

Supreme Court Case No. S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re C.C.,

A Person Coming Under The
Juvenile Court Law

Case No. A153925,
Consolidated with
Case No. A154042

(San Francisco Superior Court
Case No. JD15-3034)

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Appellant,

v.

C.C.,

Defendant and Respondent;

CADEN C., a Minor,

Appellant.

ANSWER TO PETITION FOR REVIEW

Appeal from Orders of the Superior Court for the State of California
For the County of San Francisco County
Honorable Monica Wiley, Judge Presiding

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I. INTRODUCTION

Caden C. spent the majority of his young life with a substance-dependent mother who used methamphetamines to “self-medicate” her mental health issues and who believed she was a better parent when using drugs. Caden was first removed from mother’s care in September 2013 when he was four years old; he was removed for the second time when he was seven years old; and he had been in five different foster care placements by the time of the Welfare and Institutions Code section 366.26 hearing (“.26 hearing”). The undisputed evidence at the .26 hearing was that (1) mother was using substances and was making no efforts to address her substance abuse and mental health issues; (2) Caden was closely bonded with his current caregiver, whom he has known for four years and who wants to adopt him; (3) Caden’s special needs require consistent support and caregiving; (4) Caden has additional vulnerabilities based on his exposure to more than four categories of trauma while in mother’s care; and (5) without placement in an adoptive home, Caden’s physical and mental health are at substantial risk.

Despite the foregoing, and despite finding that Caden was adoptable, the juvenile court declined to give Caden the security and permanency he deserved, finding that the bond Caden had with his mother outweighed the bond he shared with the caregiver who would adopt him. In doing so, the juvenile court plainly misapplied the law. The juvenile court also relied on

evidence that did not exist and misunderstood the expert testimony before it. The court instead chose long-term foster care for Caden, an option that had already proved problematic due to mother's history of constant interference and efforts to undermine placements, and which undisputed expert testimony opined was unacceptably risky due to the extent of Caden's trauma history and learning disabilities.

The appeals in this case were filed by both the San Francisco Human Services Agency and by minor. Both sought a determination that no reasonable court could have made the finding that this juvenile court made. The Court of Appeal agreed, finding that, under the circumstances of this case, no reasonable court could have concluded that a compelling justification for refusing to order adoption was made.

Petitioner mother has a 37-year history of substance abuse that has resulted in multiple removals for six of her children. Her substance abuse and mental health issues caused Caden to endure years of trauma and instability including two removals and five different foster care placements. By the time of the section 366.26 hearing, she was, by all accounts, refusing to engage in substance abuse or mental health treatment, lacking any insight into the effect of her substance abuse on her ability to be a parent to Caden.

Mother argues that this Court's review is necessary to secure uniformity of decision and settle an important question of law under California Rules of Court, rule 8.500, subdivision (b)(1). But no such need exists--there

is no disagreement among the districts and no unsettled issue of law. The Court of Appeal simply found and corrected an abuse of the trial court's discretion.

II. THERE ARE NO GROUNDS FOR REVIEW

A. Mother mischaracterizes the Court of Appeal's decision; the decision did not create a new requirement and did not alter application of the beneficial relationship exception.

Mother asserts that the Court of Appeal created a new requirement for the beneficial relationship exception – that the parent be in compliance with services and be rehabilitated – thus rendering the exception meaningless. But the decision created no such requirement.

In this case, mother (1) was making no efforts to engage in services; (2) was abusing substances; and (3) testified at an earlier postpermanency review hearing that she did not understand how methamphetamine use affected her fitness as a parent, and testified at the permanency planning hearing that while she was an addict, her drug usage did not negatively impact her ability to parent her child. After examining these facts and others, the Court of Appeal held:

No reasonable court would apply the beneficial relationship exception on this record of mother's disengagement from treatment and case plan, inability or unwillingness to remain sober, and deficient insight regarding her parenting.

In re Caden C., case no. A153925, slip op. at p. 28. Nowhere in the opinion does the Court of Appeal specify the requirement that the parent seeking

application of the exception be in compliance with services and be rehabilitated. Nor does it seek to prohibit application of the exception in every case where a parent has failed to reunify with her child. It simply required that the juvenile court give the necessary consideration to the undisputed evidence before it when determining whether the parent-child relationship promotes the well-being of the child to such a degree as to outweigh the benefit of adoption.

B. The law is not unsettled; courts have long affirmed that a parent’s effort to address substance abuse and mental health is an appropriate factor in the beneficial relationship exception analysis.

Mother further argues that this Court should “settle the question” of whether or not a parent’s engagement in services, and her progress therein, should be factors in the beneficial relationship exception analysis. But the courts have long been in agreement that consideration of such factors is appropriate. *See In re Caden C.*, case no. A153925, slip op. at p. 26-27, citing *In re Noah G.* (2016) 247 Cal.App.4th 1292; *Breanna S.* (2017) 8 Cal.App.5th 636; *In re Marcelo B.* (2012) 209 Cal.App.4th 635; *In re S.B.* (2008) 164 Cal.App.4th 289; *In re Amber M.* (2002) 103 Cal.App.4th 681; *In re Brandon C.* (1999) 71 Cal.App.4th 1530 and *In re E.T.* (2018) 31 Cal.App.5th 68. Mother has identified no decision holding that that consideration of such factors is improper.

