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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H043056, H043066
(Santa Cruz County
Super. Ct. No. DP002866)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

J.H.,

Defendant and Appellant.

I. INTRODUCTION

In this juvenile dependency matter regarding T.H. (the child), the juvenile court terminated parental rights and selected adoption as the permanent plan pursuant to Welfare and Institutions Code section 366.26.¹ The mother, J.H., has separately appealed from two of the juvenile court's orders; this court ordered the mother's two appeals to be considered together for purposes of briefing, argument, and disposition.

In case No. H043056, the mother contends the juvenile court erred by denying her section 388 petition, in which she requested the juvenile court reinstate her

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

reunification services. In case No. H043066, the mother contends the juvenile erred by terminating her parental rights after determining that neither the beneficial parent-child relationship exception nor the sibling relationship exception applied. (See § 366.26, subds. (c)(1)(B)(i) & (c)(1)(B)(v).) For reasons that we will explain, we will affirm the juvenile court's orders.

II. FACTUAL AND PROCEDURAL BACKGROUND²

A. Initial Proceedings

On December 30, 2013, the Santa Clara County Department of Family and Children's Services (DFCS) filed a second amended petition under section 300, subdivision (b) [failure to protect] alleging that the 16-month-old child came within the jurisdiction of the juvenile court.

On December 4, 2013, the police had taken the child into protective custody. The mother had been arrested for being under the influence of a controlled substance, felony possession of a controlled substance, and child endangerment. In the mother's hotel room, police found methamphetamine, glass pipes, and Vicodin pills, "all easily accessible" to the child. The mother had previously participated in drug rehabilitation programs, and she was on both probation and parole for drug-related offenses. The mother had admitted relapsing and using methamphetamine. The father, S.W., was incarcerated. Both parents had prior convictions and the family had 13 prior referrals.

By December 30, 2013, the child was living with the maternal grandmother in Aptos. The child's half-brother was also living with the maternal grandmother, who was seeking to become his legal guardian.

² Some of the background facts are taken from our nonpublished opinion in *J.H. v. Superior Court* (Oct. 13, 2015, H042562), of which we have taken judicial notice. (See Evid. Code, §§ 452, 459.)

By January 22, 2014, the mother was participating in residential treatment in Santa Cruz, and on February 5, 2014, the Santa Clara County juvenile court ordered the child released to the mother on the condition that she continue to reside at the program and comply with its conditions. On March 5, 2014, the Santa Clara County juvenile court sustained the section 300 petition, ordered the child returned to the mother on family maintenance services, and ordered the case transferred to Santa Cruz County. On April 24, 2014, the Santa Cruz County juvenile court (hereafter, the juvenile court) accepted the transfer-in.

B. Interim Review Hearings

While on family maintenance services, the mother was arrested for possession of a controlled substance on May 24, 2014 and again on July 17, 2014. She pleaded no contest to one charge and the other was dismissed. At the six-month review hearing held on November 13, 2014, the juvenile court ordered family maintenance services to continue.

The mother entered a substance abuse treatment program on November 25, 2014 but was discharged a few weeks later “due to poor attendance.” She had 10 no-shows for drug tests, and other drug tests could not be verified as accurate. The mother tested positive for methamphetamine on February 11, 2015 and entered residential treatment at Janus Main on March 3, 2015. When the mother entered residential treatment, the child was living with the father, who had been released from custody but also had no-shows for drug tests and three positive drug tests. The father was back in custody by the time of the 12-month review hearing held on April 16, 2015, and the child was apparently once again living with the mother. At the 12-month review hearing, the juvenile court again ordered family maintenance services to continue.

C. Section 387 Proceedings

The Santa Cruz County Human Services Department (the Department) filed a section 387 petition on May 8, 2015. The mother had been asked to leave the Janus Main

program because of staff concerns that she was “actively using substances” and had tampered with an oral swab drug test. The mother had admitted cheating on her urine tests, and program staff had found urine samples and methamphetamine hidden in a child’s toy in the mother’s room. The father was in jail facing murder charges. The child was detained, and by June 5, 2015, she had been placed with a paternal aunt.

At a contested hearing held on July 8, 2015, a social worker with the Department testified that the mother had “the most deep issue with substance abuse” he had ever seen. The mother also had “[a] very loving, deep relationship” and a “strong connection” with the child. The mother was in residential treatment again, and she was attending Family Preservation Court, therapy, and parenting classes.

