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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

E.S.,

Defendant and Appellant.

G052318

(Super. Ct. No. DP023475)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig E. Arthur, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

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E.S., the mother of the minor Hailey S., contends the juvenile court erred in terminating her parental rights and ordering adoption as the permanent plan pursuant to Welfare and Institutions Code section 366.26. (All further statutory references are to the Welfare and Institutions Code.) We find no error and affirm the judgment.

I

FACTS

After numerous domestic violence incidents between her parents, Hailey was removed from her parents and ordered detained in July 2009, when she was seven months old. On September 1, 2009, Hailey was declared a dependent of the Los Angeles County Juvenile Court.

A few months later, the paternal grandmother and caregiver sought and received a restraining order against the father, a situation described in a social worker's report: "[S]he reported father came to her home on several occasions demanding money from [grandmother]. [Grandmother] reported that father slapped her in the face on a prior occasion, and has come to her home, screaming, threatening and cursing at her. [Grandmother] reported that on 10/24/09 father came to her home under the influence of drugs and began kicking her door and demanding money."

Hailey's maternal grandmother asked the mother to leave her home after she "showed up to a family function under the influence of drugs." In November 2009, the mother tested positive for morphine.

On the same day the court issued the restraining order against the father, the mother was arrested for possession of illegal drugs and paraphernalia. She also possessed Dr. John's Famous Pee Pee, a concentrated synthetic urine. She had been arrested twice before. She showed positive for morphine on a November 25, 2009 test. The father has also had contacts with police, with numerous arrests and convictions over the 21-year period before Hailey was declared a dependent of the juvenile court.

In March 2010, the father broke into the paternal grandmother's home and she filed a police report. Also in March, the mother reported the father yelled at her that Hailey was not his child. The two argued and the father spit in the mother's face. In April, the mother was again arrested for possession of controlled substances, black tar heroin. She re-enrolled in an inpatient drug program, but the following July, the mother tested positive for amphetamines and opiates. In August 2010, the juvenile court terminated reunification services for the mother.

On November 24, 2010, the mother filed a petition under section 388, asking the court to change its orders regarding terminating services and monitored visitation of Hailey. The juvenile court ordered the Department of Children and Family Services (DCFS) to investigate and prepare a report regarding the petition. In its report, a social worker reported an August 23, 2010 conversation with the mother's counselor: "[Counselor] stated that she is suspicious that mother may still be 'Using' and stated there have been several incidents where mother was 'nodding off' in group sessions and appeared fidgety in other sessions." The counselor said when the mother nodded off, she removed her from group and tested her and that "mother's test sample (urine) was not warm and appeared to be old stale urine." DCFS also reported speaking with the mother's sponsor who said he believes she had been sober for "about ninety days" and remarked it was "probably the longest she has been sober since the age of eleven." DCFS recommended terminating parental rights with adoption as the permanent plan.

On June 9, 2011, the mother's boyfriend was arrested while he was in the mother's car. He was in possession of "loaded" hypodermic needles. He had attempted to destroy evidence by discharging the contents of the needles and throwing the needles out of the car. The boyfriend gave the mother's address as his address. As a result of a conversation a social worker had with the mother after the boyfriend was arrested, the social worker reported the mother continued to be dishonest regarding her relationships. The mother's visits with Hailey were thereafter monitored. The mother yelled at the

social worker and said that the social worker was “out to get her” and that DCFS receives more money for having children in foster care.

In March 2012, Hailey’s caregiver, the paternal grandmother informed the social worker that Hailey told her that another of the mother’s boyfriends had started playing with Hailey in bed. According to the caregiver, Hailey said: “Mitch makes tents for me with my blankie.” Hailey also said Mitch put a blanket over her head and took her bike riding. The social worker later asked the mother about Mitch, and the mother denied having any friends named Mitch. But the mother said she had a friend named Michelle who she calls Mitch. When the social worker and the caregiver later discussed Mitch, the caregiver said she had seen a man named Mitch on the mother’s Facebook page. The two then accessed the mother’s Facebook page, and the mother’s account showed she had a friend named Mitch Clark. They brought Hailey to the computer to see Mitch’s photograph and she identified him as the person who makes tents and takes her on bike rides.

When confronted with Hailey’s identification of Mitch, a man, the mother told two different stories. One was that she called a former boyfriend named Charles by that name, and the other story was that she did know a man named Mitch, a friend from a drug program, but that Hailey had never met him.

