Filed 11/14/24 In re Aurora B. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Aurora B., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.B. et al., Defendants and Appellants.	E083664 (Super.Ct.No. J292946) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Panda Kroll, under appointment by the Court of Appeal, for Defendant and Appellant, A.B.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant, S.C.

Tom Bunton, County Counsel and David Guardado, Deputy County Counsel, for Plaintiff and Respondent.

Anthony B. (Father) appeals from the termination of his parental rights to his minor daughter, Aurora B. He contends that the juvenile court erred by failing to apply the beneficial parental relationship exception under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) (unlabeled statutory references are to this code). Suzanne C. (Mother) joins Father's arguments. We affirm.

BACKGROUND

I. *Prior dependency case*

In October 2020, when Aurora was nearly one year old, San Bernardino County Children and Family Services (CFS) received an immediate response referral alleging that Aurora had been physically abused. Mother had brought Aurora to urgent care after noticing swelling in Aurora's left arm and left leg. Medical staff determined that Aurora had a fracture in her arm and that nonaccidental trauma could have caused it. When CFS arrived, the doctor expressed concern because "it was an old and unhealed break." CFS later observed that Aurora had "faded bruising on her right cheek and chin." The following day, the attending physician noted that Aurora had two different bone fractures, and Aurora was admitted for a full nonaccidental trauma assessment.

After medical staff determined that Aurora's injuries were "highly suspicious for abuse," CFS obtained a protective custody warrant to remove Aurora from the parents and placed her with maternal aunt Jacqueline. CFS interviewed Father, who reported that

he had not seen Aurora during the previous two months and had not been providing support for her. CFS reported that Father's speech was "incredibly slurred and he sounded disoriented and under the influence."

In October 2020, CFS filed a petition under subdivisions (a), (b), and (e) of section 300, and Aurora was placed with Jacqueline.

In its jurisdiction and disposition report, CFS reported that Father had been forthcoming about his past alcohol abuse, admitting that he "was an alcoholic years ago" and "was involved in a life of crime." Father said that he was no longer a "heavy drinker" and that he "only drinks socially or on the weekends." Father also stated that he "gave up alcohol completely" because he did not want to "jeopardize reunification" with Aurora. CFS reported that Father had multiple convictions for driving under the influence. Since Aurora's removal, Father said that he planned to abstain from alcohol, attend a 12-step program, and install a breathalyzer in his car, because he was "desperate to have Aurora returned to his care and custody." CFS also reported that Mother had not provided a plausible explanation regarding Aurora's injuries, and her prognosis for reunification was "poor."

CFS reported that Aurora was bonding with her caregiver and adjusting well. CFS described Aurora as having a "sweet disposition" and appearing to be "happy overall." Her caregiver was protective of Aurora and meeting her daily needs. Her caregiver was "very attentive and engaging with Aurora." CFS observed that Father's interactions with

Aurora had "always been positive," and he had "taken great care of [her]." CFS noted that Father had always been respectful and cooperative with CFS.

At the contested jurisdiction and disposition hearing in June 2021, the juvenile court sustained the petition, removed Aurora from Mother but placed her with Father, and bypassed Mother for reunification services.

In January 2022, the juvenile court terminated jurisdiction. The juvenile custody order provided that Mother would have only supervised visitation.

II. *Detention in the present case*

In April 2022, Father was arrested for driving under the influence with Aurora in the vehicle. Law enforcement arrested Father in front of Mother's home and left Aurora in Mother's care. When CFS arrived at Mother's house, Mother explained that she had left Aurora with maternal aunt Jacqueline. Both Mother and paternal aunt Jane told CFS that Father was drinking again.

CFS filed a second petition under subdivisions (b), (g), and (j) of section 300, alleging that Father had an unresolved substance abuse problem and that he placed Aurora at substantial risk of harm by driving under the influence while she was present in the vehicle. The petition also alleged that his arrest left Aurora without provisions for care, placing her at substantial risk of further harm, abuse, or neglect. A few days later, the juvenile court detained Aurora and again placed her with Jacqueline.

III. *Jurisdiction and disposition*

In its jurisdiction and disposition report, CFS reported that Father had not yet made himself available for an interview. CFS was concerned about Father's ability to reunify with Aurora because of his "multiple DUIs" and his continued alcohol abuse. CFS reported that if Father was to be successful with reunification, he would need to "gain insight" into the issues that led to Aurora's removal and "ensure [Aurora's] future safety and overall well-being." CFS also reported that Aurora was bonded to her caregiver and readjusting well in her placement.

At the jurisdiction and disposition hearing in May 2022, the juvenile court found true the allegations concerning Father's substance abuse and driving under the influence with Aurora in the vehicle, as well as an allegation that Aurora was previously a dependent of the court and that Mother had been bypassed in that case. The court again bypassed Mother but ordered reunification services for Father. The court ordered supervised visitation for both parents.

