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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H038112
(Santa Cruz County
Super. Ct. Nos. DP001468, DP002454,
& DP002455)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

Appellant claims that the juvenile court erred in terminating her parental rights to three children. She rests this view on an assertion that the court should have applied the parent-child beneficial relationship exception to overcome the statutory preference for adoption of adoptable children.

We conclude that the juvenile court's orders terminating appellant's parental rights are supported by substantial evidence and that it did not abuse its discretion in finding no "compelling reason" to determine that terminating appellant's parental rights would be detrimental to the children. Therefore, we affirm the orders terminating appellant's parental rights.

FACTS AND PROCEDURAL BACKGROUND

Appellant is the mother of S.S., A.R., and C.R. When administrative proceedings regarding their welfare began, they were ages seven, three, and one, respectively.

Those proceedings consisted of petitions filed on May 5, 2011, by the Santa Cruz County Human Services Department (Department) on behalf of all three children.

Amended petitions for S.S. and C.R. were filed on August 23, 2011. The one original and two amended petitions, considered together, alleged that all three children fell within the dependency jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (j) (abuse of child's sibling)¹, that S.S. also fell within the ambit of subdivision (g) thereof (no provision for support), and that C.R. also fell within the ambit of subdivision (a) thereof (serious physical harm).

Two days before the filing of the original petitions, the Department had removed all three children from the home. The problem that precipitated their removal was first noticed by a day-care provider, who reported that one-year-old C.R. had external injuries, notably a bruised thigh. The parents could not account for the injury when the Department investigated the report. When appellant learned that the day-care provider was aware of the injury, she asked the father and other adult residents in the home for an explanation, but no one offered any. However, A.R. told a day-care worker and appellant that the father had hit C.R., and appellant reported this to a social worker. A police investigation failed to establish the cause of injury and a doctor could not determine it either. Three weeks later, however, C.R. was seen by a pediatric specialist at Children's Hospital in Oakland. C.R. underwent a skeletal survey and a physical examination. The pediatric specialist, who worked in its Center for Child Protection, determined that C.R.'s injury was the result of the application of blunt force. She expressed a doubt that C.R.'s

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

brother caused it. She provided this assessment: “the size of the bruise on a padded body surface (i.e.,] buttocks and thigh) without evidence of bleeding disorder suggests that a significant amount of force would be required. This . . . could either be one extremely forceful blow or a series of somewhat less forceful blows.” In addition, the doctor discovered that C.R. had anemia and an abnormally high white blood cell count.

Appellant had a history of inability to care for her children. Her parental rights to another child, C.S., had been terminated some years before because that child had suffered general neglect and emotional abuse. C.S. came to the Department’s attention in 2006 after a neighbor reported seeing a two-year-old wandering outside in a filthy diaper. As the Department described the situation, “The 2-year-old is seen outside on a daily basis unsupervised and is always barefoot and naked except for a soaking wet diaper. The 2-year-old recently went to a neighbor’s home with an empty bottle which ‘stunk and was not clean.’ The [neighbor] noted that the minors are taken in vehicles without car seats. There is a lot of traffic coming and going from the house and the [neighbor] suspects drugs as she knows someone who saw adults shooting up in the home a week ago. Children were present in the home.”

The Department’s report goes on to say, “[appellant’s] children [S.S. and C.S.] were removed from the parents[’] care on [February 17, 2006] due to the home being a health and safety hazard. At the time of this referral the investigating [social worker] observed the sink full of dirty dishes, pots and pans with moldy food on the countertops and stove, large cutting knives accessible to a small child, [and] nails and small coins strewn throughout the floor accessible to small children. The mother’s medication bottles were on the table accessible to a small child. Empty beer bottles and aluminum cans were observed throughout the home. Dirty clothes and garbage were piled throughout the home[,] making it difficult to navigate one’s way through the home. Also found in the home [were] drug paraphernalia. At this time, both parents were arrested for child endangerment and [the father] was arrested for being under the influence of

methamphetamine and drug possession. While [appellant] was able to reunify with [S.S.], reunification services were terminated in regards to [C.S.] on [May 2, 2007] and [she] was adopted by a nonrelative. . . . [A report prepared for the permanent plan] notes that [appellant] complied with submitting to a psychological evaluation . . . [that] indicates that [appellant] had a diagnosis of ADHD, [unspecified] personality [disorders], and . . . severe denial and poor insight as to the situation. It is questionable . . . what [appellant] learned from this prior incident and all the services provided to her regarding the above removal of her children.”

With the approval of appellant and the father of A.R. and C.R., the children were lodged at the house of relatives in Sacramento toward the end of August of 2011. On October 27, 2011, the juvenile court sustained the petitions and declared the three children to be dependents following a jurisdiction and disposition hearing. The court decided to direct that family reunification services not be provided and that a permanent plan should be arranged without the intermediation of attempts at reunification, as permitted by subdivisions (b)(10), (b)(11), and (b)(13) of section 361.5 in certain serious circumstances.² There were two fathers for the children, and the court’s ruling applied

² Section 361.5 provides as follows:

“(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

“[¶] . . . [¶]

“(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

“(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in

(footnote continued)

subdivisions (b)(10) and (b)(11) to appellant and to the father of S.S., who was confined in Arkansas, whereas it applied subdivision (b)(13) to the father of A.R. and C.R.

The juvenile court scheduled a hearing under section 366.26 to decide on a permanent plan for the children. In anticipation of the hearing, the Department recommended that the children be adopted.

During the period between the jurisdiction and disposition hearing and the section 366.26 hearing, a juvenile court order allowed appellant to visit her children under supervision at least once a month.