Moreover, there is no question that a parent’s efforts to address her substance abuse and mental health issues *should* be a consideration. The task of the juvenile court is to assess the value of the parent-child relationship and

to determine whether that relationship amounts to a compelling reason to forgo adoption and all of its attendant benefits. A parent's utter refusal to engage in efforts to address substance abuse or mental health is an obvious factor in that determination.

C. The Court of Appeal's decision was correct.

A further basis for denying review is the simple fact that the Court of Appeal was correct. The juvenile court's decision to forgo adoption by Caden's longtime caregiver in favor of the instability of long-term foster care was – on the record before it and in light of well-established principles of dependency law – a rare but clear abuse of discretion.

When reunification efforts with a parent fail, as they did in this case, the focus shifts from family preservation “to the needs of the child for permanency and stability.” *In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1163; *In re Jason J.* (2009) 175 Cal.App.4th 922, 935. Thus, permanency planning hearings are “designed to protect children's ‘compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’” *In re Celine R.* (2003) 31 Cal.4th 45, 52–53. As the most permanent of the available options, adoption is the plan preferred by the Legislature. *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573. Indeed, when a court finds that a child 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 would be detrimental to the child” due to one or more of the statutory circumstances delineated in section 366.26. § 366.26, subd. (c)(1)(B); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320. The three prongs which establish the beneficial relationship exception are: (1) regular visitation and contact with the minor; (2) a significant parent-child relationship; and (3) that the parent-child relationship promotes the well-being of the child to such a degree as to outweigh the benefit the child would obtain by securing a permanent home with new, adoptive parents. Section 366.26(c)(1)(B)(i).

Here, the Court of Appeal was correct when it held that no reasonable court could have found the third prong of the exception was satisfied. Caden is an especially vulnerable child, with learning disabilities, PTSD, and exposure to multiple types of trauma. In addition to mother’s refusal to make efforts to address her substance abuse and mental health issues and her lack of any insight into those issues, she had a history of trying to interfere with and undermine Caden’s foster care placements and had recently caused a guardianship for her daughter to fail. At the same time, his longtime caregiver had shown a remarkable commitment to the boy’s well-being over the course of five years, as well as the ability to support his needs.

These circumstances were undisputed and went to the heart of the weighing process that is the essence of the third prong. There was also undisputed expert opinion. Dr. Lieberman – the only expert in the case who considered the question of how Caden would do in foster care if parental rights

were not terminated and the only expert who weighed the different permanency options against each other – opined that, even accepting the strong parent-child bond, any placement other than adoption would pose an “unacceptable risk” to Caden’s well-being due to his vulnerabilities. The circumstances of the case, together with the expert opinions, viewed as a whole and in light of the well-established jurisprudence on the beneficial relationship exception, could resolve the third prong in only one way.

Tellingly, the juvenile court (1) never explained how it reconciled these circumstances; (2) ignored Dr. Lieberman for an unsupportable reason (as explained in Slip Op. at fn. 6; and (3) provided analysis that was fundamentally confused. In addition to purporting to rely on evidence of mother’s supposed efforts to maintain her sobriety where none existed in the record, the juvenile court also appeared confused as to the legal standard it needed to apply, believing that the question was whether a beneficial relationship existed (without the balancing of the third prong) and whether mother’s parental bond trumped the bond Caden shared with his current caregiver. If the Court of Appeal had not reversed it would have would have fallen short of its duty as a reviewing court.

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III. CONCLUSION

For all of the foregoing reasons the San Francisco Human Services Agency respectfully requests that the petition for review be denied.

Dated: May 28, 2019

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE
(California Rules of Court, rule 8.204(c)(1) and
8.412(a).)

I certify that this brief complies with Rule 8.204, because it uses proportionately spaced font with a typeface of 13 point and contains 1,763 words.

To assess the number of words, I utilized the word count function of Microsoft Word program with which this brief was drafted.

Dated: May 28, 2019

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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is 101 Montgomery Street, Suite 2650, San Francisco, California, 94104. On May 28, 2019, I served the attached **ANSWER TO PETITION FOR REVIEW** in said action by depositing it in a sealed envelope, postage prepaid, in the United States Mail, addressed as follows:

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San Francisco, California 94102

Supreme Court
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San Francisco, California 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on May 28, 2019, at San Francisco, California.



Linda J. Halperin

STATE OF CALIFORNIA
 Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
 Supreme Court of California

Case Name: **IN RE CADEN C.**
 Case Number: **S255839**
 Lower Court Case Number: **A153925**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/28/2019

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