IV. *Reunification period*

For the six-month review hearing, CFS reported that Father stated that he was willing to follow the court's orders and was waiting to start his services, which included individual counseling, parenting education, substance abuse treatment, and random drug testing. Father reported that he was attending a 12-step program on a weekly basis. CFS noted that Father's visits with Aurora were consistent and appropriate and that no issues or concerns were reported. CFS also reported that Aurora's needs were being met by her

current caregiver, who was "willing to provide permanency" for Aurora. The court followed CFS's recommendation to continue reunification services for Father.

For the 12-month review hearing, CFS reported that there had been little communication between Father and his current social worker. CFS reported that Father was guarded and lacked insight. Aurora's mental and emotional status was stable, and she did not need any services. Jacqueline was meeting Aurora's needs and had enrolled her in ballet, and Aurora was "'potty train[ing]'" and learning her colors. CFS reported that Father's visits with Aurora continued to be consistent and appropriate and that there were no issues or concerns. Father's family therapist reported that Father "continued to minimize the magnitude of his substance abuse problem" and "was not able to accept that he had a problem." The therapist opined that Father's prognosis was guarded because Father lacked insight about his addiction. The court again followed CFS's recommendation to continue Father's reunification services for another six months.

For the 18-month review hearing, CFS reported that Father continued to be guarded and that he provided limited information to the social worker. According to CFS, Father had made "minimal and slow progress in his case plan" and was "not ready to be a full time parent."

Aurora was developmentally "on target" and stable and did not need any services. Jacqueline was meeting Aurora's needs, and Aurora had "a strong connection" with her. Father attended his weekly supervised visits, and there were no issues or concerns.

At the contested 18-month review hearing in November 2023, the court followed CFS's recommendation to terminate Father's reunification services and set a hearing under section 366.26.

V. *Section 366.26 hearing*

For the section 366.26 hearing, CFS reported in February 2024 that Aurora "appears to be happy and comfortable with the caregiver" and "does not appear to be in emotional distress." CFS also reported that Aurora "exudes love and affection in the presence of the caregiver." Jacqueline expressed that she is very close to Aurora, and the social worker observed that a "strong bond . . . is apparent" between them.

Father continued to attend weekly monitored visits with Aurora, and there were no issues or concerns. But Father last visited on December 17, 2023, missing his last two scheduled visits that month and all four of his scheduled visits in January, apparently because he was taken into custody and sentenced on his previous charges for driving under the influence.

In December 2023, Father completed a bonding study. During the study, Dr. Elizabeth Stanton, Psy.D., observed Father and Aurora during a four-hour visit. Stanton observed Aurora engaging in "healthy (secure) attachment behaviors towards Father" and "Father initiat[ing] affection and respond[ing] to her overtures." Aurora held Father's hand and leaned against him. She referred to Father as "'Daddy.'" She ran to Father and "crashed into his lap." When they went to a children's play area, she asked Father to join

her in play. During the study, Aurora preferred attention from Father over other children and Jacqueline.

Stanton opined that severing contact with Father "could be detrimental" to Aurora and that "there may be challenges related to negotiating the ambiguous loss that can result when there is a healthy parent-child relationship that is severed without significant reason (e.g., an unhealthy or unsafe parent)." Stanton recommended that the court consider the attachment between Father and Aurora before terminating parental rights.

Stanton testified at the selection and implementation hearing. She explained that even though Father had not visited Aurora in several weeks, the opinion that she expressed in her report remained unchanged. Stanton testified that she observed attachment behaviors from Aurora toward Father even though Aurora had been living with Jacqueline. Stanton explained that Aurora's connection with Father was significant because he is her biological Father.

Father also testified. He stated that he never missed a visit with Aurora. Father said that Aurora refers to him as "Dada" and that she joyfully yells, screams, and runs up to him when they see each other. He testified that Aurora is very affectionate with him and cried sometimes at the end of visits. Father stated that during the four years five months of Aurora's life, she has lived with him for "[o]ver a year."

The court found that Aurora was likely to be adopted. The court also found that Father had maintained regular visitation and contact and that there was evidence that Aurora's relationship with Father was more positive and substantial than her relationship

with Mother. But the court concluded that Father failed to prove that his relationship with Aurora was so beneficial that termination of parental rights would be detrimental to her. The court reasoned that Aurora was over four years old, and she had been in Jacqueline's care for "about half her life." The court found that given the instability in Aurora's life, the benefits of adoption "far outweighed" any detriment she may suffer from selecting adoption as Aurora's permanent plan. The court accordingly terminated parental rights.

DISCUSSION

Father argues that the juvenile court erred by terminating his parental rights because the beneficial parental relationship exception applied. We are not persuaded.