The juvenile court sustained the section 387 petition, ordered the child removed, and denied reunification services to the mother due to her chronic drug use and failed attempts at treatment, pursuant to section 361.5, subdivision (b)(13).³ The juvenile court denied reunification services to the father due to his incarceration, pursuant to section 361.5, subdivision (e).⁴ The juvenile court set a permanency planning hearing for October 22, 2015. At a subsequent placement hearing, the juvenile court ordered the child placed with the paternal aunt, finding that the opportunity for permanency with the paternal aunt and uncle, combined with safety concerns about placement with the maternal grandmother, outweighed the child’s sibling relationship.

³ Section 361.5, subdivision (b)(13) provides that the juvenile court may deny reunification services if it finds, by clear and convincing evidence, “[t]hat 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.”

⁴ Section 361.5, subdivision (e) provides that the juvenile court may deny reunification services if the parent or guardian is incarcerated and the court determines, by clear and convincing evidence, that those services would be detrimental to the child.

The mother filed a petition for extraordinary writ in this court, challenging the juvenile court's orders sustaining the Department's section 387 petition, denying reunification services, and setting the matter for a section 366.26 permanency planning hearing. On October 13, 2015, this court filed an opinion denying the mother's petition for extraordinary writ. (*J.H. v. Superior Court, supra*, H042562.)

D. The Mother's Section 388 Petition

On October 26, 2015, the mother filed a section 388 petition, asking the juvenile court to set aside the section 366.26 permanency planning hearing and order reunification services. Mother alleged she had "ameliorated the circumstances that brought [the child] before the Dependency Court." Specifically, she was participating in "substance abuse treatment services, parenting [classes] and counseling." She had also "developed [a] detailed plan" to safely care for the child. The mother asserted she had been "diligent" in visiting the child. The mother indicated she had been offered a job as a legal assistant and that she had secured housing. The mother described the efforts she had made to remain a part of the child's daily life despite the fact that her visitation had been reduced to once per month.

Other attachments to the mother's section 388 petition included progress reports from her parenting class, a letter from the maternal grandmother describing three visits between the child and her half-brother, photographs of the child with her half-brother, attendance records from the mother's AA/NA meetings, a report from the mother's therapist, a letter discussing the mother's participation in the House of Grace Recovery Program, a letter from the maternal aunt attesting to the child's strong attachment to the mother, letters from a family friend attesting to the child's strong attachment to her half-brother, and a letter from the child's former babysitter attesting to the strong bond between the mother and the child.

The juvenile court summarily denied the mother's section 388 petition on October 30, 2015. In its written order, the juvenile court found that the mother did not

state new evidence or show a change of circumstances, and that the proposed change of order would not promote the best interest of the child. (See *In re Lesly G.* (2008) 162 Cal.App.4th 904, 912 [juvenile court may summarily deny a section 388 petition if the petition does not “ ‘state a change of circumstances or new evidence that might require a change of order’ ”].)

E. Section 366.26 Report

The Department filed a report in advance of the section 366.26 hearing, recommending that the juvenile court terminate parental rights and establish a permanent plan of adoption. The child remained in her concurrent home with paternal relatives. She appeared to be “emotionally stable, engaged, and thriving and happy with her foster family.” The child was attached to her aunt, who she frequently referred to as “mommy.” The child referred to her foster home as “home.”

The report provided details about the mother’s visits with the child dating back to July of 2015. The mother and the child were always happy to see each other. The mother was affectionate and brought gifts and food for the child. The mother played with the child and read to her. The child told the mother she loved her. During a visit in late August of 2015, the mother told the child she would not be visiting during a “30 day blackout period in her residential program,” and the child responded, “no.” At the end of a visit a few weeks earlier, the child had run to the door to greet the paternal aunt and her children.

The social worker noted that the Department continued to have “great concern” about the mother’s history of drug use despite her participation in treatment. The social worker believed the mother had not demonstrated an ability to consistently care for the child in a safe manner, and that the child needed stability and permanency.

F. Section 366.26 Hearing

A section 366.26 permanency planning hearing took place on December 16, 2015. The parties agreed the juvenile court could consider the attachments to the mother's section 388 petition as well as the social worker's report.

The maternal grandmother testified that the child had a "very close" relationship with her half-brother. The half-brother was "very attentive" to and protective of the child. The child called the half-brother "my T[.]" The two children had visited each other about once per month during the prior four or five months. When they did visit, they were "ecstatic to see each other." They played together and held hands. At the end of the visits, the child would hold on to the half-brother.

The mother testified that both of her children lived with her at various times since the child's birth in July of 2012. In addition, after the maternal grandmother obtained a guardianship of the half-brother in December of 2013, the children visited each other frequently. The mother described the children as "so close" and testified that the child considered the half-brother "her everything," "her hero," and "her rock."

