Filed 8/16/17 In re Andrew O. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANDREW O., A person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.B., Defendant and Appellant.	B279728 (Los Angeles County Super. Ct. No. DK03706)

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel and Stephanie Jo Reagan, Deputy County Counsel, for Plaintiff and Respondent.

Appellant E.B. (Mother), mother of Andrew O., appeals the juvenile court order terminating parental rights under Welfare and Institutions Code section 366.26.[1] Mother contends substantial evidence does not support the court's finding that Andrew was adoptable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background Facts*

We summarize the facts surrounding jurisdiction and the reunification period briefly, as they are not directly pertinent to the issue raised on appeal. In February 2014, when Andrew was two, he was detained by the Department of Children and Family Services (DCFS) after Mother was arrested in possession of a large quantity of methamphetamine and a firearm. Andrew was initially placed with his father, Ricardo O. (Father).[2] A few months later, Father tested positive for methamphetamine, and Andrew was

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] Father is not a party to this appeal.

placed in foster care. After the court found grounds for assertion of jurisdiction, Mother and Father were provided reunification services. Initially, Mother complied with the case plan. Andrew was returned to her custody in December 2014. A few months later, however, Mother was arrested in possession of a controlled substance, and tested positive for methamphetamine. Andrew was removed again. In the months that followed, Mother was inconstant in visiting Andrew and participating in services. In May 2016, the court terminated reunification services and set a section 366.26 hearing for August 31, 2016.

B. *Facts Pertinent to Adoptability*

In June 2015, after his second removal from Mother's custody, Andrew was placed in the foster home of Sandra B. He was examined at that time, and found to be physically healthy and developmentally on target. He was described as "verbal" and "energetic." Within a few months, he was described as "thriving" in his placement, and developing a bond with his foster family. However, his daycare provider reported he had tantrums. His foster mother reported he was anxious, afraid of the dark, and asked about Mother multiple times a week. If Mother missed or was late for a visit, he cried and asked if she loved him. He also cried at bedtime, had difficulty falling asleep, and had bouts of anger multiple times per day.

In August 2015, Andrew was sent to therapy to address "process history," "presenting behaviors," and "self-

regulation." The therapist said his disruptive behavior was triggered by Mother's inconsistency. Andrew attended sessions once per week for six months. In January 2016, his therapist closed his treatment program because he had made substantial progress in every area. He was sleeping better and no longer anxious. He continued to express anger, but much less often.[3]

In June 2016, the caseworker spoke with foster mother Sandra B. about adopting Andrew. Initially, Sandra said she and her husband were very interested. Shortly thereafter, the B.'s reported having second thoughts due to Andrew's behavior, and in August told the caseworker they were no longer interested in pursuing adoption. Thus, on August 31, 2016, the date originally set for the section 366.26 hearing, Andrew had no prospective adoptive family. The court continued the section 366.26 hearing to November 2, 2016, and ordered the boy assessed for therapeutic behavioral services and wraparound services.[4]

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[3] After the therapy concluded, the B.'s reported Andrew's sleep patterns had become "normal," and described him as "verbal" and "sociable." The daycare providers reported he sometimes had conflicts with his peers and did not always follow the rules, but was "intelligent," did his homework and "liked . . . [m]ath."

[4] """Wraparound services""" are "'community-based intervention services that emphasize the strengths of the child and family and includes the delivery of coordinated, highly individualized unconditional services to address needs and achieve positive outcomes in [the] lives [of the targeted children

(*Continued on the next page.*)

Some months earlier, in April 2016, Andrew's therapy had been re-started. The goal this time was to "increase positive attachment behaviors," by processing Andrew's feelings about Mother's abandonment and, later, the impending move from his foster home.[5] Prior to the August 31 hearing, Andrew's therapist reported he was making progress. After the hearing, he stated that Andrew did not need wraparound services or meet the criteria for them. DCFS nonetheless offered to provide wraparound services, but the B.'s declined as they did not believe Andrew's behavior was sufficiently severe.

In September 2016, the adoption caseworker identified several families who appeared to be good matches for Andrew. DCSF selected a couple identified as "Ms. S. and Ms. C.," who were teachers, had no other children, and already had an approved home study. In October 2016, DCFS arranged a meeting and visits, including an extended weekend visit, between Andrew and his prospective adoptive family. The meeting and visits went well, and Andrew was placed in their home on November 1. The section 366.26 hearing was set for the following day, but the court

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and families]."' (*In re Andrew J.* (2013) 213 Cal.App.4th 678, 684, quoting section 18251, subd. (d).)

