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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H037939
(Santa Cruz County
Super. Ct. No. DP002136)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

D.M. (mother) appeals from the order terminating her parental rights to her son, S.T. (son) (born 2001) pursuant to Welfare and Institutions Code section 366.26.¹ Mother argues that the undisputed evidence presented to the juvenile court established the existence of the beneficial relationship exception and thus her parental rights should not have been terminated. We disagree and shall affirm the order.

I. FACTUAL AND PROCEDURAL BACKGROUND²

This is the third appellate dependency proceeding involving mother and son. In 2010, mother unsuccessfully challenged the juvenile court's judgment declaring son a

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

² In connection with the instant appeal, by separate order, we granted mother's request for judicial notice of the clerk's transcript in a prior writ proceeding, *D.M. v. Superior Court* (Feb. 8, 2011, H036347 [nonpub. opn.]).

dependent of the court and removing him from her custody. (*In re S.T.* (Aug. 31, 2010, H035080) [nonpub. opn.].) In December 2010, family reunification services were terminated and the juvenile court set a section 366.26 hearing. We denied mother's subsequent petition for writ relief, concluding substantial evidence supported the juvenile court's finding that reasonable services had been offered to mother. (*D.M. v. Superior Court* (Feb. 8, 2011, H036347) [nonpub. opn.].)

At the March 2011 hearing, the Santa Cruz County Human Services Department (Department) recommended a planned permanent living arrangement for son with a goal of adoption. The juvenile court adopted Department's recommendation and ordered supervised visitation by mother a minimum of twice a month. In June 2011, Department petitioned the court to reduce visitation to once a month, and mother stipulated to monthly supervised visitation for the next three months with the matter to be reviewed by the juvenile court following the third scheduled visit.

At the September 2011 postpermanency planning review hearing, the juvenile court set a selection and implementation hearing for January 19, 2012. Son had moved to an adoptive placement home in June 2011 and the foster parents wished to adopt him.

At the January 2012 hearing, mother disagreed with Department's recommendation that her parental rights be terminated and that adoption was the appropriate permanent plan for son. The juvenile court set the matter for a settlement conference and trial.

At the settlement conference, although the parties did not reach a settlement, they agreed to an offer of proof as to what the social worker's testimony would be if she were to testify at the hearing. The offer of proof stated:

"The social worker supervised six visits between November, 2011, and December, 2012. [¶] The mother . . . greeted [son] . . . with smiles and hugs. [Son] appeared happy to see his mother. [¶] [Mother] played with [son] and talked with him throughout the visits. The mother talked with [son] about topics such as movies, trucks, and school.

Both [mother] and [son] seemed to enjoy the conversations. At times the social worker had to work hard to remain in earshot of [mother] and [son], but the conversations the social worker was able to hear seemed generally appropriate. [¶] [Mother] brought gifts for [son] and played with him during visits. The mother brought several more gifts than recommended to the Christmas visit, under the visitation rules established by the Department. However, the gifts were well-received by [son] and the mother showed great interest in watching [son] open his gifts. [¶] At the end of visits, [mother] and [son] often exchanged hugs and [son] was able to leave the visit without visible distress.”

At the February 15, 2012 hearing, Department submitted into evidence a “366.26 WIC Report” and the court-appointed special advocate report, both dated January 19, 2012. Mother submitted the delivered service log, recording all contacts, services and visits with son from September 1, 2011 to February 2, 2012.

In the “366.26 WIC Report,” dated January 19, 2012, Department recommended termination of parental rights and selection of a permanent plan of adoption. The report provided the following history. “The Department opened an informal case in April 2008 to assist [mother] in obtaining services due to address [son]’s behavioral issues and help her in finding her [*sic*] services to address issues of neglect, domestic violence, and her own traumas. The Department attempted to address the serious concerns regarding ongoing domestic violence, mental health concerns, and substance abuse concerns while the mother was caring for the minor.”

Despite these services, son was twice removed from mother’s care in July and August 2009, “when [mother] refused to follow through with services and did not stay in contact with the social worker or assist with another investigation.” During the period when family reunification services were offered, mother failed to “engage in consistent visitation with her son” and continued to “struggle to visit with her son consistently” after reunification services were terminated. According to the report, mother’s visitation only

became more consistent “after it was made clear that an adoptive home had been identified.”

The report noted that mother was “playful and engaged toward [son] during the visits, but does not set boundaries, use discipline, or direct his play. It is clear that [son] has affection for his mother; however, he also does not express any distress or sorrow at the end of his visits with his mother and seems happy and relieved to see his caregiver.”

