Filed 3/25/11 In re H.T. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re H.T., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Appellant, v. H.T., Appellant, T.T., Respondent.	A128188 (Alameda County Super. Ct. No. OJ-08-010319)

The Alameda County Social Services Agency (Agency) and the minor, H.T., appeal from the juvenile court's order selecting a permanent plan of guardianship for the minor. The Agency and the minor contend the juvenile court erred when it determined it would be detrimental to the minor to terminate Mother's parental rights pursuant to the "beneficial relationship" exception set forth in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i),[1] and consequently erred in selecting a permanent plan of guardianship rather than of adoption. We affirm.

BACKGROUND

In December 2007, the San Francisco Human Services Agency (SF Agency) initiated these proceedings after receiving a referral from the San Francisco Police

[1] Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Department to the effect Mother, T.T., had come to a police station "wanting to give up her baby as she was unable to continue to provide care." Mother had been in San Francisco only a few days, and reported that, until her recent emancipation, she had been living in a foster care home in Visalia, Tulare County.

About six months later, on May 22, 2008, the Juvenile Division of the San Francisco City and County Superior Court concluded a jurisdictional/dispositional hearing, at which time it adjudged the minor a dependent under section 300, subdivisions (b) and (g), and placed her with Mother under a plan of family maintenance. The sustained jurisdictional allegations identified Mother's need for drug treatment, mental health services, including psychotropic medication, and parenting education. Thus, the family maintenance plan called for her to continue participation in a residential drug treatment program, continue in the care of a therapist and follow a recommendation for psychotherapy and medication, and complete a parenting class.

In September 2008, the SF Agency filed a supplemental petition under section 387, alleging Mother had left her residential drug treatment program after arranging for a relative to pick up the minor. The minor was placed with M.T., her maternal great-great aunt (Aunt), who lived in Tracy, San Joaquin County, while Mother began living with T.J., the minor's maternal great grandmother (Grandmother) in Oakland. Two months later, in late November 2008, the San Francisco Juvenile Court approved a mediation agreement under which the SF Agency withdrew the section 387 petition and the minor was again placed in Mother's care under a family maintenance plan. This plan included requirements for outpatient drug treatment, mental health treatment, and parenting education. The agreement also called for transfer of the case to the Alameda Juvenile Vourt. The Alameda court accepted the transfer on January 22, 2009.

On March 5, 2009, the Agency filed a supplemental petition under section 387, stating Mother was "overwhelm[ed] with providing care for the minor [while trying to] comply with her Family Maintenance case plan," and had requested that the minor be placed with either Grandmother or Aunt. The Agency placed the minor with

Grandmother in Oakland. The juvenile court, on March 30, found the supplemental allegations to be true. Mother's reunification case plan again included requirements for outpatient drug treatment and mental health treatment and medication.

On April 21, 2009, Mother told the Agency's assigned case worker that, after much deliberation she had decided she wanted the minor to be adopted by Aunt.[2] Accordingly, the Agency recommended that the juvenile court terminate Mother's reunification services and set the matter for a hearing under section 366.26. The court, at the six-month status review hearing held June 10, 2009, adopted these recommendations. At this time the Agency placed the minor with Aunt as the prospective adoptive parent.

Meanwhile, Mother, who did not visit the minor for several weeks after the minor's removal from her care in March, began visiting her every one or two weeks. The minor was happy with the resumed visitation. On August 11, 2009, Mother told the case worker that her situation had stabilized: she was clean and sober and had housing and employment, and she now wanted to reunify with the minor. The case worker, in her report prepared for the section 366.26 hearing, recommended that the juvenile court terminate Mother's parental rights and select a permanent plan of adoption by Aunt.

On October 2, 2009, Mother filed a petition under section 388, seeking to reinstate her reunification services and have the minor placed in her care. On November 23, the court denied Mother's section 388 petition on the ground the proposed modification of orders did not promote the minor's best interest.