[5] Mother stopped visiting Andrew at the end of 2015. She was arrested and re-incarcerated in June 2016.

continued it six weeks because the prospective adoptive home was new.[6]

Prior to the December 14, 2016 section 366.26 hearing, the caseworker reported Andrew had a "smooth and positive transition" to the home of Ms. S. and Ms. C., and appeared to be "comfortable and at ease in [their] presence" and to be bonding with them. In a last-minute information for the court, the caseworker stated Andrew was "comfortable, happy, and secure" in his new home, which would be "a wonderful, loving, and nurturing place for Andrew to live and grow." Ms. C. and Ms. S. were described as "motivated," "capable of meeting all of [Andrew's] needs[,] . . . emotional and medical," capable of "providing [him] with appropriate care and supervision," and "thoroughly involved in Andrew's life." DCFS recommended termination of parental rights to free Andrew for adoption.

At the hearing, Andrew's attorney argued the boy was adoptable, and asked the court to terminate parental rights. Mother's counsel contended he was not adoptable due to "severe behavioral issues" and because it was unclear whether his current home would be permanent.[7] The court

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[6] The court considered continuing the hearing for a longer period, but Andrew's counsel objected, advising the court that Andrew was happy in his prospective adoptive home and that there was no need for delay.

[7] In the interim between the November hearing and the final hearing, two of Mother's relatives and a non-related extended family member expressed interest in providing a home for
(*Continued on the next page.*)

found by clear and convincing evidence that Andrew was adoptable, and terminated parental rights. Mother appealed.

DISCUSSION

At the section 366.26 hearing, the court selects the permanent plan for the dependent child from among several options, one of which is terminating parental rights and ordering the child placed for adoption. (§ 366.26, subd. (b); *In re Celine R.* (2003) 31 Cal.4th 45, 53.) "'Adoption is the Legislature's first choice.'" (*In re Celine R.*, *supra*, at p. 53.) If the court determines by clear and convincing evidence that it is likely the child will be adopted, the court "shall terminate parental rights and order the child placed for adoption" (§ 366.26, subd. (c)(1)), unless a statutory exception -- none of which were raised here -- "provides a compelling reason for finding that termination of parental rights would be detrimental to the child." (*In re Celine R.*, *supra*, at p. 53.)

Mother contends the evidence does not support the court's finding that Andrew was adoptable. She points to Andrew's behavior and its contribution to the reversal of the

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Andrew, but either did not pass the requisite background screening or failed to follow through with DCFS. At the commencement of the hearing, Mother's counsel asked that the matter be continued so that a different non-relative -- Mother's godmother -- could be considered for placement. The court denied the request.

B's decision to adopt. She further contends that to the extent the finding of adoptability was based on the interest expressed by Ms. S. and Ms. C., it was "premature," as he had been in their prospective adoptive home for only six weeks. We disagree.

"'The issue of adoptability . . . focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.]'" (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, quoting *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) "All that is required [to support the finding of adoptability] is clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time." (*In re Zeth S.*, *supra*, at p. 406.) "Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292, quoting § 366.26, subd. (c)(1).)[8]

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[8] We note that in 2005, section 366.26 was amended to add a section providing that a child who is not adopted three years from the date the court terminates parental rights may petition the court to reinstate parental rights. (See 366.26, subd, (i)(3); *In re I.I.* (2008) 168 Cal.App.4th 857, 871.) Thus, "under the current statute, there is no danger of . . . children becoming legal orphans." (*In re I.I.*, *supra*, at p. 871.)

On appeal, "[w]e review the factual basis of a termination order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find a factual basis for termination by clear and convincing evidence." (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) For a finding of general adoptability to be upheld, "it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.'" (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.)

Here, the evidence supported the finding that Andrew was generally adoptable. He was young (five years old at the time of the hearing), physically healthy and developmentally on track. He was described as "sociable," "verbal," "intelligent," and "energetic." His emotional problems, triggered by Mother's inconsistency, were essentially resolved by the initial six-months of therapy. He was sleeping, was no longer anxious, and was no longer expressing the same level of anger. The second round of therapy was set up not because these problems had recurred, but to resolve issues pertaining to his abandonment by Mother and the B.'s. His therapist said he was making progress and did not need wraparound services. The absence of physical, mental, developmental or serious emotional problems supported the conclusion that he was adoptable. (See *In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) Moreover, the fact Ms. S. and Ms. C. had expressed interest in adopting him after hearing about his history, and

continued to express interest after having him in their home supported the court's finding. (See *In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650 "[T]he fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family" (italics omitted)]; *In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154 [finding of general adoptability upheld where couple with whom children lived said they were committed to adopting children and had not been dissuaded by recent onset of behavioral problems].) Finally, the adoption caseworker had identified several other families that she believed would be a good match for Andrew if the current prospective adoptive home fell through. On this record, the court's finding of adoptability was supported by substantial evidence.

DISPOSITION

The order terminating parental rights is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.