When the juvenile court finds that a dependent child is likely to be adopted, it must terminate parental rights and select adoption as the permanent plan unless it finds that adoption would be detrimental to the child under one of several exceptions. (§ 366.26, subd. (c)(1); *In re Caden C.* (2021) 11 Cal.5th 614, 630-631 (*Caden C.*).) The exceptions allow "'the court, in exceptional circumstances [citation], to choose an option other than the norm, which remains adoption.'" (*Caden C.*, at p. 631.)

Under the beneficial parental relationship exception, the parent bears the burden of proving three elements by a preponderance of the evidence: "(1) regular *visitation and contact*, and (2) a *relationship*, the continuation of which would *benefit* the child such that (3) the termination of parental rights would be *detrimental* to the child." (*Caden C.*, *supra*, 11 Cal.5th at pp. 631, 636.)

We review the juvenile court's findings on the first two elements for substantial evidence. (*Caden C.*, *supra*, 11 Cal.5th at pp. 639-640.) Whether termination of parental rights would be detrimental to the child because of the beneficial parental relationship is a discretionary determination and hence is reviewed for abuse of discretion. (*Id.* at p. 640.) But we review any factual findings underlying that decision for substantial evidence. (*Ibid.*)

When a trial court assesses whether the child would benefit from continuing the relationship, "the focus is the child. And the relationship may be shaped by a slew of factors, such as '[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.' [Citation.]" (*Caden C.*, *supra*, 11 Cal.5th at p. 632.)

When "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, citing *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).) The parent must show that his or her relationship with the child "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." (*Autumn H.*, at p. 575.) "A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646, disapproved on other grounds in *Caden C.*, at pp. 637-638, fns. 6, 7.)

In determining whether the 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. 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." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; see *Caden C.*, *supra*, 11 Cal.5th at p. 633.)

No party challenges the court's findings that Father maintained regular visitation and contact with Aurora and that there was some benefit to Aurora from her relationship with Father. We agree that those findings are supported by substantial evidence.

As to the third element, the juvenile court did not abuse its discretion by concluding that the benefits of Aurora's relationship with Father were not so great that termination of parental rights would be detrimental to her. Stanton opined that severing Aurora's relationship with her Father "could be detrimental" to her. That opinion does not compel a trial court finding that it would be or was likely to be detrimental when weighed against the benefits that she would derive from adoption. Aurora had spent approximately one year in Father's care but more than half of her life with Jacqueline. Aurora was bonded with her caregiver and had a strong connection with her, and Jacqueline was committed to providing permanency for Aurora. Aurora "exude[d] love and affection in the presence of [her] caregiver," and there is no evidence that she

suffered any negative emotional consequences when Father stopped visiting in mid-December 2023.

Father argues that the court should have considered legal guardianship as a "viable alternative" to termination of parental rights. The argument is meritless. The statutory scheme requires that parental rights be terminated if the child is likely to be adopted and no exception applies. (§ 366.26, subd. (c)(1).) The burden is on the parent to prove an exception. (*Caden C.*, *supra*, 11 Cal.5th at pp. 631, 636; § 366.26, subd. (c)(1)(B)(i).) The only exception at issue in this case is the beneficial parental relationship exception, and the only element at issue is whether Aurora's relationship with Father was so beneficial to her that the detriment she would suffer from severance of that relationship would outweigh the benefits of adoption. The opinion in the bonding study does not establish that it would, and the trial court therefore did not abuse its discretion by determining that it would not. Because Father did not carry his burden of proving that the exception applied, legal guardianship was not an option.

Father also argues that "[t]ermination of parental rights is a harsh remedy" and that "[t]he bias of the controlling statute is on family preservation, not removal." Father's arguments are contrary to governing law and would be more appropriately addressed to the Legislature. "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." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) When reunification efforts have failed, adoption is the first permanency option "in order of preference" and is "'the norm'" from which courts may deviate only "'in exceptional circumstances.'" (*Caden C.*, *supra*, 11 Cal.5th at pp. 630-631.)

Finally, Father argues that the juvenile court "did not conduct a *Caden C.* compliant hearing." The argument is meritless. The juvenile court expressly considered all three elements of the analysis under *Caden C.*, determining that Father had carried his burden on the first two but not on the third. The court acknowledged Aurora's relationship with Father and found that it was more substantial than her relationship with Mother. The court also acknowledged both parents' love for Aurora. But the court ultimately concluded, in light of all of the relevant circumstances, that Aurora's relationship with Father was not so beneficial that whatever detriment might be caused by its severance would outweigh the benefits of adoption. The court's analysis fully complied with *Caden C.*, and Father has not shown that the court abused its discretion.

DISPOSITION

The order terminating parental rights is affirmed.

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MENETREZ
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.