Two days later, on November 25, 2009, Mother filed a second petition under section 388. The petition again sought reinstatement of reunification services and placement with Mother, stating additionally that such changes would be better for the minor because she would be "harmed by [the] terminat[ion of] mother's rights in favor of the current caregiver who has been inconsistent with allowing visitation." The juvenile court denied the second petition on December 18, again on the ground the proposed modifications did not promote the minor's best interest.

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[2] Grandmother, who had custody of the minor at this time, expressed support for adoption of the minor by Aunt, her sister and the younger of the two.

The juvenile court commenced the section 366.26 hearing on October 7, 2009. At the conclusion of testimony, on March 25, 2010, the court took the matter under submission. On April 7, after noting the case had been "particular[ly] hard . . . to decide," the court determined Mother had met her burden to prove that the termination of her parental rights would be detrimental to the minor pursuant to the "beneficial relationship" exception of section 366.26, subdivision (c)(1)(B)(i), finding she had "substantial and significant parent child relations" with the minor. Ruling Mother's parental rights would not be terminated—and hence adoption was not an option—the court continued the matter for selection of another permanent plan.

On April 28, the court selected legal guardianship, "the next most permanent plan" to that of adoption, and again continued the matter to enable the Agency to prepare letters of guardianship. On May 12, the court issued letters appointing Aunt as the minor's legal guardian.

These appeals followed. (§ 395, subd. (a)(1).)

DISCUSSION

When the juvenile court finds a minor is likely to be adopted, it is generally required to terminate parental rights and order the minor to be placed for adoption. (§ 366.26, subd. (c)(1).) The finding of a "beneficial relationship" is one of the statutory exceptions. (§ 366.26, subd. (c)(1)(B)(i).) Specifically, section 366.26, subdivision (c)(1)(B)(i), states: "[T]he court shall terminate parental rights unless . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents 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).)

The Courts of Appeal have considered the "beneficial relationship" exception in numerous cases. In *In re Autumn H.*, the court explained the "[i]nteraction between natural parent and child will always confer some incidental benefit to the child." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Therefore, more is required, and the exception applies only when the relationship with a natural parent "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.) The court in *In re Beatrice M.* agreed, holding that the parents' "frequent and loving contact" with their children was not enough to establish the necessary benefit from continuing the relationship, when the parents "had not occupied a parental role in relation to them at any time during their lives." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

"Another way of stating the beneficial parent-child concept described in [*In re*] *Autumn H.* is: a relationship characteristically arising from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

The same court that decided *In re Casey D.* subsequently characterized the nature of the determination required to apply the beneficial relationship exception in an even more flexible way: "The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the 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.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.) As Division Three of this court observed in *In re Jasmine D.*, "[p]arent-child relationships do not necessarily conform to a particular pattern. The juvenile court should be concerned not with finding a certain type of parental relationship but with the interests of the particular child or children before it, and whether there is a compelling reason not to terminate parental rights." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D*).)

When a juvenile court "finds that termination of parental rights would be detrimental to the child pursuant to . . . [the beneficial relationship exception] . . . , it shall

state its reasons in writing or on the record." (§ 366.26, subd. (c)(1)(D).) This does not mean that the court must make a series of formulaic findings. Rather, the court must explain why it finds the exception applies. (See *Jasmine D., supra*, 78 Cal.App.4th at p. 1350 [court must "make a more substantial and affirmative finding if it decides to apply the exception and preserve parental rights"].)

Here the court found the minor was adoptable, but determined further that termination of Mother's parental rights would be detrimental to the minor in that "[t]he mother has maintained regular visitation and contact with [the minor] and [the minor] would benefit from continuing the relationship." "[B]ased, principally on the evidence produced by [Grandmother]," the court found the relationship between Mother and the minor to be a *parental* relationship—that is, a "normal and substantial and significant parent child relations[hip]." The court also found Mother had visited the minor regularly, "even though there was a slip up or whatever happened during the Christmas and New Years time frame" in December 2009. Finally, the court noted that Mother, despite the termination of reunification services in June 2009, had made "significant progress" in stabilizing her life, earning a GED and "other things to improve herself." Accordingly, the court selected legal guardianship rather than adoption as the permanent plan.

