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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.D., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.D.

Defendant and Appellant.

E083852

(Super.Ct.No. J289345)

OPINION

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

Sebastien Akarmann, under appointment by the Court of Appeal, for Defendant and Appellant.

Tom Bunton, County Counsel, and Dawn M. Martin, Deputy County Counsel, for Plaintiff and Respondent.

K.D. (mother) appeals from an order terminating parental rights over her minor child. Mother argues the juvenile court abused its discretion by failing to apply the beneficial parental bond exception to adoption. We affirm.

BACKGROUND

Mother has six children, only the youngest of which, A.D. (born 2021), is the subject of this appeal. Four of the children were subjects of dependency cases which ended in adoption due to mother's substance abuse. The fifth child's case also ended in adoption.

The department received a referral alleging general neglect shortly after A.D.'s birth. It responded while A.D. was still in the hospital and found no safety concerns. Mother told the department she planned to have a friend be A.D.'s guardian and provided paperwork indicating she had started that process. However, when the department attempted to follow up, they were unable to contact mother.

After A.D. was discharged from the hospital in March 2021, the department no longer knew his or mother's whereabouts. Over the next few months the department attempted to investigate the claims of neglect and the existence of the allegedly pending guardianship, but mother was generally nonresponsive. In May 2021 the department sent mother a text message threatening to get the court involved if they could not confirm A.D.'s safety. Mother promised to bring A.D. to the department a few days later, but never showed.

After multiple unsuccessful attempts to contact mother, the department asked the police to conduct a welfare check. Police were able to contact mother, and mother told them she would call the department the next day. The department did not receive a call, so it obtained a detention warrant for A.D. When the police attempted to notify mother of the detention warrant, she was not home, and a man at the scene told the police she left home shortly after the initial welfare check.

In June 2021 the department filed a petition under Welfare and Institutions Code section 300¹ alleging mother's substance abuse history placed A.D. at risk, his unknown father had left him without support, and that A.D. was at risk of experiencing similar neglect as his siblings. Later that month, the court found the petition stated a prima facie case and ordered A.D. detained.

From May 2021 until September 2023 the department was unable to locate either mother or A.D. In July 2021 the department referred this matter to the Child Abduction Unit of the San Bernardino County District Attorney's office. The department and the district attorney's office were able to contact mother multiple times during this period—often after extensive investigation to find contact information—and each time mother disclaimed any neglect or substance abuse and insisted she did not understand why the department filed a dependency action. Other times mother even claimed not to know about the dependency action at all. Mother would always refuse to disclose her address, but usually agreed to produce A.D., agreeing to bring him with her to the next court

¹ Unlabeled statutory citations refer to the Welfare and Institutions Code.

hearing or to the department's offices. However, mother never followed through on these promises. Mother also failed to drug test despite agreeing to do so.

On June 27, 2023, mother appeared at the courthouse before a continued hearing in the matter. She did not bring A.D., told the department A.D. was with his father, and left before the matter was called.

In September 2023 police pulled mother over and found drug paraphernalia in her car and drug residue in her purse, which was next to A.D. Mother told the police she used methamphetamine once or twice a day while caring for A.D., and that she used it four hours prior to the traffic stop. Police arrested mother and the department detained A.D.

The department interviewed mother in November 2023. Mother denied being under the influence when she was pulled over. She said she told the police she took "an 'edible' " a few hours before, and that the police lied about her being under the influence and lied about finding drug paraphernalia and drug residue in her purse. She said she had not taken methamphetamine since 2018. She initially refused to sign certain documents and refused to engage in most services other than on-demand drug testing. She insisted she had no substance abuse issues but had sought outpatient substance abuse services because she knew the court would want to see that. Mother eventually signed the referral to complete parenting classes and individual therapy.

