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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re E.B., a Person Coming Under the
Juvenile Court Law.

H042307
(Santa Clara County
Super. Ct. No. 1-13-JD022234)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Respondent;

E.B.,

Appellant.

E.B., a minor child, appeals from a final judgment selecting guardianship as the permanent plan. On appeal, E.B. argues that the trial court erred when it determined that

the parent/child relationship exception applied to preclude adoption. (Wel. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i).)²

STATEMENT OF THE FACTS AND CASE³

The contested section 366.26 hearing was held on April 22, 2015. In anticipation of the hearing, the social worker prepared a report in which she recommended guardianship for E.B. She believed that E.B. and Father had developed a strong relationship that benefitted E.B.'s emotional well-being.

Since November 1, 2014, Father had not missed a scheduled visit with E.B. and had begun to have unsupervised visits. During her visits with Father, E.B. spent time with Father's other children, paternal aunts, nephews, and paternal grandfather. Father had completed his parent orientation and was scheduled to complete his parenting classes by March 11, 2015. Father had joined a father's support group, and he supported guardianship with the maternal grandmother. The social worker believed that terminating Father's parental rights would not be in E.B.'s best interests.

The social worker stated that during visits, Father was patient, comforting, affectionate, nurturing, and engaging with E.B. She believed that E.B. benefited from having Father in her life. The social worker wanted the dependency to remain open for an additional six months so that if Father failed in his commitment, she could request a different permanent plan.

Father testified at the hearing that when the dependency began, he visited E.B. three or four times a week at the maternal grandmother's home. However, from April to

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

² Both the Department of Family and Children's Services and Father are respondents in this case.

³ The facts leading up to the contested section 366.26 hearing in this case are stated in our opinion in the companion appeal in H042077.

October 2014, Father did not visit because he was working seven days a week to pay off debt and recover his driver's license for work as a truck driver. Father regretted his decision not to visit E.B. as often as he should have.

Father stated that at the time of the hearing, he was visiting E.B. regularly, and E.B. seemed comfortable with him. He said he took E.B. to the park, read books for her, and played games with her. Father also said that during his visits with E.B., he included his sons and all of the children played together. Father stated that he loved E.B., and would not abandon her.

After taking the matter under submission at the conclusion of the hearing, the juvenile court followed the social worker's recommendation and selected guardianship with the maternal grandmother as the permanent plan. The court noted that Father had maintained regular visitation and that E.B. would benefit from having a continuing relationship with him. The court noted Father's progress and found his testimony to be genuine and sincere, "in his desire to encourage, teach, and support [E.B.] as a loving parent" The court found that Father's relationship with E.B. was a compelling reason not to terminate parental rights. The court ordered guardianship as the permanent plan for E.B.

E.B. filed a notice of appeal.

DISCUSSION

E.B. argues that the trial court erred in ordering guardianship as the permanent plan based on the parent/child exception to adoption.

After reunification services are terminated, " 'the focus shifts to the needs of the child for permanency and stability.' " (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. 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).)

Adoption is the preferred choice during the section 366.26 stage of the dependency proceeding. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 49; § 366.26, subd. (c)(1).) “ ‘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.*, *supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” (§ 366.26, 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).)

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.” (*Ibid.*) 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.*)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*See In re C.B.* (2010) 190 Cal.App.4th 102, 133.) “[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*, 31 Cal.4th at p. 53.)

“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.” (*Ibid.*) “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.*)

This court has determined that review of the applicability of the beneficial parent-child relationship exception under section 366.26 is governed by a hybrid substantial evidence/abuse of discretion standard of review. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*)) Substantial evidence is applied to the factual issue of whether there is a beneficial relationship between a parent and child. (*Ibid.*) However, a juvenile court's finding that the parent/child relationship is a “ ‘*compelling reason*’ ” to not order termination of parental rights is 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.” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 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.)

Here, the trial court’s decision that the relationship between E.B. and Father outweighed the benefit she would receive from being adopted by her grandmother was not beyond the bounds of reason. While adoption would normally be the recommended permanent plan in a case such as this, the social worker stated that the relationship between E.B. and Father was strong and beneficial to E.B. Specifically, since the six-month review hearing in October 2014, Father had participated in a parent orientation class, was almost finished with a father’s parenting class, and had joined the Santa Clara Fatherhood Collaborative for additional parenting support.

In addition, by the time of the contested section 366.26 hearing, Father had been visiting with E.B. regularly for six months, had family support, was employed and had a stable home. The social worker expressed her belief that Father was demonstrating his commitment to be a part of E.B.’s life, and that E.B. was benefitting from spending time with him. The social worker believed the relationship between Father and E.B. was important and should be maintained.

Father testified about his visits with E.B. He explained that he had six-hour unsupervised visits during which he played with E.B. and read to her. Father also was helping E.B. get to know her extended family. Father acknowledged that that E.B. was attached to her grandmother and sister, and he did not challenge E.B.’s placement. Father was committed to having a continued relationship with E.B.

The information from the social worker, as well as Father’s testimony, provided substantial evidence to support the court’s finding that there was a beneficial relationship between the father and E.B. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1316.)

Moreover, the court properly exercised its discretion in finding that there was a compelling reason that termination of parental rights would be detrimental to E.B. With regard to Father's commitment to E.B., the court found: "Not only has he been consistent, nurturing, and appropriate during visitation, but has demonstrated that his commitment to act in a parental role by enrolling and completing parenting classes, seeking guidance and input from the social worker, attending a father's support group, and a willingness to communicate with [E.B.'s] caregiver in an effort to meet [E.B.'s] needs." The court's decision to order guardianship as the permanent plan based on the beneficial relationship between E.B. and Father did not exceed the bounds of reason. (*In re Stephanie M.*, supra, 7 Cal.4th at pp. 318-319.)

DISPOSITION

The order is affirmed.

RUSHING, P.J.

WE CONCUR:

ELIA, J.

WALSH, J.*

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