The Agency contends the juvenile court erred in applying the "beneficial relationship" exception because it failed to consider " 'the many variables which affect a parent/child bond,' " particularly the minor's need for permanence and security, and failed to articulate a sufficient "compelling reason" to apply the exception.[3] The minor argues the evidence was not sufficient to support the juvenile court's findings that Mother had maintained regular visitation and contact, and that the minor would benefit from continuing the relationship. Further, the minor claims Mother failed to meet her burden

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[3] The Agency also argues the juvenile court erred in relying on the decisions in *In re Jerome D.* (2000) 84 Cal.App.4th 1200 and *In re Brandon C.* (1999) 71 Cal.App.4th 1530. Our review, however, focuses on that court's ruling, not its reasoning, much less its mere recitation of cases it has considered. (See *In re Natasha A.* (1996) 42 Cal.App.4th 28, 38.)

to prove a "compelling reason" for determining that termination of parental rights would be detrimental to the minor.

In reviewing the juvenile court's determination—that the "beneficial relationship" exception is applicable—we agree with those reviewing courts that have found the abuse of discretion standard appropriate. The statutory requirement that the court apply the exception only when it finds a "compelling reason" to do so is a "quintessentially discretionary determination." (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) Other appellate courts have applied the substantial evidence standard of review because the lower court's determination—whether the "beneficial relationship" exception is applicable or not—is expressed as a finding. (See, e.g., *In re Dakota* (2005) 132 Cal.App.4th 212, 228.) In either event, the differences between the two standards of review are not significant in this case. Even under the substantial evidence standard, we view the evidence in the light most favorable to the judgment, draw all reasonable inferences in its favor, and recognize the juvenile court's opportunity to observe the witnesses and get " 'the feel of the case.' " (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

As we have noted, the evidence on which the juvenile court "principally" relied—that which, in effect provided the court with a "compelling reason" not to terminate Mother's parental rights—was the testimony of Grandmother. The background summary above shows that Mother lived with the minor at Grandmother's house for a period beginning in November 2008, and the minor was placed in Grandmother's care for a period of several months beginning in March 2009. It appears, in addition, that Grandmother *alone* had the opportunity to observe Mother with the minor after the latter's placement with Aunt in June 2009. This was because Aunt would drive to Oakland from Tracy once or twice a week, sometimes more, and Grandmother would pick up the minor and take her to her own home while Aunt attended church or other business. Mother would visit with the minor at these times.

Grandmother testified that during the visits she observed, the minor would run to Mother and "jump[] up in her arms," shouting "mommy, mommy."[4] Mother took "full control" of the minor, taking her out, playing with her, feeding her, and changing her. Mother "[took] care of [the minor] the full time that she[was] there." Mother disciplined the minor by "just talk[ing] to her." At the end of visits, Grandmother would observe the minor "cr[y] to stay with [Mother]" "almost every time."

When asked if she had any concerns about Mother's parenting, Grandmother replied "[n]o," and described Mother as "loving, caring [and] concerned about the welfare of [the minor]." Later, when asked to describe the relationship she observed between Mother and the minor, Grandmother said "just beautiful" and could not "explain it more than that."

Grandmother reported that, in addition to visits, Mother maintained contact with the minor by frequent telephone calls, making "[e]veryday" calls to the minor when she was with Aunt, as well calls to or from Grandmother's home. Grandmother described these calls as affectionate on both sides.

We conclude substantial evidence supports the juvenile court's express and purely factual finding that Mother regularly visited and maintained contact with the minor *despite* a "slip up" during the holiday season in December 2009. The foregoing statements elicited from Grandmother are sufficient—at least with respect to the period between June 2009 and early February 2010, when Grandmother completed her testimony. Concerning the "slip up" in the latter part of December 2009, the evidence was extensive and conflicting. Nevertheless, Grandmother testified that at least some visitation occurred during this period, despite some visits missed due to transportation problems, Mother's illness, or misunderstanding among the parties.

