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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

E080209

(Super.Ct.Nos. J284566, J284567)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes,
Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas Bunton, County Counsel, and Pamela J. Walls, Special Counsel, for Plaintiff and Respondent.

In this dependency case, defendant and appellant S.A. (mother) appeals the termination of her parental rights to her children H.R. and E.R. (Welf. and Inst. Code, § 366.26.)¹ She argues the court erred by failing to apply the beneficial parental relationship exception. We affirm the judgment.

BACKGROUND

Two of mother's children are at issue: H.R. (age 4) and E.R. (age 3). In 2019, the Los Angeles juvenile court terminated her parental rights to a third child.

E.R. was born in 2020 with significant health issues. Mother told plaintiff and respondent San Bernardino County Children and Family Services (the department) she did not know she was pregnant until she was five months along. She admitted that she used marijuana and alcohol for the first five months of the pregnancy but stopped once she learned she was pregnant.

In March 2020 the department petitioned under section 300, subdivisions (b) and (j), as to both H.R. and E.R. The petitions alleged mother had a history of substance abuse, mental health issues, and domestic violence. The court detained the children the same month and ordered supervised visitation for two hours a week.

The siblings were initially placed with different caregivers. Though the children were too young to be interviewed, as of March 24, 2020, the department reported that

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

both seemed well-bonded to their foster parents. The department recommended bypassing reunification services.

Between March and June 2020, the COVID-19 pandemic made in-person visitation impossible, and all visits happened via video and phone. In June 2020 the children were both placed with their maternal great-aunt.

The court held a contested jurisdictional and dispositional hearing in September 2020. It found the allegations in both petitions true. It ordered reunification services for both parents and ordered weekly visitation of four hours per week supervised, plus two hours per week unsupervised.

At some point before February 2021, the department increased unsupervised visitation to six hours. As of February 2021, visits were going well, and the parents were eager to start extended visits. The children were happy before and after the visits. The parents brought snacks and toys for the children and were “engaged and appropriate during the visits.” The children were also “thriving” in their placement, and the caregiver said she would provide permanent care if the children failed to reunify with the parents. The department recommended returning the children to mother and father and starting them on family maintenance services.

In March 2021, mother canceled a scheduled visit because of car issues after paternal grandfather’s funeral. In April 2021 the court ordered a 29-day trial visit. The department observed the family from time to time during this visit, and found that the children seemed “happy, healthy, and clean.” The department recommended extending

the 29-day visit permanently and ordering family maintenance services. In May 2021 the court adopted the department's recommendation.

In November 2021, the department reported the children were "happy in the home with their parents," and the family was attached to each other. However, because father missed multiple drug tests and the family had not yet completed maintenance services, the court continued the children as dependents.

In February 2022 a neighbor reported they heard yelling and children crying in the family's home. When the department responded, the parents were bruised and the home was a mess, with "soiled carpet, mounds of clothing, partially eaten food, and empty beer cans throughout." E.R. had a scratch on her cheek and H.R. had soiled his diaper and pants. The police arrested the parents on domestic abuse and child endangerment charges.

Two days later, the department filed supplemental petitions under section 387. The petitions alleged that: the parents engaged in domestic violence, the children were exposed to this domestic violence, the parents left the children without care upon their arrest, the conditions of the home placed the children at risk, and the parents suffered from ongoing substance abuse issues. The court again detained the children and placed them with the maternal great-aunt on February 18, 2022.

The court held a contested jurisdictional and dispositional hearing on April 14, 2022. It found the allegations in the section 387 petitions true and removed the children from the parents' custody. The court also found the parents were out of statutory time for

reunification. Therefore, it terminated reunification services and set a section 366.26 hearing for termination of parental rights. However, it ordered two-hour weekly supervised visits.

The department reported that at the start of visits E.R. would immediately return to the caregiver after entering the lobby and would have to be coaxed to the visitation room with mother. H.R. would be “extremely active” which included throwing food at mother, trying to run out of the room, and becoming aggressive with mother and E.R. Mother brought food and toys for the children. She would also intervene when H.R. acted up and would talk to him about being respectful and following the rules. She played games with the children and encouraged them to follow directives. However, the caregivers “expressed concerns about the children’s behavior after visits with their parents.” According to the caregivers, H.R. would become aggressive with women and both children would be more anxious after visits, in that they would both be more sensitive to unexpected noises.