The mother also testified about her visits with the child. The child would scream out "mommy" and run to her. The child would hug her and "not let go." They would play together and the mother would read to the child. The mother attempted to be positive about the transitions at the end of the visits, but the child would not let go of the mother. The mother would call the child after each visit, and she talked to her almost every day on the phone.

The half-brother, who was 10 years old, testified that he really missed the child. He testified that he usually went to her birthday parties and that they would "almost do everything together." The last time he and the child visited, the child tried to hug him and cried when she was leaving.

The father, who was not present at the hearing, submitted an offer of proof that he supported the child's placement with the paternal aunt. The father's attorney indicated

that the father wanted the juvenile court to terminate parental rights and “move forward with adoption.”

The Department acknowledged that the mother was “consistent and regular in her visitation” and that there was “a strong sibling history” but argued that these factors did not outweigh the benefits of adoption. The child’s attorney joined the Department’s argument and added that the evidence showed that the child and the half-brother had been with different primary caregivers for almost two years, such that they did not have “the type of relationship” supporting the sibling exception.

The mother’s attorney argued that the juvenile court should not terminate rights because both the beneficial parent-child relationship exception and the sibling relationship exception applied. (See § 366.26, subs. (c)(1)(B)(i) & (c)(1)(B)(v).)

The juvenile court found overwhelming evidence that the child was adoptable. The juvenile court further found that the mother had not met her burden of proof to show the beneficial parent-child exception applied. Although it was “undisputed” that the mother had maintained regular visitation and contact with the child, the mother had not established that the benefit of maintaining the parent/child relationship outweighed the benefit of adoption. The juvenile court noted, in support of this finding, that the child ran to the paternal aunt at the end of visits, that the child called the paternal aunt “her mom,” and that the child’s need for stability was “paramount” due to the numerous disruptions in placement she had already experienced. The juvenile court further noted that the child’s relationship with the mother had been “impeded” by the mother’s inability to overcome her substance abuse problems.

The juvenile court also found that the mother had not met her burden of proof to show the sibling relationship exception applied. The juvenile court noted the evidence established that the child and her half-brother had not always lived together, since the maternal grandmother had become the half-brother’s legal guardian in 2013 but the child had generally lived with the mother between 2013 and 2015. The juvenile court

acknowledged that the child and her half-brother had “shared common experiences and have a strong bond,” but it found that those considerations did not outweigh the benefit of “permanence through adoption.”

The juvenile court then terminated parental rights and set a permanency review hearing for May 26, 2016.

III. DISCUSSION

A. Denial of Section 388 Petition

In case No. H043056, the mother contends the juvenile court erred by summarily denying her section 388 petition. The mother asserts that her petition contained evidence that was sufficient to “trigger a full hearing.”

1. Legal Standards

A parent or “other person having an interest” in a dependent child may petition for a change of orders “upon grounds of change of circumstance or new evidence” pursuant to section 388, subdivision (a)(1). Section 388, subdivision (d) specifies that the court shall order a hearing on the petition if “it appears that the best interests of the child . . . may be promoted by the proposed change of order.” Thus, when considering whether to order a hearing on a section 388 petition, the juvenile court’s task is to determine whether the petition presents a prima facie showing of “a change in circumstances or new evidence *and* the promotion of the child’s best interests. [Citation.]” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) “A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.]” (*Ibid.*)

The procedure provided by section 388 “accommodate[s] the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*))

Section 388 provides an “ ‘escape mechanism’ ” that allows the court to consider new information before a hearing on termination of parental rights. (*Marilyn H.*, *supra*, at p. 309.) When a section 388 petition is brought after the termination of reunification services, “the predominant task of the court [is] to determine the child’s best interest. . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320.) “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.]” (*Id.* at p. 317.)

The standard of review for an order denying a section 388 petition is abuse of discretion. “The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. [Citations.]” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.)

2. Analysis

The mother contends she showed a change of circumstances by providing documentation of her progress and participation in parenting classes, a 12-step program, therapy, and residential treatment, as well as evidence of the close relationship between herself and the child and between the child and the half-brother. However, a *prima facie* showing of *changing*, as opposed to *changed*, circumstances is not enough. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [seven months of sobriety insufficient given long history of drug abuse]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [120 days of sobriety insufficient to show “real reform”].) The evidence presented in the mother’s section 388 petition did not show *changed* circumstances from the contested hearing on the Department’s section 387 petition, which was held less than four months earlier, on July 8, 2015. At that time, the mother was similarly participating in residential treatment, attending therapy and parenting classes, and claimed to be “fully committed to [her] recovery.” Considering the mother’s lengthy history of treatment and

relapse, the juvenile court could reasonably find that a four-month period of sobriety and participation in services did not show that the mother's circumstances had in fact changed. Thus, the juvenile court did not abuse its discretion by summarily denying the mother's section 388 petition rather than ordering a hearing.