We conclude further, on the basis of Grandmother's testimony—the only witness to and with personal knowledge of Mother's relationship with the minor—that the juvenile court could reasonably determine Mother's relationship with the minor was truly

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[4] Grandmother explained that the minor called Mother "mommy," while she addressed Aunt as "mom" and herself as "nana."

parental rather than merely friendly or familiar (see *Jasmine D., supra*, 78 Cal.App.4th at p. 1350), and hence that the minor would benefit from a continuation of that relationship.

We are not persuaded by the Agency's suggestion that the other reason articulated by the juvenile court—Mother's efforts to stabilize her life and "improve herself"—failed to provide adequate support for the court's ultimate determination there was a "compelling reason" not to terminate Mother's parental rights. The testimony of Grandmother and Mother, herself, showed Mother had made notable, successful efforts from June 2009 onward—efforts made after the termination of her reunification services and thus entirely on her own initiative. Mother entered an outpatient drug treatment program, began attending NA meetings, participated in therapy, and had remained clean and sober for nine months, testing negative on drug tests. She had completed parenting classes as well, and related that these had given her insight into understanding and caring for the minor, as well as the baby Mother was expecting at the time of her testimony in February and March 2010. According to Grandmother, Mother appeared to have remained clean and sober over the six-month period preceding her testimony in February 2010, had obtained her own housing, and had begun attending church with Grandmother, as well as participating in "her meetings and her schooling." Mother now "had her head on [straight]," "[took] care of herself better," and there was "just a big difference in her than [when she was] out in the streets." The juvenile court itself had a unique opportunity as the trier of fact to observe Mother's demeanor over the course of the dependency proceedings, both as a party and a witness—a position we cannot replicate. We find it significant that the judge noted on the record on at least one occasion that "just from my observation of you since I've been dealing with this case . . . [y]ou have changed," and recommended that Mother continue her efforts.

Mother testified that when she left the foster care home in Visalia, when the minor was still an infant, she was not "used to the real world" and became overwhelmed. Mother began to receive support, however, from a program designed to assist young adults making the transition from foster care to emancipated status. According to Mother, she never "abandoned" the minor during this transitional period, because each

time she felt a need to focus on stabilizing her own life. In the meantime, she believed it was *in the minor's best interest* that she be in the more stable care of Grandmother or Aunt.

In our view, the evidence of Mother's progress and increased stability is consistent with her testimony that she was overwhelmed when she initially left foster care, and acted in the minor's best interest when she asked relatives to assume care of the minor while she addressed her own instability. It is, more importantly, consistent with Mother's testimony that, because of the progress she had made, she did *not* believe she would become unstable again should her parenting relationship with the minor continue. As such, it provides support for the juvenile court's determination there was a compelling reason not to terminate Mother's parental rights and sever the parental relationship she had established with the minor notwithstanding her initial difficulties as an emancipated young adult.[5]

Finally, we reject the Agency's claim that the juvenile court failed to consider the "many variables" it was required to weigh in making its determination. It is clear from our review of the lengthy section 366.26 hearing—and not least from the court's comment that it was "very, very close case"—that the court carefully weighed the competing interests of the permanence and stability of adoption versus the continuation of the relationship between Mother and the minor. In this connection, we note particularly that there was no evidence that the court's decision not to terminate Mother's parental rights would jeopardize the security and stability of the minor's placement with Aunt. (Cf. *In re Jerome D., supra,* 84 Cal.App.4th at p. 1208.) While Aunt may have expressed to the Agency her preference for adoption, she nevertheless accepted her appointment as legal guardian.

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[5] *In re Clifton B.* (2000) 81 Cal.App.4th 415, 421, cited by the Agency, is distinguishable. Here, Mother was a recently emancipated young mother and there was no evidence of a lengthy history of relapse following periods of sobriety.

We therefore conclude the juvenile court did not abuse its discretion in determining that the "beneficial relationship" exception of section 366.26, subdivision (c)(1)(B)(i), applied to preclude the termination of Mother's parental rights.

DISPOSITION

The order of April 7, 2010, is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.