



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

In re Hailey C.

CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

Sara K. and Robert C. (together, the parents) appeal a juvenile court order terminating their parental rights to their minor daughter, Hailey C., under Welfare and Institutions Code section 366.26.¹ Sara contends the court erred by denying her section 388 petition for modification by which she sought to have the court return Hailey to her custody, or alternatively, reinstate reunification services. Sara also challenges 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 her parental rights. Robert joins in these arguments. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2010, six-month-old Hailey became a dependent of the juvenile court under section 300, subdivision (b) and was removed from parental custody based on findings Hailey was exposed to violence in the home when Robert was stabbed by another man during a drug deal; Robert used methamphetamine and marijuana; drugs and drug paraphernalia were found in the home; and Sara had failed to protect Hailey. The court placed Hailey with relatives and ordered reunification services for the parents, including supervised visitation. Sara was ordered to participate in individual therapy, parenting classes and substance abuse treatment for her alcohol abuse.

During the next six months, the parents did not consistently participate in services. Initially, they visited Hailey regularly, but the frequency of visits declined. The parents offered various excuses for missing visits or showing up late. Sara arrived at one visit smelling of beer, and during another visit, she drank a beer. At the six-month review hearing, the court terminated services and set a section 366.26 hearing to select and implement a permanent plan for Hailey.

The social worker for the San Diego County Health and Human Services Agency (Agency) assessed



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

Hailey as adoptable. The social worker recommended adoption as Hailey's permanent plan after determining none of the exceptions to adoption applied.

Sara filed a section 388 petition for modification, asking the court to return Hailey to her custody or reinstate reunification services. The petition alleged Sara's circumstances had changed in that she was now participating in services, attending Alcoholics Anonymous (AA) meetings and no longer living with Robert. The petition further alleged the proposed modification was in Hailey's best interests because Hailey was attached to her and should be returned to her biological mother. The court ordered a hearing on the petition, scheduled for the same day as the selection and implementation hearing.

At the hearing in May 2011, the court received in evidence Agency's reports and the stipulated testimony of social worker Julie Walker. If called to testify, Walker would say she had no knowledge of the services in which Sara claimed to be participating until she received Sara's section 388 petition. Also, Sara's substance abuse counselor informed Walker that Sara tested positive for methamphetamine and alcohol in January 2011, and tested positive for methamphetamine in March 2011. The counselor recently referred Sara to residential drug treatment and, once that referral was made, Sara no longer attended the drug treatment program in which she was enrolled.²

Sara testified that after the court terminated reunification services in December 2010, she enrolled in and completed parenting classes, and was attending self-help meetings, individual therapy and AA meetings. Before December, she had been in a drug counseling program. Although Sara was referred to a residential drug treatment program, she did not complete it because she was advised "it wouldn't be the best thing" to do. Sara had been separated from Robert for a month and did not intend to reunite with him in the future.

Sara further testified she loved Hailey, who had a bond with her. At visits, Hailey was happy to see her, hugged her and called her "mama." They enjoyed playing together, and Sara was able to successfully redirect Hailey when necessary. Sara missed two visits due to transportation problems and missed other visits when Hailey was sick.

After considering the evidence and arguments of counsel, the court denied Sara's section 388 petition, finding there was no showing Sara's circumstances had changed or that the proposed modification was in Hailey's best interests. The court also found Hailey was likely to be adopted and none of the exceptions to adoption applied to preclude terminating parental rights.

DISCUSSION

I

The parents contend the court erred by denying Sara's section 388 modification petition. They assert



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

Sara met her burden of showing her circumstances had changed and it was in Hailey's best interests to grant the petition.

A

Under section 388, a party may petition the court to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, there is a change of circumstances or new evidence, and the proposed change is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) Whether a previous court order should be modified and a change would be in the child's best interests are questions within the sound discretion of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our decision for that of the juvenile court. (*In re Stephanie M.*, at pp. 318-319.)

B

Here, Sara alleged her circumstances had changed because she was participating in services on her own, she would complete all her treatment goals in the next six months and she was no longer living with Robert. However, Sara's petition and supporting documentation show, at most, her circumstances were "changing," but had not changed. (*In re Casey D.*, supra, 70 Cal.App.4th at p. 47.) Sara had participated in drug treatment, but did not complete it. She continued to use drugs and alcohol, and tested positive for methamphetamine 10 weeks before the hearing on her modification petition. Sara's drug counselor believed Sara needed at least six months of residential drug treatment, but Sara declined to enroll in a residential drug treatment program and stopped treatment altogether.