The court held a contested jurisdiction/disposition hearing in January 2024. Mother testified. She admitted that she failed to bring A.D. to the department but

claimed she “was just trying to protect [him] and have him with me and take care of him. I wanted to find an alternate reason and do classes while having him in my care.” She also claimed she made attempts to communicate with the department but “could not get a response.” However, she later said she “kind of irresponsibly ignored the fact of their phone calls.” She also admitted that the department informed her at least as early as February 2022 that dependency proceedings were ongoing and, in mother’s words, “if I was stopped or whatnot, that they would take my son.” Indeed, mother eventually said she was aware of the dependency proceedings and had been contacted by the department about them multiple times, saying “they informed me that I had court and they would tell me—that’s the only time I would hear from them was when a court date would be coming up.” She also claimed the drug paraphernalia and drug residue found in her car were “in an old purse that was part of all the trash that was going to be thrown away.” Finally, she alleged the police provided inaccurate information to the department in that she was only using marijuana, not methamphetamine.

After hearing testimony and argument, the court sustained the section 300 petition and denied reunification services under section 361.5, subdivisions (b)(10), (b)(11), and (b)(15).

In the two months following the hearing, the department visited A.D. with his caregiver twice. Both times the department observed that A.D. “appeared to be thriving, having a strong bond with [the caregiver],” and that he seemed to be comfortable around her. Mother also visited A.D., and the caregiver reported that mother was affectionate

and nurturing and interacted with him appropriately. However, the caregiver believed mother was trying to sabotage the placement due to mother claiming she had concerns about A.D.'s safety.

As of May 2024 A.D. had been diagnosed with autism but was generally physically capable and was receiving occupational therapy. He screamed and threw tantrums, but these were reducing in frequency and duration. The department observed that there was an "attachment and bond forming between [A.D.] and his prospective adoptive family," that he appeared "to be forming a trusting attachment to the family," and that his interactions with them were "positive without any fear or hesitation."

Mother continued to have weekly two-hour visits with A.D. supervised by A.D.'s caregiver. The caregiver reported mother was affectionate and nurturing during the visits. For example, mother would bring toys and food for him and comb and brush his hair. A.D. generally had no behavioral issues before visits but threw tantrums after the visits.

The court held a section 366.26 hearing in May 2024. Mother testified. She said that at the latest visit A.D. ran to her as soon as she arrived and that he calls her mom. She described how visits go, which involved her playing with him in a McDonald's play area, combing his hair, eating, playing with educational materials like flash cards, and then playing various games together. She said he tells her he loves her, though she was sure he tells his caregiver the same. She said when he could tell visits were ending he would start getting clingy, and when they ended would reach for her and scream and cry.

After hearing testimony and argument, the court assessed whether to apply the beneficial bond exception to adoption by the three factor test outlined in *In re Caden C.* (2021) 11 Cal.5th 614 (*Caden C.*). The court found mother met the first two prongs—regular visitation and the existence of a beneficial bond—but failed to prove the third prong—that terminating the relationship would be detrimental to the child. In so finding, the court cited A.D.’s young age and the fact that he would need services as reasons why “the permanency of adoption would outweigh any detriment to him.” It therefore terminated mother’s parental rights.

ANALYSIS

Mother argues the trial court erred when it did not apply the beneficial parental bond exception. We disagree.

“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 (*Jasmine D.*)) 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’ 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 and the child 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.” (*Caden C.*, *supra*, 11 Cal.5th at p. 631, italics omitted.)

“The first element—regular visitation and contact—is straightforward. The question is just whether ‘parents visit consistently,’ taking into account ‘the extent permitted by court orders.’ ” (*Caden C.*, *supra*, 11 Cal.5th at p. 632.) For the second element, courts may take into account “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.’ ” (*Ibid.*) As 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.” (*Id.* at p. 632, italics omitted.)