In an April 25, 2012 report to the court, the DCFS social worker reported: “Although mother has made good progress in her drug program, there are concerns in regards to mother’s honesty about her relationships, and mother’s choices to continue to choose unhealthy relationships. Mother previously was dishonest to [social worker] regarding two prior relationships that involved men who either have a current drug abuse, and anger problem, or are early in their recovery. Mother continues to remain dishonest about her current relationships, and states that her daughter calls everyone ‘Mitch.’ Mother’s dishonesty throughout the life of this case, impacts this [social worker’s] ability to ensure [Hailey’s] safety while in mother’s care.”

In August 14, 2012, the juvenile court ordered Hailey placed in the mother's home under supervision of DCFS. DCFS was ordered to provide both Hailey and mother with family maintenance services.

The mother completed parenting, domestic violence and anger management classes. At some point in 2012, she continually maintained "frequent, quality, visits at her home." Her visitation was liberalized to unmonitored and overnight and included weekend visits.

Throughout much of 2011 and the first part of 2012, the mother had numerous negative tests. But the August 23 and September 6, 2012 tests were reported as "dilute," and the September 6 test result was positive for methamphetamines. Her counselor said the mother had missed two of the last four weekly sessions. Hailey told her paternal grandmother that the mother takes her to places she doesn't like because "[t]here are bad guys there that make faces at me and scare me." DCFS determined Hailey could not safely remain in the mother's home. On September 14, 2012, Hailey was removed from the care of the mother and again placed in the home of her paternal grandmother.

A few weeks later, the paternal grandmother reported the mother had come for a visit with Hailey and appeared to be under the influence. The mother passed out on Hailey's bed, and the grandmother said she does not want the mother at her residence.

The mother told the social worker "she relapsed after she got Hailey back." She said she would leave Hailey with the maternal grandmother when she used drugs. When the social worker asked the mother whether she desired reunification services being that Hailey had primarily been raised by the paternal grandmother, the mother was at first "very quiet," and then responded that "it was hard being a mom and it was overwhelming."

Hailey reported that the maternal grandfather touched her "pee-pee." A child abuse investigation ensued.

Meanwhile, Hailey's father reported to DCFS that he had another child who was detained by the Orange County Juvenile Court. A social worker in Los Angeles County spoke with a social worker in Orange County and was informed the father's other child was detained "regarding a domestic violence dispute," and that the father was receiving reunification services.

The Los Angeles Juvenile Court ordered reunification services for the father, and none for the mother. The Los Angeles County Juvenile Court transferred Hailey's case to the Orange County Juvenile Court on January 24, 2013. On February 19, 2013, the Orange County Juvenile Court accepted the transfer.

The Orange County Juvenile Court ordered twice monthly monitored visitations for the mother. During one visit, it was reported the monitor left to twice go to his car, and was not within hearing distance when the mother and Hailey were on top of some playground equipment for about 30 minutes. That evening, Hailey stated that the mother told her "papa Ray didn't touch you."

On June 6, 2013, Hailey began a 60-day visit in the father's home. Also in the home were Hailey's half sibling, a baby, the father's wife, and half the time two 10-year-old children of the father's wife were also present. However, because the father's wife was arrested for driving under the influence on July 19, 2013, Hailey was again placed in the care of the paternal grandmother.

On October 8, 2013, the juvenile court ordered Hailey returned to the home of the father. For the next six months, the mother did not visit Hailey and had no contact with the social worker. On August 8, 2014, a social worker discovered the mother was incarcerated in Los Angeles County.

On July 16, 2014, the juvenile court ordered Hailey removed from the father's home. The father had relapsed into using methamphetamine, reporting it was triggered by his decline in health after being diagnosed with stage three lymphoma

cancer. A social worker's report to the court states the father began an 18-week chemotherapy course in June 2014.

On September 3, 2014, the father died. That same day, the juvenile court ordered reunification services for the mother. A few days later, the juvenile court specifically ordered the mother to enroll and participate in reunification services available in jail, but a social worker reported that on October 23, 2014, the mother stated "she does not want [Hailey] to visit her and reported that she is trying to get into an inpatient drug treatment program by the end of November. The mother stated that if she is unable to get into the program, she would then like a visit with the child in December."

On November 20, 2014, the juvenile court granted the paternal grandmother's request for de facto parent status for Hailey. A social worker reported: "The child is thriving in the care of the caregiver and appears extremely bonded with the caregiver."

In early December, the mother requested, and the paternal grandmother complied, a visit with Hailey in jail. In late December, soon after her release from jail, the mother requested visits with Hailey, and, again, the paternal grandmother complied. The mother cancelled her scheduled March 17, 2015 visitation with Hailey, giving minimal notice. The juvenile court ordered reunification services with the mother terminated on March 25, 2015.

