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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JENNIFER W. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. Jennifer N. et al., Defendants and Appellants.	D055368 (Super. Ct. No. J515663A-B)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis, Judge. Affirmed.

Jennifer N. (J.N.) and Alfred W. (together, the parents) appeal juvenile court orders terminating their parental rights to their minor children Jennifer W. and Mandy W.

(together, the minors) under Welfare and Institutions Code section 366.26.[1] The parents challenge the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception to adoption did not apply to preclude terminating their parental rights. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The family has a history with child protective services that began in Nevada in 2003, when Mandy was diagnosed as "failure to thrive." The parents received voluntary services, and when the case was closed, they moved to San Diego. In 2005, the minors became dependents of the San Diego juvenile court when they were found living with the parents in a dirty car with no food or water. After a year of services, the minors were returned to their parents' custody and jurisdiction was terminated. Two days later, the San Diego County Health and Human Services Agency (Agency) received a referral that the parents were abusing drugs.

In February 2007, the parents tested positive for methamphetamine and Agency found there was no food in the home on three separate occasions. J.N. agreed to participate in voluntary services, but did not follow through, and continued to test positive for drugs. Seven months later, Agency filed petitions in the juvenile court under section 300, subdivision (b), alleging seven-year-old Jennifer and five-year-old Mandy

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1 Statutory references are to the Welfare and Institutions Code.

were at substantial risk of harm because the parents abused drugs and failed to provide them with adequate food.

At a jurisdiction and disposition hearing, the court sustained the allegations of the petitions, declared the minors dependents, removed them from the parents' custody and placed them in out of home care. The court ordered the parents to comply with the provisions of their case plans.

During the next six months, the parents did not participate in services and were visiting the minors only sporadically. J.N. admitted ongoing methamphetamine use and Alfred admitted financially supporting J.N.'s drug use. The minors had developmental delays and attended special education classes. They were placed with caregivers who were willing to provide for them as long as necessary.

By May 2008, the parents began to show some motivation to participate in services. J.N. entered a drug rehabilitation program (KIVA) and Alfred was in individual counseling. The minors enjoyed two visits with the parents. At the six-month review hearing, the court ordered six more months of services and psychological evaluations for the parents.

The social worker reported Alfred continued his transient lifestyle, and sometimes forgot to attend visits with the minors. He did not believe the minors were affected by his absence. Nevertheless, the minors were happy to see him.

Alfred did not consistently show he had basic parenting skills, and was unable to put the minors' needs ahead of his own. During one visit, Alfred became upset and used profanity when the minors told him they saw J.N. kissing her boyfriend. He telephoned

J.N., began arguing with her, and said he was going home to smoke marijuana. On another occasion, Alfred ignored Mandy when she hit her head, fell to the ground and began to cry. Although visits took place at a restaurant, Alfred did not bring or buy food for the minors, but instead ate their food. Alfred broke his promise to bring Mandy gifts for her birthday, and did not understand the minors' needs and vulnerabilities, or how broken promises hurt them. Once Alfred discovered J.N. had a boyfriend, he became more despondent, angry and inappropriate during visits.

J.N. was doing well at KIVA where she had weekly supervised visits with the minors. The minors were very affectionate toward her. J.N. engaged them in activities and responded to their changing moods.

The minors were thriving in their placement, where they had lived for more than a year. Their Court Appointed Special Advocate (CASA) reported the minors' attachment to their caregivers grew stronger every day. The caregivers were willing to adopt the minors if reunification with the parents failed.

The social worker recommended the court terminate services and set a section 366.26 selection and implementation hearing. J.N. admitted she made an error in judgment by bringing her boyfriend to a visit with the minors. After stating she was finished with relationships and instead was focusing on the minors and her case plan, J.N. continued to bring her boyfriend to visits and allowed him to interact with the minors. Her therapist believed she was dependent on having a man in her life, and this was her priority.

Alfred claimed he had stopped smoking marijuana, but then tested positive for the drug. He was not attending counseling and continued his transient lifestyle. The quality of Alfred's visits with the minors was inconsistent. The minors had to be urged to interact with him, and Jennifer cried throughout one of the visits.

At a 12-month hearing, the court found there was no substantial probability the minors would be returned to parental custody by the 18-month date. The court terminated reunification services and set a section 366.26 selection and implementation hearing.

In an assessment report, social worker Robyn Spahn recommended adoption as the minors' permanent plans. Spahn observed four two-hour visits between the minors and the parents, noting the minors enjoyed and looked forward to visits. The minors said they loved their parents, and Jennifer said she would have liked to live with them. However, the minors also said they loved their caregivers, and wanted to live with them forever.

In Spahn's opinion, the minors had a relationship with the parents, but it was not a parent-child relationship. Mandy viewed the parents as friendly visitors. Visits took place at a restaurant, where Mandy enjoyed interacting with other people as much as with her parents. She went to her caregivers when she wanted something. When she misbehaved, she ignored her parents' attempts at discipline but responded well to her caregivers' directions.

