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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

VANESSA S.,

Defendant and Appellant.

G050950

(Super. Ct. No. DP022151)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Andre Manssourian, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

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

* * *

This is another in the apparently endless and always heartbreaking line of cases we are called upon to review where children have been removed from their homes and the appellant's parental rights terminated. We accept, for purposes of this appeal, that mother Vanessa L. did all she could during her six-hour weekly visits with her daughter Lilly S. to maintain and nurture a strong bond between the two of them. However, there is substantial evidence that Vanessa had not resolved a long-standing drug addiction problem by the time of Lilly's permanency planning hearing. There was no error, then, in the trial court's refusal to apply what is often called the "benefit exception" in juvenile dependency law. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).¹) Accordingly, we affirm the court's order terminating Vanessa's parental rights.

FACTS AND PROCEDURAL HISTORY

Lilly was born to Vanessa in December 2011, so she is now three years old. Her father is unknown. Lilly's dependency comes with a history. Vanessa had four children prior to Lilly's birth in December 2011 (the oldest was born in 1999), and each has become a dependent of the court as a result of substance abuse on Vanessa's part. In one incident, a four-year-old daughter found a methamphetamine syringe hidden in a bathroom vanity.

Lilly came to the dependency court's attention in disturbing circumstances: On September 18, 2013, Lilly was taken into custody when Homeland Security investigators served a search warrant on one of the occupants of Vanessa's residence for child pornography and discovered appalling squalor.² A painter's bucket was being used in one room as a chamber-pot, and we will spare readers a more detailed description of conditions. Suffice to say that when a social worker interviewed Vanessa, she admitted

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

² While Vanessa said she was unaware of anyone in the household possessing child pornography, a social worker noted that her male roommate was the suspect. The child pornography aspect of this case has not played a role in these proceedings.

the residence was “beyond filthy.” Lilly’s feet were black from walking around the house barefoot, and there were flea bites on her legs.

Juvenile dependency proceedings rapidly ensued. Lilly was removed from Vanessa’s custody at the detention hearing. The case came to a jurisdiction hearing on October 15, and Lilly was formally found to be a dependent of the court that day. A dispositional hearing began November 13, but did not conclude until June 5, 2014. Among the trial court’s orders made June 5 were denial of reunification services to Vanessa and the setting of a permanency planning hearing within 120 days.³ No writ was taken from the denial of reunification services. The permanency planning hearing was held, and the juvenile court chose not to apply the benefit exception found in section 366.26, subdivision (c)(1)(B)(i). It terminated parental rights. Vanessa filed a notice of appeal from the permanency planning order. She raises only the issue of the juvenile court’s decision not to apply the benefit exception.

The essence of this case is to be found in the eight-month period from the jurisdictional hearing held in mid-October 2013, to a discontinuation of drug testing at the end of July 2014, because of too many positive tests. Specifically, Vanessa failed these tests:

- (1) October 31, 2013: positive for amphetamine and methamphetamine.
- (2) November 14, 2013-November 27: positive for amphetamine and methamphetamine.⁴
- (3) November 21-December 4, 2013: positive for methamphetamine.
- (4) December 12, 2013: positive for methamphetamine.⁵
- (5) December 19, 2013: positive for methamphetamine and codeine.⁶

³ Hearings pursuant to section 366.26 are often called “permanency planning” hearings. (See *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009.)

⁴ Because the testing was done with a patch, it could cover a window of time, such as one to two weeks. Some of the discrete dates given in this recital appear to also reflect patch results over a span of time.

⁵ The social worker’s report makes reference to a patch result from December 15, which we will assume represents the December 12 test clearly identified as a positive test in the report.

(6) January 13, 2014: positive for methamphetamine.

(7) March 31, 2014: positive for codeine.

(8) April 8, 2014: positive for codeine.⁷

(9) June 20, 2014: positive for the opiates hydrocodone and hydromorphone.

(10) June 24, 2014: positive for benzodiazepines, methadone, hydrocodone, and oxymorphone.