On July 20, 2015, Orange County Social Services reported to the court: "The child continues to do well in her placement. She appears happy, healthy and has many friends. She is close to her caretaker, the paternal grandmother, as the grandmother has cared for her most of her life. Her grandmother is completing the adoption home study paperwork in a quick and efficient manner as to not delay the finalization of the adoption. The child is in favor of the adoption and the grandmother looks forward to raising the child."

At a hearing that same day, held pursuant to section 366.26, the juvenile court stated the following: “Unfortunately your choices in life and your lifestyle has not been compatible with being a parent for [Hailey]. ¶ I have absolutely no doubt that you love [Hailey] tremendously. I also have probably no doubt that over the course of the years you’ve probably struggled some very difficult times for yourself and your life and you’ve probably had the want and the desire to be a better parent to [Hailey], it just didn’t ever come to fruition. ¶ I don’t see this as a close case. Perhaps there have been periods of time where I could probably make a finding that you had regular and consistent visitation, but certainly not over an extensive period of time, certainly not since this court referred the matter to a .26 hearing, which was only four months ago. Based upon the social worker’s testimony, I can’t even make a finding as to that period of time. ¶ But even if I were to make that finding, I certainly could not make the next finding that the law requires me to make and that is that [Hailey] would benefit from continuing the relationship or that the relationship is a parent/child relationship. ¶ Certainly [Hailey] probably benefits somewhat from your contact and visitation, but not as . . . in a parent/child relationship type of benefit that not only the code requires but the case law that has interpreted the code section certainly requires. ¶ So contrary to the argument presented by your attorney, this court does not believe that that exception applies.”

The juvenile court ordered termination of the mother’s parental rights and also ordered Hailey placed for adoption. The mother filed a notice of appeal.

II

DISCUSSION

In her brief, the mother contends the juvenile “court erred in terminating parental rights because the evidence showed Hailey loved her mother and would suffer detriment if their relationship were severed.” Specifically, she argues she had frequent

visitation and contact with Hailey, she was bonded with Hailey, “and that severing their attachment would be detrimental to” Hailey.

There is a statutory preference under section 366.26 to terminate parental rights and order a child placed for adoption, which is just what the juvenile court ordered. (*In re C.B.* (2010) 190 Cal.App.4th 102, 121.) There is an exception to that statutory preference, for which the parent bears the burden of proof, if the juvenile court finds termination would be detrimental to the child because the parent has maintained regular visitation and contact with the child, and that the child would benefit from the continuing relationship. (*Id.* at p. 122; § 366.26, subd. (c)(1)(B)(i).)

“If the court’s ruling is supported by substantial evidence, the reviewing court must affirm the court’s rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c).” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396.) The type of parent-child relationship sufficient to derail the statutory preference for adoption is one in which “regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The parental relationship exception also requires that the juvenile court find that the existence of the parent-child relationship constitutes a compelling reason for determining that termination would be detrimental to the child, a finding which is based on facts, but not primarily a factual issue. “It is, instead a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.)

In the present action, with regard to the necessary statutory finding the parent maintained regular visitation and contact with the child, the juvenile court stated: “Perhaps there have been periods of time where I could probably make a finding that you had regular and consistent visitation, but certainly not over an extensive period of time, certainly not since this court referred the matter to a .26 hearing, which was only four months ago.” When asked about the consistency of the mother’s visits with Hailey, the social worker testified in 2015 at the section 366.26 hearing that the mother’s visitation “has been consistent over the last four or five weeks.”

When the mother explained she was too busy with family functions to telephone the paternal grandmother to set up visits, she was asked how many family functions there were in the past year. The mother responded: “Just one.” The mother said the longest period of time she had ever spent with Hailey was “I’d say maybe three months,” admitting that period ended “[b]ecause I relapsed.” At the time of that relapse in 2012, the mother explained to a social worker that “it was hard being a mom and it was overwhelming.” As to her visitation with Hailey, the mother explained: “I mean, since the incarceration, we kind of separated for a little bit, but before that, we were pretty close.” It is not clear from the record to which incarceration the mother was referring.

With regard to whether or not Hailey would benefit from continuing a relationship with the mother, Hailey has spent almost her entire life with her paternal grandmother. She is bonded and happy. The mother never even attended a back to school night because she said, “I was never really invited.” She doesn’t “know what Hailey’s favorite subject is in school.” The juvenile court was unable to find that a parent/child relationship existed between the mother and Hailey. Whatever the relationship between the two, the juvenile court was also unable to find Hailey benefited from it in a parent/child context. As to the quality of her visitations, the mother admitted at the hearing that she had only been sober since June 5, 2015.

Under the circumstances we find in this record, we conclude there is substantial evidence to support the juvenile court's findings. We also conclude the juvenile court did not abuse its discretion.

III

DISPOSITION

The judgment of the juvenile court is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.