In July 2022 the department recommended terminating parental rights and allowing the children to be adopted. It reported the prospective adoptive family was committed to the children’s long-term care and that the children and the prospective adoptive parents had a “mutual attachment.”

The court held the section 366.26 hearing in November 2022. Mother testified she missed only three visits, all three of which she missed because the children were sick. She said the children were excited to see her at visits and referred to her as “Mom.” She

acknowledged, however, that the children also sometimes referred to their caregiver as “Mom.” The social worker testified that the children were not upset at the end of visits.

After hearing argument, the court found mother met two of the three factors for the parental-benefit exception to termination of parental rights. However, the court found mother did not meet her burden to prove that termination of parental rights would be detrimental to the children, finding that the benefits of adoption outweighed any detriment. Accordingly, it terminated mother’s parental rights.

ANALYSIS

Mother argues the trial court erred when it terminated her parental rights because it should have applied the parental bond exception. Specifically, mother contends the court erred in its consideration of the elements used to assess whether the parental bond exception applies. We disagree and conclude the juvenile court did not err in deciding not to apply the parental bond exception.

“By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) Adoption is the Legislature’s preferred permanent plan. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) “[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.” (*Jasmine D.*, at p. 1350.)

To avoid this outcome, the parent must show that termination of parental rights “would be detrimental to the minor[s]’ due to any of certain specified circumstances.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.) One circumstance, the parental bond exception, applies where the parent can show they “have maintained regular visitation and contact with the child[ren] and the child[ren] would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) There are three elements to this exception: “(1) regular visitation and contact, and (2) a relationship, the continuation of which would benefit the child[ren] such that (3) the termination of parental rights would be detrimental to the child[ren].” (*In re Caden C.* (2021) 11 Cal.5th 614, 631, italics omitted (*Caden C.*)). In *Caden C.*, our Supreme Court identified “a slew of factors” to consider when assessing the second of these three elements. (*Id.* at p. 632.)

The juvenile court found mother satisfied the first and second elements. The only remaining issue is whether mother satisfied her burden under the third element.

For the third element, “in assessing whether termination would be detrimental, the trial court must decide whether the harm from severing the child’s relationship with the parent outweighs the benefit to the child of placement in a new adoptive home.” (*Caden C., supra*, 11 Cal.5th at p. 632, italics omitted.) We review for abuse of discretion whether termination of parental rights would be detrimental to the child or children because of the beneficial parental relationship. (*Id.* at p. 640.) But we review any factual findings underlying that decision for substantial evidence. (*Ibid.*) In doing so, we look

only at the evidence admitted at the 366.26 hearing. (*In re L.A.-O.* (2021) 73 Cal.App.5th 197, 207-208.)

Sufficient evidence supported a finding that adoption would bring significant benefits. Both children lived with the current caregiver—maternal great-aunt—from June 2020 to May 2021, almost a full year. They returned to her care in February 2022 and have been in her care ever since. Thus, both children have spent more than half their lives in their maternal great-aunt’s care. Moreover, this care has been consistently positive and stable. Both children seem well bonded to the maternal great-aunt, look to her for comfort, and otherwise appear to be thriving in her care. Allowing her to adopt the children is unlikely to be disruptive and likely to permanently solidify a living situation that is already working.

There is little evidence that H.R. and E.R. would experience significant material or emotional harm from terminating their relationship with mother. Mother admitted that the children call the maternal great-aunt mom, and the social worker testified they had little trouble transitioning back to the maternal great-aunt’s care after visits. As evidence of detriment, mother points to her testimony that H.R. looked to her for comfort at times during visits, called her mom, and was excited to see her. But this is evidence of a beneficial bond, not necessarily evidence that terminating that bond would be more detrimental than adoption.

Thus, viewing the evidence in the light most favorable to the court’s order, we conclude it did not abuse its discretion by deciding the costs of terminating the children’s

relationship with mother did not outweigh the benefits of obtaining a final, stable, and permanent custody arrangement.