B. Parent/Child and Sibling Exceptions

In case No. H043066, the mother contends the juvenile court abused its discretion by determining that the benefits of adoption outweighed the preservation of the beneficial relationships between herself and the child and between the child and the half-brother.

1. Legal Background

The California Supreme Court has stated that “[t]he objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.]” (*Marilyn H.*, *supra*, 5 Cal.4th at p. 307.) “When the child is removed from the home, the court first attempts, for a specified period of time, to reunify the family. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52 (*Celine R.*)). Where reunification efforts have failed, “ ‘the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. [Citation.]’ ” (*Ibid.*)

“The court has four choices at the permanency planning hearing. In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption . . . ; (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).)” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) “When the juvenile court finds that the child is adoptable, it must terminate parental rights unless it finds one of four specified circumstances in which termination would be detrimental (§ 366.26, subd. (c)(1)(A)-(D)).” (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 852.) “The specified statutory circumstances—actually, *exceptions* to the general

rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.]” (*Celine R.*, *supra*, at p. 53.)

The parent/child relationship exception is set forth in section 366.26, subdivision (c)(1)(B)(i). Under that statutory provision, parental rights cannot be terminated where the juvenile court “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he 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).)

The sibling relationship exception is set forth in section 366.26, subdivision (c)(1)(B)(v). Under that statutory provision, parental rights cannot be terminated where the juvenile court “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]here would be substantial interference with a child’s sibling relationship.” (§ 366.26, subd. (c)(1)(B)(v).) In determining whether the sibling relationship exception applies, the juvenile court must “tak[e] into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

2. Standard of Review

This court has determined that there is a two-part standard of review for a juvenile court’s ruling regarding the application of the parent/child relationship and sibling relationship exceptions. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*).

First, “[s]ince the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling 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 or sibling relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

“The other component of both the parental relationship exception and the sibling relationship exception is 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.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1315; accord, *In re C.B.* (2010) 190 Cal.App.4th 102, 123 (*C.B.*.)

3. Analysis – Parent/Child Exception

As noted above, under section 366.26, subdivision (c)(1)(B)(i), parental rights cannot be terminated where the juvenile court “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

Below, the juvenile court found that the mother had maintained regular visitation and contact, but that she had not established that the benefit of maintaining the parent/child relationship outweighed the benefit of adoption. (See *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*) [requirement of benefit from continuing the relationship means that “the relationship promotes 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 support of this finding, the juvenile court noted that the child ran to the paternal aunt at the end of visits and that the child called the paternal aunt “her mom.” The juvenile court also found that the child’s need for stability was “paramount” due to the numerous disruptions in placement she had already experienced, and that the child’s relationship with the mother had been “impeded” by the mother’s inability to overcome her substance abuse problems.

In asserting that the juvenile court erred by finding that she had not established a beneficial parent-child relationship, the mother contrasts her case with *In re C.F.* (2011) 193 Cal.App.4th 549 (*C.F.*). The mother in *C.F.* had a history of drug use and had relapsed during the reunification period; she had also reunited with an abusive boyfriend. The children appeared to enjoy visits with the mother and appeared to have an emotional connection with her. The children expressed that they would be disappointed if they could no longer see the mother but also that they enjoyed living with their caregivers. (*Id.* at pp. 555-556.) The mother was not always fully engaged during visits: she sometimes needed to be reminded to “play with the children or attend to their needs.” (*Id.* at p. 556.) The appellate court upheld the termination of parental rights, finding no evidence that the mother “occupied a parental role” in the children’s lives, no evidence that the children “would suffer any actual detriment on the termination of parental rights,” and no evidence “that the benefits of continuing the parental relationship outweighed the benefits of permanent placement with family members who [we]re ready

to give them a permanent home” and to whom the children looked “to fulfill all of their emotional and physical needs.” (*Id.* at p. 557.)

The mother asserts that unlike the mother in *C.F.*, she “acted in a parental manner at every visit” and “never had to be redirected to look after her daughter.” The mother also asserts that because the child called her “Mommy,” termination of the relationship would be detrimental to the child.