Spahn described Jennifer's relationship with the parents as one of role reversal. Jennifer frequently worried about her parents' well-being, especially when it rained because she did not want them to get wet in the tent in which they lived. Jennifer was

always negatively affected when Alfred cried at visits, and she tried to comfort him with hugs. She often asked her parents if they loved her, and needed reassurance that they cared about her. In Spahn's opinion, Jennifer did not have a secure parent-child relationship with her parents because she could not depend on them to meet her needs. Spahn believed the benefits of a safe, secure, stable and nurturing adoptive home outweighed maintaining the relationship the minors had with their parents.

The minors' CASA also recommended the court terminate parental rights and order adoption for the minors. She reported the minors continued to thrive in their caregivers' home. The minors had learned to dress themselves since being placed there, and were responsible for doing chores assigned to them. They called the caregivers "mom" and "dad." The caregivers remained willing to adopt them.

According to addendum reports, the minors were progressing well in individual and conjoint therapy. The parents continued to have weekly supervised visits with the minors. J.N. shortened her visits, and Alfred sometimes forgot he had a visit scheduled. Although the minors enjoyed visits, they did not react adversely when the parents canceled, failed to attend, or shortened visits. When visits occurred, the minors were distracted by other people. They preferred to talk to other adults or play with other children rather than spend time with their parents, and they consistently went to the caregivers when they needed something. The minors had no difficulty separating from their parents when visits ended. Spahn continued to recommend adoption as the minors' permanent plans.

At a contested selection and implementation hearing, the court received into evidence the reports of Agency and the CASA, and the stipulated testimony of the parents. Alfred would testify he loved the minors and visited them regularly, even though he missed some visits because of his medical conditions. Alfred believed he had a bond with the minors that outweighed the benefits of adoption. J.N. would testify she consistently visited the minors, except on four occasions, and the visits went well. She and the minors loved each other, and their relationship outweighed the benefits of adoption. After considering the evidence and hearing argument of counsel, the court found the minors were likely to be adopted and none of the exceptions to adoption applied. The court terminated parental rights and referred the minors for adoptive placement.

DISCUSSION

The parents challenge the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception did not apply to preclude terminating their parental rights. They assert they regularly visited the minors, and their positive, loving relationship outweighed the minors' need for adoption.

A

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H*. (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under

one or more of the enumerated statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights. [Citation]." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it 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.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if terminating parental rights 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." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "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 other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and sense of belonging a new family would confer. 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." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811; *In re Jason J.* (2009) 175 Cal.App.4th 922, 936-937.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Jason J., supra*, 175 Cal.App.4th at pp. 936-937; *In re Derek W*. (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*In re Derek W., supra*, at p. 827; *In re Elizabeth M*. (1997) 52 Cal.App.4th 318, 324.)

We review the court's finding regarding the applicability of a statutory exception to adoption for substantial evidence. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576; *In re S.B*. (2005) 130 Cal.App.4th 1148, 1157.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L*. (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the parents' visits with the minors were initially sporadic, but eventually became regular. However, the parents did not meet their burdens of showing there was a beneficial parent-child relationship sufficient to apply the exception of section 366.26, subdivision (c)(1)(B)(i).

The minors became dependents because the parents abused drugs and failed to provide for the minors' basic needs, especially food. Throughout the reunification period, the parents failed to put the minors' emotional and physical needs before their own. Alfred had little insight into the minors' needs and vulnerabilities. Despite J.N.'s claim she was focused on the minors and her case plan, her priority remained having a man in her life.

The record does not support the parents' argument the minors have a "significant, positive, emotional attachment" to them such that terminating the parent-child relationship would result in great harm to the minors. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 938.) The parents' relationship with the minors was loving and pleasant, but was not parental. Although the minors loved their parents and enjoyed visits with them, they did not react adversely when the parents canceled, failed to attend or shortened visits, and they had no difficulty separating from the parents when visits ended. The minors preferred interacting with other adults and children during visits, and consistently went to the caregivers to get their needs met. Mandy viewed her parents as friendly visitors and responded only to her caregivers' directions when she misbehaved. Jennifer did not have a secure parent-child relationship with her parents because she could not depend on them to meet her needs. Instead, she worried about them and constantly sought their reassurance that they cared about her. "A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a

relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)[2]

Further, the parents did not show that maintaining the relationship with the minors outweighed the benefits of adoption for them. The minors are thriving in the home of their caregivers, who have provided them with a stable and loving environment and are committed to adopting them. In the social worker's opinion, the benefits of a safe, secure and nurturing adoptive home outweighed the benefits of maintaining the minors' relationship with the parents. (*In re Justice P*. (2004) 123 Cal.App.4th 181, 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue].) "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M*. (1987)189 Cal.App.3d 1032, 1038.) The court was required to, and did, weigh the strength and quality of the parent-child relationship, and the detriment involved in terminating it, against the potential benefits of an adoptive home for the minors. We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D*. (1999) 70 Cal.App.4th 38, 53.) Substantial evidence supports the court's

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2 The parents' reliance on *In re S.B.* (2008) 164 Cal.App.4th 289, 300-301, is misplaced. The decision in that case does not "stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J., supra*, 175 Cal.App.4th at p. 937.)

finding the beneficial parent-child relationship exception did not apply to preclude terminating parental rights.

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.