Filed 5/23/18 In re Jamaya B. CA2/2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re JAMAYA B., et al., Persons Coming Under the Juvenile Court Law.	B286272
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent. v. JENNIFER M., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK05283)

APPEAL from an order of the Superior Court of Los Angeles County. Victor Greenberg, Judge. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David Michael Miller, Deputy County Counsel for Plaintiff and Respondent.

Appellant Jennifer M. (mother) appeals from the juvenile court's order terminating her parental rights over her children Jamaya (born April 2013) and Howard (born April 2014). Mother's sole basis for challenging the order is that the children are not adoptable. Substantial evidence supports the juvenile court's finding of adoptability, and we therefore affirm the order terminating parental rights.

BACKGROUND

Detention, section 300 petition, and jurisdiction

In May 2014, the Los Angeles Department of Children and Family Services (the Department) filed a petition under Welfare and Institutions Code section 300[1] on behalf of the children alleging domestic violence between mother and Howard's father, Howard Sr.,[2] substance abuse by both parents, and neglect of Jamaya by mother for failing to provide timely and adequate medical care for the child's sickle cell disease. The Department detained both children after confirming that the parents had engaged in domestic violence in the presence of the children.

Mother told the social worker that both Jamaya and Howard had been diagnosed with sickle cell disease, that Jamaya had not been to the doctor in more than nine months, and that mother had stopped administering Jamaya's prescribed penicillin.

At the detention hearing held in May 2014, the juvenile court found Howard Sr. to be Howard's presumed father and

---

[1] All further statutory references are to the Welfare and Institutions Code, unless stated otherwise.

[2] Howard Sr. is not a party to this appeal.

Carrell B.[3] to be Jamaya's alleged father, ordered both children detained from their parents, and issued a temporary restraining order against Howard Sr.

In July 2014, the Department filed a first amended petition that included more specific allegations that mother and Howard Sr. had medically neglected both children by failing to obtain medical treatment for the children's sickle cell disease and by failing to administer penicillin to Jamaya as prescribed.

At the time of the adjudication hearing, Jamaya was placed in the home of Ms. H. and Howard was placed with another caregiver. Both caregivers had received medical training for the children's sickle cell disease and the children were doing well in their respective placements. Howard received emergency medical care and was hospitalized for severe anemia for a period of time before being returned to his caregiver. He was malnourished and had blood disorders when first placed with his caregiver, but had since gained weight and was adjusting to a regular sleeping schedule. Both children's sickle cell disease required them to take penicillin on a daily basis.

Mother, Howard Sr., and Carrell B. were present at the August 2014 jurisdiction/disposition hearing at which the juvenile court dismissed several counts as to Carrell, amended by interlineation the first amended petition, and sustained the petition as amended. The court ordered the children removed from their parents' custody, granted reunification services for mother and for Howard Sr., and ordered mother to complete a drug and alcohol program with aftercare, and to participate in on demand drug and alcohol testing, a domestic violence support group for victims, individual counseling, and a parenting class for

---

[3] Carrell B. is not a party to this appeal.

medically fragile children. The court denied reunification services to Carrell.

Six-month review proceedings

In January 2015, Mrs. N., who lived in Nevada and who had adopted the children's half-sibling, Trinity, contacted the Department and said she was interested in adopting both Jamaya and Howard in the event the parents failed to reunify.

By February 2015, mother was in compliance with her case plan and the Department had liberalized her visitation to unmonitored visits with the children. Jamaya was receiving mental health services to address behavioral issues and remained placed with Ms. H. Howard was placed with a new caregiver, was doing well in his new placement, and was scheduled to receive regional center services to address gross motor delays and stiffness on the left side of his body.

A court appointed special advocate (CASA) assigned to the children submitted a report in February 2015 stating that the children were doing well in their respective placements and were receiving appropriate medical care. In March 2015, the children's hematologist at Children's Hospital submitted a letter to the juvenile court that stated in part: "Both . . . children have sickle cell disease, which is a chronic and unpredictable disease with the potential for numerous complications. However, please note that despite this disease, these are not fragile children."

At the six-month review hearing held on March 12, 2015, the juvenile court found mother to be in compliance with her case plan and ordered an additional six months of family reunification services for mother. The court terminated reunification services for Howard Sr.

Twelve-month review

In September 2015, the Department reported that Jamaya and Howard were developing healthy bonds with their respective

caregivers. Both children had been hospitalized several times, however, for complications resulting from their sickle cell disease.

The children's CASA submitted an updated report that both children were up to date on their immunizations and were taking antibiotics for their sickle cell disease. The children's hematologist also submitted a letter informing the juvenile court that children with sickle cell disease will intermittently become sick despite the doctors' best efforts and treatment.

At the time of the 12-month review hearing held in October 2015, mother remained in compliance with her case plan and had visited regularly with the children. The juvenile court ordered the children returned to mother's care under the Department's supervision with family maintenance services.

Section 387 petition and removal

On April 6, 2016, the Department filed a section 387 petition alleging that mother had violated court orders by living with Howard Sr. and allowing him to have unlimited access to the children. The juvenile court ordered Jamaya and Howard detained from mother and placed in the homes of their previous caregivers. The children's behaviors regressed, and both children were exhibiting physical aggression.

Mother waived her right to a trial on the section 387 petition, and the juvenile court sustained the petition as amended by interlineation and ordered the children removed from mother's custody. The court accorded mother reunification services and ordered her to participate in drug testing, individual counseling, and a domestic violence support group.