On review, we apply the substantial evidence standard to the findings on the first two elements and a hybrid standard for the third. (*Caden C.*, *supra*, 11 Cal.5th at p. 639.) Specifically, we review for abuse of discretion whether termination of parental rights would be detrimental to the child 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.) This hybrid standard embodies the principle that as the reviewing court, we may not “ ‘substitute [our] own judgment as to what is in the child’s best interests for the trial court’s determination in that regard.’ ” (*Caden C.*, at p. 641.)

The department concedes mother satisfied the first two elements and we accept the concession. Therefore, the only question is whether the trial court erred by concluding she failed to meet the third element. We conclude the record is sufficient to demonstrate she did not.

Sufficient evidence supported a finding that adoption would bring significant benefits. A.D. seemed well bonded to his caregivers and their family. His behavior improved over the time spent in their care, he seemed to have no problems being in their care, and according to the department he had formed “a trusting attachment to the family,” that was “without any fear or hesitation.” There was also substantial evidence to support the trial court’s finding that A.D.’s recent diagnosis of autism meant that he would benefit from a permanent placement. First, because—as the trial court pointed out—he needed consistent services with an engaged and consistent caregiver to address his deficits. Second, because inconsistency and impermanency often is a tremendous stressor for autistic children and adults alike, permanency would likely benefit him. In sum, allowing the caregiver to adopt A.D. was unlikely to be disruptive and likely to permanently solidify a living situation that was already working.

More importantly, there was little evidence A.D. would experience significant material or emotional harm from terminating his relationship with mother. Mother presented evidence that her visits with the child went well, that he told her he loved her, that he enjoyed playing with her, was excited to see her, and was sad when she left. However, this was evidence of a beneficial bond, not necessarily evidence that terminating that bond would be more detrimental than adoption. (See *In re Dy.P.* (2022) 76 Cal.App.5th 153, 167 [fact that the children “often called mother ‘mom’ or ‘mommy’ ” supported second element].) The only evidence that terminating this bond would be detrimental was that A.D. threw tantrums after visits. (*Ibid.* [fact that “the children would sometimes get upset at the end of the visits when they had to leave their parents” supported third element].) But this was less of a problem as time went on, and according to the caregiver he was fine by at least the next day.

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 mother’s parental rights did not outweigh the benefits of obtaining a final, stable, permanent custody arrangement.

Mother argues the trial court erred by failing to recite its specific analysis on the record. But *In re A.L.* (2022) 73 Cal.App.5th 1131 expressly rejected that argument, stating, “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.” (*Id.* at p. 1156, italics omitted.)

We find this reasoning applicable and fatal to mother’s claim of error.

Finally, mother claims the court erred by considering the caregiver’s bond with A.D., citing *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) to support her argument that a “significant relationship with a caregiver should not be considered as something that can negate the harm caused by losing a . . . relationship with a parent.” However, *S.B.* did not hold that it was improper to consider the bond between a caregiver and a child. It merely “reject[ed] the . . . position the continuing beneficial relationship exception does not apply unless the child has a ‘primary attachment’ to the parent.” (*Id.* at p. 299.)

According to *S.B.*, a child may have a positive relationship with both their prospective adoptive parent *and* their biological parent, and the parent’s relationship need not be the “primary” one for the parental bond benefit to apply. *S.B.* thus clarified that the question is not whether the child is primarily bonded with their parent, but whether terminating whatever relationship they did have would be detrimental, and if so whether that detriment outweighed the benefits of permanent adoption by their current caregiver. *S.B.* does not forbid consideration of the dependent child’s relationship with their prospective adoptive parent. It just requires that the benefits of making that relationship permanent outweigh the detriment of terminating the child’s relationship with their parent.

The trial court here did exactly that analysis, and therefore we cannot say that it abused its discretion by concluding that terminating mother’s relationship with A.D.

would not be so detrimental as to outweigh the benefits of adoption. Accordingly, we affirm the order terminating mother's parental rights.

DISPOSITION

We affirm.

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RAPHAEL
J.

We concur:

RAMIREZ
P. J.

MILLER
J.