Although the mother’s visits were appropriate and parental in nature, the record nevertheless supports the juvenile court’s finding that the mother did not occupy a “parental role” in the child’s life that benefitted the child to such an extent that severing that relationship would greatly harm the child. (See *C.B.*, *supra*, 190 Cal.App.4th at p. 126.) As the juvenile court noted, the child also referred to the paternal aunt as “mommy” and to the paternal aunt’s home as “home.” The child was thriving in the paternal aunt’s home. Moreover, there was no evidence that the child would be harmed by severance of her relationship with the mother. The parent-child exception does not apply merely because the child “ ‘derive[s] some measure of benefit’ from the parental relationship. [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 530.) And a child’s “outward affection” for a parent does not necessarily indicate a “substantial positive attachment,” since “[m]any toddlers are cuddly, effusively loving, and affectionate.” (*Id.* at p. 533.) Here, there was no bonding study, expert testimony, or other evidence indicating a potential for detriment to the child from the loss of her relationship with her mother. (Cf. *In re S.B.* (2008) 164 Cal.App.4th 289, 295-296.)

In sum, while we commend the mother’s efforts and progress, the evidence presented at the section 366.26 hearing did not compel a finding that the relationship between the mother and the child was so beneficial as to outweigh the benefits of adoption. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 (*I.W.*) [“where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding

in favor of the appellant as a matter of law”].) Therefore, the juvenile court did not err by finding that the mother failed to meet her burden of proof as to the parent/child exception.

4. Analysis – Sibling Exception

Under section 366.26, subdivision (c)(1)(B)(v), parental rights cannot be terminated where the juvenile court “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]here would be substantial interference with a child’s sibling relationship,” which depends on “the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.”

Below, the juvenile court found that the child and her half-brother had not always lived together, and that while the child and her half-brother had “shared common experiences and have a strong bond,” those considerations did not outweigh the benefit of “permanence through adoption.”

In challenging the juvenile court’s finding, the mother discusses *In re Valerie A.* (2007) 152 Cal.App.4th 987 (*Valerie A.*). In *Valerie A.*, the dependent children were twins who were removed when they were about 17 months old. (*Id.* at p. 994.) The twins had an older half-sibling who had been adopted by the maternal grandmother. They were initially placed with the maternal grandmother and the half-sibling, but they were later placed with other relatives. During the dependency proceedings, the twins visited with their half-sibling about two times per month. (*Ibid.*) At the section 366.26 hearing, the social worker testified that she had not observed a sibling bond during the visits, but other witnesses testified that the twins wanted to be with their half-sibling at all times and that they ran to her and hugged her at visits. (*Valerie A., supra*, at pp. 995-996.) A bonding study also found that there was a significant sibling bond.

Applying the factors set forth in 366.26, subdivision (c)(1)(B)(v), the *Valerie A.* court upheld the trial court's finding that the sibling bond exception did not apply. The appellate court noted that the twins and their half-sibling had been raised in the same home for a "relatively short period of time" and that although they had contact with her since birth, the trial court reasonably could infer the experiences they shared with her were not meaningful to the twins, "as infants and toddlers." (*Valerie A.*, *supra*, 152 Cal.App.4th at p. 1013.) The *Valerie A.* court further found that even though the twins shared "loving, affectionate, playful and nurturing" interactions with their half-sibling, it was reasonable for the trial court to find that their "long-term emotional interests, due to their ages and needs, were better served by the permanency of adoption rather than by continued sibling contact." (*Ibid.*, fn. omitted.)

In this case, the child and her half-brother were raised together for only part of the child's life. The child and her half-brother shared some birthdays, but the record contains little other evidence of "shared significant common experiences" (§ 366.26, subd. (c)(1)(B)(v)), and the trial court "reasonably could infer the experiences the children shared" (*Valerie A.*, *supra*, 152 Cal.App.4th at p. 1013) were not as meaningful to the child, a toddler, as to the half-brother. The record indicates that the bonds between the child and her half-brother were "strong," but no bonding study or expert testimony established that ongoing contact with the half-brother would be "in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).) The juvenile court could reasonably determine that even though the child shared "loving, affectionate, playful and nurturing" interactions with her half-brother, her "long-term emotional interests . . . were better served by the permanency of adoption rather than by continued sibling contact." (*Valerie A.*, *supra*, at p. 1013, fn. omitted.)

Having carefully reviewed the entire record, we conclude the evidence did not compel a finding that adoption would cause substantial interference with the child's

sibling relationship. (See *I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) Thus, the trial court did not err by finding that the mother failed to meet her burden of proof as to the sibling exception.

IV. DISPOSITION

In case No. H043056, the juvenile court's October 30, 2015 order summarily denying the mother's Welfare and Institutions Code section 388 petition is affirmed.

In case No. H043066, the juvenile court's December 16, 2015 order terminating parental rights and selecting adoption as the permanent plan is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

In re T.H.; HSD v. J.H.

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