Further, Sara had attended only three or four sessions of individual therapy and did not complete domestic violence treatment. Although she completed a parenting course and no longer lived with Robert, she did not show she had successfully addressed the issues that brought Hailey into protective custody. Thus, the court could reasonably infer Sara had not rehabilitated sufficiently to warrant returning Hailey to her custody or reinstating services. A petition like Sara's that alleges changing circumstances does not promote stability for the child or the child's best interests because it would mean delaying the selection of a permanent plan to see if a parent, who has failed to reunify with the child, might be able to reunify at some future point. (*In re Casey D.*, supra, 70 Cal.App.4th at p. 47.) "Childhood does not wait for the parent to become adequate." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

Even had Sara shown changed circumstances, she did not meet her burden of showing it would be in Hailey's best interests to be returned to her custody or to have a permanent plan delayed by offering



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

Sara more reunification services. The Legislature has determined an attempt to facilitate reunification between a parent and child generally is not in the child's best interests when the parent is a chronic drug abuser who has resisted prior treatment. (In re Levi U. (2000) 78 Cal.App.4th 191, 199-200.) The parent's high risk of relapse into drug use puts his or her interest in reunifying with the child directly at odds with the child's compelling right to a " 'placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' " (In re William B. (2008) 163 Cal.App.4th 1220, 1228.) Sara had previously participated in drug treatment, but tested positive for methamphetamine 10 weeks before the hearing. Even had Sara been drug-free after her last positive test, she remained at high risk of relapse.

Sara asserts the proposed modification for further services was in Hailey's best interests because she had a loving, bonded relationship with Hailey. However, "[t]he presumption favoring natural parents by itself does not satisfy the best interests prong of section 388. The cases that state a child may be better off with his or her biological parent rather than with strangers do so when the biological parent has shown a sustained commitment to the child and parenting responsibilities." (In re Justice P. (2004) 123 Cal.App.4th 181, 192.) Here, in contrast, Sara has not been committed to safely parenting Hailey, despite having received eight months of services. The court could reasonably find that ordering additional services for Sara in the hope she would reunify with Hailey would postpone stability for Hailey, and would not be in her best interests compared to the certainty of a permanent home. (See In re Angel B. (2002) 97 Cal.App.4th 454, 464.) The proper focus of this case was on Hailey's need for stability and permanency, regardless of Sara's interest in reunification. (In re Stephanie M., supra, 7 Cal.4th at p. 317; In re Brittany K. (2005) 127 Cal.App.4th 1497, 1507.) The court acted well within its discretion by denying Sara's section 388 modification petition.

II

The parents challenge the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating parental rights. They assert Sara maintained regular visitation and contact with Hailey, who would benefit from continuing the parent-child relationship.

A

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (In re Fernando M. (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (Ibid.)



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

"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." (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 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.) 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. (1999) 73 Cal.App.4th 823, 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 this regard, we do not consider the credibility of witnesses, resolve conflicts in the evidence or weigh 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.)



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

B

Here, Sara's visits with Hailey were initially consistent, but decreased over time. Sara was frequently late to visits and had various excuses as to why she missed them. Even if the visits are considered regular, Sara did not meet her burden of showing there was a beneficial parent-child relationship sufficient to apply the exception of section 366.26, subdivision (c)(1)(B)(i).

The record shows Hailey enjoyed seeing and playing with Sara at supervised visits, and called her "mama." She cried and held onto Sara at the end of some visits. However, Hailey was easily consoled, and there was no evidence she was negatively impacted by the absence of Sara from her daily life. Any positive bond, warmth and affection Hailey shared with Sara was not enough to show she has a "significant, positive, emotional attachment" to her such that terminating the parent-child relationship would result in great harm to Hailey. (In re Jason J., *supra*, 175 Cal.App.4th at pp. 936, 937; In re Autumn H., *supra*, 27 Cal.App.4th at p. 575.)

Although Sara's relationship with Hailey was loving and pleasant, it was not parental. Throughout the dependency proceedings, Sara made choices that put her own needs ahead of those of Hailey, and she has not been able to show her commitment to parenting. "A biological parent who has failed to reunify with an adoptable child may not derail an 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., *supra*, 97 Cal.App.4th at p. 466.)

Further, Sara has not shown that maintaining a relationship with Hailey outweighed the benefits of adoption for her. Hailey was removed from parental custody when she was five months old. Since that time, she has had to depend on caregivers other than her parents to meet her daily physical, medical, developmental and emotional needs. Hailey is now two years old and deserves the stability, continuity and permanence that only an adoptive home can provide. The court was entitled to accept the social worker's opinion that the benefits of adoption for Hailey outweighed the benefits of maintaining a relationship with Sara. (In re Justice P., *supra*, 123 Cal.App.4th at p. 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue].) We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (In re Casey D., *supra*, 70 Cal.App.4th at p. 53.) Substantial evidence supports the court's finding there was no beneficial parent-child relationship to preclude terminating parental rights.

DISPOSITION

The order is affirmed.

WE CONCUR: BENKE, Acting P. J. HALLER, J.

1. All further statutory references are to the Welfare and Institutions Code.



In Re Hailey C.

2011 | Cited 0 times | California Court of Appeal | December 12, 2011

2. The court also received in evidence further stipulated testimony by Walker, not relevant to the issues on appeal, concerning Hailey's adoptability and Walker's contact with non-relative extended family members who wanted to adopt Hailey.