The report also indicated that son was thriving in the care of his current caretakers. It asserted that “it is in the best interest of [son] to be adopted. . . . While [son] does continues [*sic*] to struggle with the after-effects of his exposure to neglect, substance abuse and violence in his home, his prospective adoptive parents are actively engaging in the appropriate therapy in order to support and enable [son] to address his traumas.” When asked about where he should live, son answered, “I think that I should be adopted by [my current caretakers]. I want to be able to visit with him [*sic*] my mom, too.” Son did not think living with mother was a good idea, because “[mother’s ex-boyfriend] could find her and then he would hurt us, like he promised to do. She can’t keep us safe, from him. Maybe she should live with [my current caretakers], too. They could help take care of her, too.”

Mother also testified at the hearing. In her testimony, mother disputed Department’s representation that her visitation was inconsistent. She said she missed one visit in April³ because she was moving and did not have a telephone to call Department to arrange visitation. She also described the activities she engaged in with son during their visits, e.g., talking with him about school, what he likes to do after school, the games and music he likes, etc. Mother would ask if son had brought homework from school for her to see what he has been learning. They would play lots of games. Mother believed son

³ Mother did not specify a year, but it appears from other information in the record that this was April 2011.

enjoyed visiting with her and they were very close, though their relationship had been “very strained” due to the limitations on their visitation.

When asked about the information in Department’s report suggesting she does not set boundaries with son, mother said, “[son] doesn’t really try to cross boundaries that I would need to discipline him in any way. And because I only do have that hour of a visit, I don’t want to spend it all being all, you know, all strict and drill sergeantess [*sic*] towards him. I would rather focus on doing something fun and that would be enjoyable for him and I [*sic*] both.” According to mother, the boundaries for their visits were already set, and son knew what was expected of him. Mother concluded her testimony by saying her parental rights should not be terminated because she loved son, believed he loved her too and she “feel[s] that he needs to be with his mother.”

On cross-examination, mother said son had never told her he wanted to be adopted, but he did say “he wanted to buy an island and have the foster parents and me and him all go live on the island with the four dogs and cats and various other animals.”

After finding by clear and convincing evidence that son was adoptable, the juvenile court also concluded there was no compelling reason to determine that termination of mother’s parental rights would be detrimental to son. In discussing its conclusions, the juvenile court described mother’s relationship with son as “a visiting, fun relationship,” but noted that he did not go to mother for protection, safety, comfort or care. Instead, it was son who was “taking on a parental role to try to protect Mother[,] believ[ing] that she’s still subject to harm and still is vulnerable.”

Mother timely appealed.

II. DISCUSSION

Mother asserts that undisputed evidence compelled a finding that the beneficial parent-child relationship exception applied in this case. According to mother, there was no question that she loves son and that son is strongly attached to her.

At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).) A statutory exception to this rule exists where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” (*id.* subd. (c)(1)(B)) because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.* subd. (c)(1)(B)(i).)

If the evidence establishes that a parent maintained regular visitation and contact with his or her child and some benefit would result from continuation of the parent-child relationship, the court’s determination whether or not there was “a compelling reason for determining that termination [of parental rights] would be detrimental to the child” (§ 366.26, subd. (c)(1)(B)) is reviewed for abuse of discretion. (See *In re C.B.* (2010) 190 Cal.App.4th 102, 123; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) “ ‘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.’ ” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In deciding whether the parent-child beneficial relationship exception applies, “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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “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.” The parent-child relationship must “promote[] 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.” (*Ibid.*)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ [Citation.] ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (See *In re C.B.*, *supra*, 190 Cal.App.4th at pp. 133-134.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; see *In re Celine R.*, *supra*, at p. 53.)

The parent-child relationship “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.*, *supra*, 78 Cal.App.4th at p. 1348.) “[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.” (*Id.* at p. 1350.) Even a “loving and happy relationship” with a parent does not necessarily establish the statutory exception. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

“The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) “[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact.” “Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A

strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction.” (*Ibid.*)

In this case, although mother had become more consistent in her visitations with son, she failed to demonstrate that she occupied a parental role in her relationship with him. To the contrary, the juvenile court noted that son was “taking on a parental role,” as he apparently believed mother was vulnerable to harm.

Mother presented no expert evidence, such as a bonding study, showing that termination of parental rights would be detrimental to son. She also presented no evidence to show that the improvement in son’s behavior, which was observed following his placement with his prospective adoptive family, was a consequence of her continued visitation with him, as opposed to him getting the safety and security he needed from his foster family. On this record, we find no basis for reversing the juvenile court’s order terminating mother’s parental rights. The uncontradicted evidence did not show the existence of the beneficial relationship exception, nor did the juvenile court abuse its discretion in finding no compelling reason to determine that termination of mother’s parental rights would be detrimental to son.

III. DISPOSITION

The order terminating mother's parental rights to son is affirmed.

Premo, Acting P.J.

WE CONCUR:

Bamattre-Manoukian, J.

Grover, J.*

* Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.