(11) June 26, 2014: positive for methadone, hydrocodone, and hydromorphone.

(12) July 1, 2014: positive for methadone.

(13) July 10, 2014: positive for methadone, hydrocodone and hydromorphone.

(14) July 14, 2014: positive for methadone and oxymorphone.

Test result numbers (9) through (14) may have been the result of prescription pain killers for back pain. However, social workers spotted an increase in the *amounts* of methadone in the tests done on June 26 and July 14. The increase in opiate usage plus the multitude of generally positive test results prompted a July 30 recommendation by social workers to discontinue funding for drugs.

As noted in the report for the permanency planning hearing, Vanessa regularly visited her daughter and the visits went very well. But social workers still concluded Vanessa had not “successfully addressed her dependence to drugs” and in particular had a psychological tendency to “minimize her current dependence to prescribed medicine.”

⁶ A patch company employee told the social worker that no legitimate medication being taken by Vanessa would have caused the result.

⁷ Vanessa would tell a social worker in May that these positive tests for codeine were because of a prescription.

DISCUSSION

In this appeal, Vanessa’s counsel has but one card to play, and that is to make the most out of Vanessa’s regular visitation. However, as noted in *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81, it is the parent who bears the burden of showing the benefit exception, and the parent “must show more than ‘frequent and loving contact.’” There are two prongs to the benefit exception. Frequent and loving contact only takes care of the first prong of the benefit exception for “regular visitation and contact.” There is also a second prong that requires the child to benefit from continuing the parental relationship.⁸ Courts have construed this second prong to mean the parent must show continuation of the parent-child relationship is so beneficial to the dependent child that it will outweigh the benefits of the stability otherwise accruing from the stability of adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [“‘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.’ [Citations.]”].)

We recognize, as counsel reminds us, that during visits Vanessa “engaged in the full range of parental activity with her daughter,” displayed “appropriate parenting skills” and indeed showed an “enormous amount of affection” for Lilly. Indeed, the trial judge compassionately addressed Vanessa directly at the end of the permanency planning hearing with these words: “[I]t is very clear to me that Lilly does mean a lot to you. It’s clear to me, and the attorneys all conceded and mentioned that you clearly love your child.”

⁸ In relevant part, that statute reads: “[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (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.*” (Italics added.)

Even so, there remains a great gap in Vanessa's appellate argument: a very serious and clearly unresolved drug problem. As the trial judge pointed out, Vanessa has been a "poor historian" concerning her drug use. Clearly, it was Vanessa's methamphetamine addiction that led to the wretched and miserable circumstances in which Lily was found living in September 2013. And there is no getting around the fact Vanessa was extremely slow to recognize an immediate need to get off drugs when she lost her fifth child – like her previous four children – to drug abuse. Even after Lily had been taken away, Vanessa still ingested methamphetamine and a counter-productive amount of methadone.

Vanessa's unresolved drug addiction makes it evident the trial court was correct not to apply the benefit exception. The trial judge was faced with a situation where he had no assurance Vanessa would not relapse into the same drug addiction problem that had already resulted in losing her first four children. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 424 [in case of father with history of drug abuse, "200 days was not enough to reassure the juvenile court that the most recent relapse would be his last"]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform."].)

For the same reason, the main case relied on by Vanessa in this appeal, *In re S.B.* (2008) 164 Cal.App.4th 289, cannot help her: *S.B.* provides – unfortunately for Vanessa – a marked contrast to the present case. There the father *immediately* recognized he had to stop using drugs. He got off and stayed off: "When S.B. was removed from his care, Michael immediately recognized that his drug use was untenable, started services, maintained his sobriety, sought medical and psychological services, and maintained consistent and regular visitation with S.B." (*Id.* at p. 298.) We wish Vanessa every success in her efforts to wean herself of her addictions to methamphetamine and, most

recently, to prescription pain killers, but her late history of drug usage means we cannot say the trial court was required, as a matter of law, to apply the benefit exception to her.

DISPOSITION

The order terminating parental rights is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.