violence in the presence of the children, resulting in the child [O.D.] demonstrating escalating aggressive behaviors and physically violent behaviors toward the dogs in the home. Further the children’s parents have unresolved substance abuse issues to include the abuse of methamphetamine and marijuana. The children’s parents were recently offered and participated in Voluntary Family Services from March 2011 to September 2011. The parents demonstrated only minimal compliance with the services and concerns still existed at the time of the case closure regarding ongoing domestic violence and substance abuse.”

On December 20, 2011, the juvenile court found there was a substantial danger to the physical health of T.D. and there was no reasonable means by which the child’s physical or emotional health could be protected without removing the child from the parents’ physical control. On February 14, 2012, the minors were declared dependent children of the juvenile court under Welfare and Institutions Code, section 360, subdivision (d). (All further statutory references are to the Welfare and Institutions Code.)

In a May 27, 2014 SSA report, the social worker stated: “Since their detention, the children have been in five different placements with relatives and most recently, a traditional foster home. They are currently placed with paternal relatives and are settling in well. The paternal aunt and uncle have expressed their desire to provide the children with permanency through adoption. They have demonstrated their commitment to caring for the children’s needs by arranging for home-schooling, in-home therapy sessions, extra-curricular activities and social activities. They are anticipating their move to Hawaii so that they can begin their Home Study process and move closer to providing their niece and nephews with a permanent home. The undersigned believes that the placement with the paternal aunt and uncle is where the children need to be in order to be afforded the opportunity to be raised with their family and provided with the loving, nurturing, structured, and stable home environment that they so desperately need. [¶] Based on the aforementioned the undersigned recommends that parental rights be terminated for the mother . . . and the father . . . and the Court order the permanent plan of Adoption for the children with the parental aunt and uncle.”

On July 10, 2014, a motion under section 388 was before the juvenile court. The court denied the request for a hearing “because the request does not state new evidence or a change of circumstances and the proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child.”

When the court made its findings and orders, it stated: “I would have liked to have seen the parents exercising the full amount of visitation that they had. I’d like to have seen no missed visits or anything like that, but it does appear to the court that overall, especially mother, even more than father, that she has a real interest and makes a real effort to be — to make her visits regardless of whether they are in-person visits or whether they are on the phone or by Skype. And so, with that, I think that by a preponderance of the evidence I find that the mother, in particular, has maintained regular

visitation and contact with the children. Addressing the benefit, however, is more challenging. [¶] We have a case where these children haven't been with the parents since 2011 and these children — I mean, [Z.D.], he spent his whole life, pretty much, out of the parents' care. The parents have never been able to stabilize to the point where they could have these children. [¶] The children do, clearly, have an affection, a great affection, I think, for their parents and the parents, clearly, have an affection for the children. The concern here is what kind of relationship is that? Are they sort of friendly visitor kind of people? Are they like your favorite aunt or uncle kind of thing or are they real parents? And when you look at the actual visitation that has gone on, there's not much parenting going on. There's not much parental activity going on. It's really kind of almost like an older sibling playing with younger siblings, from what I can see. [¶] And I think it's unfortunate that that may, in fact, be part of the addiction. You know, I believe that sometimes the addiction can take the form of getting you stuck in your, kind of, adolescent years and stuff and that's part of what addiction does to you, and so the children see — you know, I don't believe that they see the parents as parental figures. Clearly, they don't abide by direction or redirection from the parents as though they are parental figures and the children — even some of the children's statements show some anger and ambivalence regarding the relationship with their parents, in terms of expressions of hatred and disappointment and dissatisfaction in the conduct of the parents, as well.”

The juvenile court found by clear and convincing evidence pursuant to section 366.26, subdivision (c)(1) that the children are adoptable and that it is likely they will be adopted. The minute order of that date states: “Court finds it is really clear that the parents have failed in their ability to show that (c)(1)(B)(i) applies.” The juvenile court found that termination of parental rights was in the best interest of the children and would not be detrimental to them, and ordered parental rights terminated as to both parents. A notice of appeal from those findings and orders was filed on July 23, 2014.

II

DISCUSSION

On appeal, the mother contends the juvenile court erred by finding section 366.26, subdivision (c)(1)(B)(i), known as the benefit exception, did not apply “because mother maintained regular visitation with the children and they would benefit from continuing the relationship.”

Section 366.26, subdivision (c)(1)(B)(i) provides that the juvenile court shall not terminate parental rights if: “(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

The party claiming the benefit exception has the burden of proving both prongs required by the statute are satisfied, regular visitation and that continuing contact would benefit the child. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

“In the context of the dependency scheme prescribed by the Legislature, we interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean 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. In other words, the 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “To meet the burden of proving the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—

the parent must show that he or she occupies a parental role in the life of the child. [Citation.]” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

As reflected in the court’s statements at the conclusion of the section 366.26 hearing, the court determined the mother satisfied the first prong of section 366.26, subdivision (c)(1)(B)(i) by maintaining regular visitation and contact with the children. With regard to the second prong, benefit to the children by continuing a relationship with their mother, the mother argues she and the children have beneficial parental relationships that outweigh the benefits of adoption. However, her argument amounts to a request that this court reweigh the evidence and, in effect, overrule the juvenile court’s credibility findings, which we will not do. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

The juvenile court gave a lengthy analysis of its reasoning. The court discussed evidence of the children not being with their parents since 2011, noting the youngest has spent his whole life outside his parents’ care. The court also pointed out the parents have never stabilized, and their behavior may be part of their addiction. Other evidence discussed by the court was the existence of affection between the parents and the children, but “not much parenting going on,” commenting that it was “like an older sibling playing with younger siblings.” Reflecting upon the testimony, the court noted “some of the children’s statements show some anger and ambivalence regarding the relationship with their parents.”

Under the circumstances we find in this record, we conclude the mother did not satisfy the benefit exception found in section 366.26, subdivision (c)(1)(B)(i). There was substantial evidence the children would not suffer great harm or detriment should they discontinue their legal relationship with the mother, and the benefits of an adoptive home outweighed any relationship with the mother.

III

DISPOSITION

The findings and orders of the juvenile court are affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.