In support of a different conclusion, mother argues the juvenile court erred by failing to consider each of the factors our Supreme Court identified in *Caden C.* Mother argues that two recent cases require reversal where the court fails to review the identified factors on the record or where the record is insufficient to permit it to adequately assess the elements: *In re D.M.* (2021) 71 Cal.App.5th 261 (*D.M.*) and *In re M.V.* (2023) 87 Cal.App.5th 1155 (*M.V.*).

D.M., however, reviewed juvenile court orders that pre-dated *Caden C.* While it reversed and remanded because the juvenile court did not state its reasons for finding against the parents, that is because “[t]he court’s express findings that father did not act like a parent demonstrate it considered factors which *Caden C.* has explained are inappropriate in determining whether the parental-benefit exception applies.” (*D.M.*, *supra*, 71 Cal.App.5th at p. 271.)

Similarly, *M.V.* reversed the juvenile court because the record affirmatively showed it considered improper factors or otherwise misapplied the standard, not because the record was insufficient or the court failed to conduct a sufficient on the record analysis. As for the second element, the reviewing court concluded the juvenile court’s analysis was wanting because the juvenile court found only that there was a bond between the parents and the children, not that there was “ ‘substantial, positive, emotional attachment to the parent[s]—the kind of attachment implying that the child would benefit

from continuing the relationship.’ ” (*M.V.*, *supra*, 87 Cal.App.5th at p. 1185.) Here, the court found that mother met the second element, without elaborating. Therefore, unlike in *M.V.*, here there’s no reason to believe the court failed to conduct a sufficient analysis under element two.

As to element three, the reviewing court found the juvenile court’s analysis improper because it considered improper factors. First, the juvenile court erred because it did not assess how the child would be affected by the termination of parental rights. (*M.V.*, *supra*, 87 Cal.App.5th at pp. 1185-1186.) Second, because the court may have “relied on the expectation of continued contact between M.V. and the parents after adoption.” (*Ibid.*) Third, the court weighed the benefits of legal guardianship versus adoption rather than the benefits of the relationship against the benefits of adoption. (*Ibid.*) None of these errors involved failure to adequately state the basis for its ruling or an inadequate evidentiary basis for the ruling, only misapplication of the relevant standard. In short, the juvenile court in *M.V.* erred “[b]y failing to determine whether M.V. had a substantial, positive attachment to her parents, and by relying on improper factors in assessing detriment,” not because it lacked enough evidence to support its conclusions or because it failed to properly explain its analysis on the record. (*Id.* at p. 1186.)

In contrast, another recent case has expressly rejected mother’s argument that a court must explain its reasoning or the factual basis for its conclusions on the record. In *In re A.L.* (2022) 73 Cal.App.5th 1131, 1156, the court stated, “we are aware of no

requirement . . . that the juvenile court, in finding the parental-benefit exception inapplicable, must recite specific findings relative to its conclusions regarding any or all of the three elements of the exception. To the contrary, we infer . . . that the court is not required to make findings when it concludes that parental rights termination would not be detrimental.” (Italics omitted.)

Furthermore, the department orally argued that parents did not satisfy the *Caden C.* elements as did minor’s counsel. Mother’s counsel argued the opposite, going through the *Caden C.* elements and arguing that mother had met her burden under all three. The juvenile court expressly stated that it considered the *Caden C.* elements and referred to each of them briefly in explaining its ruling. Thus, the record establishes the juvenile court conducted its analysis under the *Caden C.* framework.

Finally, mother argues the juvenile court neglected certain factors which are part of the *Caden C.* analysis. These factors include the age of the children, the portion of their life spent in a parent’s custody, the positive and negative effects of interaction between the parent and children, the children’s specific needs, and how the children feel about the parent. (*Caden C.*, *supra*, 11 Cal.5th at p. 632.)

However, each of these factors informs the *second* element of the *Caden C.* analysis, not the third. The juvenile court found in mother’s favor on the second element of the *Caden C.* analysis. And, as discussed, the juvenile court was not required to recite specific findings as to every factor that may have informed its conclusions, even assuming these factors might also matter as to detriment from termination.

We conclude mother has not demonstrated any error in the juvenile court's determination that the parental bond exception did not apply.

DISPOSITION

We affirm the order terminating mother's parental rights.

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RAPHAEL
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.