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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re LEILAH A. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. TERESA C., Defendant and Appellant.	D049955 (Super. Ct. No. EJ02662A-B)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis, Commissioner. Affirmed. Motion to augment the record with additional evidence denied.

Teresa C. appeals orders terminating her parental rights to her daughters, Leilah A. and Yasmine A. She contends the court erred by finding (1) the exception to adoption of

Welfare and Institutions Code section 366.26, subdivision (c)(1)(A) did not apply and (2) the children are adoptable.[1] We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On September 1, 2005, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of two-year-old Leilah and one-year-old Yasmine, alleging Teresa was not able to provide regular care for them because of her substance abuse and inability to provide them with an adequate home. Teresa had been dropping off the children at relatives' homes without providing food or supplies, and the home where the children were found was unsafe and unsanitary.[2]

The court sustained the petition, declared the children dependents and placed them in out-of-home care. It ordered Teresa to enroll in the Substance Abuse Recovery Management System.

The children were placed together in foster care. Yasmine suffers from Blount's disease, which causes her legs to bow and requires her to wear a leg brace. Teresa had supervised visits with the children each week. By March 2006, she had been discharged from drug abuse treatment because of absences and missed drug tests. She entered a second drug abuse treatment program.

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

2 At the time, the children's father was in custody. In January 2006, he committed suicide.

In April 2006, Teresa was asked to leave her sober living residence because she stayed out all night and appeared intoxicated when she returned. In June 2006, the social worker reported Teresa's visits had become inconsistent and she had tested positive for alcohol. The social worker recommended terminating Teresa's services and setting a section 366.26 hearing.

At the six-month review hearing on June 12, 2006, the court found reasonable services had been provided but Teresa had not made substantive progress, and returning the children to her custody would cause a substantial risk of detriment. The court terminated services and set a section 366.26 hearing. The court authorized placement of the children with their maternal stepgrandmother (the stepgrandmother), who lives in Utah, based upon a positive evaluation for placement through the Interstate Compact on the Placement of Children.

The social worker reported the children had been placed with the stepgrandmother in June 2006, and she wanted to adopt them. Between July and September, Teresa had missed 10 of the 21 telephone calls she was scheduled to make to the children. The social worker opined the children were likely to be adopted, and, in addition to the stepgrandmother, 19 other families were interested in adopting sisters like Leilah and Yasmine. She opined the children were bonded with the stepgrandmother and their relationship with Teresa did not outweigh the benefits they would gain from the stability of adoption.

At the section 366.26 hearing on November 17, 2006, Teresa testified she had maintained regular visitation and contact with the children when they lived in San Diego

and had been fairly consistent in calling them after they moved to Utah. She said both children said they missed her.

After receiving evidence and hearing testimony, the court found it was likely the children would be adopted if parental rights were terminated and none of the statutory exceptions to adoption applied. It terminated parental rights and ordered permanent plans of adoption.

DISCUSSION

I

The Beneficial Relationship Exception to Adoption of Section 366.26, subdivision (c)(1)(A)

Teresa contends the juvenile court committed reversible error by finding the exception to adoption of section 366.26, subdivision (c)(1)(A) did not apply. She contends substantial evidence showed she had consistent and positive visits with the children, and they would benefit from continuing their relationship with her.

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parents' burden to show that termination of parental rights would be detrimental because one of the specified exceptions of section 366.26, subdivision (c)(1) exists. (*In re Autumn H.*, at p. 574.) Under the exception in section 366.26, subdivision (c)(1)(A), the parent must show termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.*

(1999) 71 Cal.App.4th 1530, 1534, the court noted that "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the exception of section 366.26, subdivision (c)(1)(A).]"

In *In re Autumn H., supra,* 27 Cal.App.4th at pages 575-577, this court found substantial evidence to support an order terminating parental rights. This court stated:

> "In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean 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." (*Id.* at p. 575.*)*

In reviewing whether sufficient evidence supports the trial court's finding, the appellate court reviews the evidence in the light most favorable to the court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 576.)

Substantial evidence supports the juvenile court's finding the beneficial relationship exception of section 366.26, subdivision (c)(1)(A) did not apply. Assuming Teresa showed she maintained regular visitation and contact, she did not show she and the children had a beneficial parent-child relationship that would outweigh the benefit they would gain from the stability of a permanent adoptive home.

The children were removed from Teresa because of her drug abuse and inability to provide an adequate home. Although she was offered services, she continued to use methamphetamine and tested positive for alcohol during the dependency period. Leilah and Yasmine were doing well with the stepgrandmother. At the time of the hearing, they

had lived with her for five months and had a positive bond with her. The social worker recommended they be adopted and opined it would not be detrimental to them to terminate parental rights. The court was entitled to rely on the social worker's testimony and opinion. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420-1421.) Substantial evidence supports the finding.

II

Adoptability

Teresa contends the finding Leilah and Yasmine were likely to be adopted as a sibling group was not supported by substantial evidence. She argues the sisters should be kept together, and because Yasmine is afflicted with Blount's disease, her adoptability is in question. She also claims there was evidence the children had difficulty transitioning into the stepgrandmother's home and the stepgrandmother's teenage daughter was ambivalent toward them.

A decision whether a child is adoptable must be made upon clear and convincing evidence. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) "In resolving this issue, the court focuses on *the child* — whether his age, physical condition and emotional state make it difficult to find a person willing to adopt him." (*Ibid.*)

Substantial evidence supports the court's finding Leilah and Yasmine were likely to be adopted. At the time of the section 366.26 hearing, they had been living with the stepgrandmother for five months. They also had lived in her home with Teresa for a time before the dependency proceedings began. The stepgrandmother was very familiar with the children and with the fact that Yasmine is afflicted with Blount's disease and requires

a leg brace. The social worker reported the stepgrandmother loved the children and wanted to make them a permanent part of her family. Although they displayed some emotional distress when transitioning to her home and Leilah initially was not affectionate toward the stepgrandmother, by October the stepgrandmother reported Leilah's tantrums were less frequent and she had become more affectionate. Also, at the time of the hearing the social worker reported the stepgrandmother's two teenage daughters had become attached to Leilah and Yasmine and enjoyed having them in their home. Further, in addition to the stepgrandmother, 19 other families would be willing to adopt two children with Leilah and Yasmine's characteristics. The finding is well supported.

DISPOSITION

The orders are affirmed. The Agency's motion to augment the record with additional evidence is denied.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

MCDONALD, J.