From October of 2011 to the date of trial, i.e., March 21, 2012, appellant saw her children four times. She forwent two visits scheduled for December of 2011 because of car problems and because she needed to work. In January 2012, she forwent another visit because, as she testified at the permanent plan hearing, she was “still working on my car.” When asked on cross-examination why she did not seek assistance from the social workers to facilitate these visits, she testified that she may have done so once in November but did not remember getting a response and that she had been too busy at

subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

“

“(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

“[¶] . . . [¶]

“(c) [¶] The court shall not order reunification for a parent or guardian described in paragraph . . . (10), (11), . . . [or] (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.”

work to pursue the subject. The juvenile court commented at the end of the hearing that there was no evidence that appellant was telephoning the children during that period.

The section 366.26 report opined that the children “do not have a mother/child relationship with [appellant] as she has been able [*sic*] to provide adequate/consistent care for the children. [She] has not made any effort to keep in touch with her children during this last reporting period; there is no visiting relationship. [The three children] look up to their relatives to fulfill their daily needs for care, love and attention. Therefore, it would not be detrimental to terminate parental rights and proceed with a permanent plan of adoption.”

In an undated letter to the juvenile court, appellant had stated, “I may not be the world’s best mom, but I did my best to take care of my children.” “They love me, and I love them. I know living with me is the best thing for them.” Appellant gave testimony to the same effect during the section 366.26 hearing. The Department’s social worker assigned to the case also testified, but offered no evidence regarding appellant. Her brief testimony pertained to the father of A.R. and C.R.

On the statutory issues whether appellant had made regular contact with her children and they would benefit from a continuing relationship with her, the juvenile court found that these elements had not been established. It found that the children were generally and specifically adoptable and issued three separate orders, one for each child, terminating appellant’s parental rights and freeing the children for adoption.

DISCUSSION

Appellant’s ground for appeal is narrow. She claims that the juvenile court erred by not finding the existence of a statutory exception to the adoption preference, specifically the parent-child beneficial relationship exception to adoption defined in section 366.26, subdivision (c)(1)(B)(i).

With regard to dispositions in juvenile dependency cases, the best interest of the child controls. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) Adoption is the

preferred alternative. (§ 366.26, subd. (b), (b)(1), (b)(2), (b)(5).) “ ‘The permanent plan preferred by the Legislature is adoption. [Citation.]’ [Citation.] ‘ ‘The Legislature has decreed . . . that guardianship is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most permanent plan and secure alternative that can be afforded them.’ ’ ” (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless 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.[’] [¶] . . . [¶] . . . (§ 366.26, subd. (c)(1)(B)(i).) ‘[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.’ [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

Review of a juvenile court determination of the applicability of the parental relationship exception under section 366.26 occurs under a hybrid substantial evidence–abuse of discretion standard. (*In re Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.) “Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental . . . relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination. Thus, . . . a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed. [¶] The same is not true as to the other component of . . . the parental relationship exception . . . [.] . . .

[namely] the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding detriment to the child is *based* on the facts but is 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.” (*Ibid.*)

Applying the foregoing standard of review to the record before us, we will affirm the juvenile court’s decision to terminate appellant’s parental rights. The record in this matter does not establish the existence of regular visitation or a beneficial parental relationship that would provide a compelling reason to overcome the preference for adoption.

Appellant asserts that she visited the children much more often before they were relocated to Sacramento and that her children were delighted to see her. However, even if that is true, the juvenile court could reasonably give greater weight to appellant’s recent inattention to the children, as it did—at the section 366.26 hearing, it asked rhetorically, “since the end of October [2011] have the parents maintained . . . regular visitation and contact with the children? The Court is finding that the parents, unfortunately, have not.” The court criticized appellant for making only feeble efforts to have contact with her children.

We recognize that for people of limited means, traveling from Santa Cruz to Sacramento can present a challenge. Asked during the section 366.26 hearing why “you didn’t call the social worker to see if there was any [transportation] assistance that could be provided,” appellant acknowledged that had not made the effort but also testified that

“I didn’t think there was [transportation assistance]. They weren’t even providing bus passes at that time.” Nevertheless, no testimony adduced during the hearing contradicted the assertion in the Department’s section 366.26 report that appellant “has not made any effort”—other than a minimal one, we would add—“to keep in touch with her children during this last reporting period; there is no visiting relationship.”

As noted in other cases, “[i]f 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.) “The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.) To qualify for the exception, appellant had to do “more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that [she] and [her] child find their visits pleasant. [Citation.] Rather, [she] must show that [she] occup[ies] ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) 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.” (*In re Autumn H., supra*, at p. 575.)

The juvenile court did not abuse its discretion (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315) in finding that appellant had not shown a “compelling reason” (§ 366.26, subd. (c)(1)(B)) to qualify for the parent-child beneficial relationship exception. In addition, substantial evidence supports the court’s conclusion that the relationship did not “promote[] the well-being of the child[ren] to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Not only does the

record fail to show that the children would be “greatly harmed” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575) by terminating appellant’s parental rights, but all of the evidence is that appellant’s relationships with her children were tenuous, problematic, and marked at times by seeming indifference or by the need to attend to her personal problems. From all that appears, appellant did not occupy a consistent and ongoing parental role in the children’s lives. (See *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854; *In re Andrea R.*, *supra*, 75 Cal.App.4th at p. 1108.) In sum, it cannot be said that “undisputed facts established the existence of a beneficial parental . . . relationship” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314), and without any, “a substantial evidence challenge . . . cannot succeed.” (*Ibid.*)

CONCLUSION

The orders are affirmed.

Márquez, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.