Interstate compact on the placement of children

In June and September 2016, the juvenile court ordered the Department to initiate an interstate compact on the placement of

children (ICPC)[4] for a maternal cousin and for Mrs. N., who had previously adopted the children's half-sibling. Both the maternal cousin and Mrs. N. lived in Nevada. The maternal cousin was only interested in fostering the children temporarily; however, Mrs. N. was willing to adopt both Jamaya and Howard.

Status review hearing

In October 2016, the Department reported that Jamaya was enrolled in therapy to address her aggressive behavior. Jamaya also participated in weekly speech therapy at school, where she was performing well academically. Her doctors were pleased with her medical progress. Howard was developmentally on target and was attending daycare, but he too had been referred to therapy to address aggressive behavior, which had necessitated his replacement with a new caregiver. The children's CASA reported that neither child had been admitted to the hospital since April 2016.

Mother was not in compliance with her case plan and her visits with the children had been inconsistent. At the January 2017 contested status review hearing, the juvenile court terminated mother's reunification services and set a section 366.26 hearing.

---

[4] The ICPC (codified at Fam. Code, section 7900 et seq.) "facilitate[s] cooperation between participating states in the placement and monitoring of dependent children. [Citation.]" (*In re Johnny S.* (1995) 40 Cal.App.4th 969, 974-975, fn. omitted.) The ICPC requires an agency sending a child out of state for placement to first provide written notice to the appropriate public authorities in the receiving state of the intention to place the child in that state. (Fam. Code, § 7901, art. 3, subd. (b).) The child cannot be sent to the receiving state until the appropriate authorities in that state notify the sending agency in writing that the proposed placement does not appear to be contrary to the child's interests. (Fam. Code, § 7901, art. 3, subd. (d).)

Section 366.26 proceedings

In May 2017, the Department reported that the State of Nevada had approved Mr. and Mrs. N. for placement of the children. The N.s had adopted the children's half-sibling in 2013, and when they learned that Jamaya and Howard were dependent children, they contacted the Department and expressed their desire to adopt both children so that the siblings could grow up together. Mrs. N stated that she was eager to begin visits with the children.

The children's CASA submitted a report stating that both children had been hospitalized since the last court hearing in January. Howard had been to the emergency room four times and had one overnight hospital stay because of a high fever. Jamaya had two overnight hospital stays for high fevers, stomach issues, and pneumonia, but she did not require any serious treatments or blood transfusions. The CASA supported adoption as the permanent plan for the children but cautioned that the transition to their adoptive home should take into account the children's previous trauma and that therapeutic services be in place before the children were moved again. The children's therapists agreed that a specific plan was needed for transitioning the children from their current caregivers to their future adoptive home.

Howard's caregiver submitted a letter to the juvenile court in April 2017 expressing support for transitioning Howard to a permanent home over the course of one to two months. The caregiver reported that Howard had been hospitalized five times during the previous four months, but that his medical condition was relatively stable. The caregiver expressed concern that Howard's transition plan include therapeutic services to address his aggressive behavior, noting that there had been "great improvements" in Howard's behavior as the result of therapy.

Jamaya's caregiver, Ms. H., also submitted an April 2017 letter to the juvenile court reporting that although Jamaya had multiple emergency room visits and two hospital admissions in the past year, the child was "doing well with no major complications from her Sickle Cell disease." Jamaya's aggressive behavior continued to be a problem at home and at school, but there had been some improvement as the result of ongoing therapy. Ms. H. supported the plan for transitioning Jamaya to an adoptive home but cautioned that the transition should occur over the course of several months.

On May 11, 2017, the juvenile court continued the section 366.26 hearing and ordered the Department to provide an updated report on the plan for transitioning the children to their prospective adoptive home.

In July 2017, the children's therapists submitted letters to the juvenile court requesting a court order to allow visits between the children and the prospective adoptive parents. The therapists also asked that the case be continued for an additional six months so that the children's behavioral issues and their confusion regarding the transition could be addressed. At a July 14, 2017 hearing, the juvenile court ordered that the children could visit the N.s in Nevada but stated that it did not want to "prejudge" the case because mother had filed a section 388 petition requesting reinstatement of family reunification services.

The juvenile court denied mother's section 388 petition on August 24, 2017. On that same date, the court ordered the Department to arrange a meeting among the children's therapists, CASA, social workers, current caregivers, and the prospective adoptive parents to develop a detailed transition plan for moving the children into their prospective adoptive home.

In September 2017, the Department reported that its social workers had met with the children's therapists, CASA, current

caregivers, and Mr. and Mrs. N. to discuss an appropriate transition plan for the children. The agreed-upon transition plan provided that Mr. and Mrs. N. would become medically certified to address the children's sickle cell disease, consult with a dietitian to discuss Howard's adverse reaction to certain processed foods, participate in the children's individualized education plan (IEP), and assist in transitioning the children to Nevada where they would be home schooled. The children's therapist agreed to provide collateral therapy sessions via telephone to Mr. and Mrs. N. while the children were being transitioned to their home in Nevada, and both Skype and in-person visits between Mr. and Mrs. N. and the children would be continued. The plan further provided that Howard would transition to the N.'s home first, and Jamaya would follow at the end of the school semester.

Mrs. N. expressed her eagerness to begin transitioning the children to her home, and both Mr. and Mrs. N. reiterated their desire to adopt Jamaya and Howard. The N.s had successfully adopted the children's now five-year-old half-sister, who had required a pacemaker implant as an infant, and whom they had cared for since the child was nine weeks old.

In a last minute information for the court, the Department reported that the children had visited with the N.s in Nevada on September 16, 2017. After the visit, Jamaya developed a high fever that required her to be hospitalized for a day. The N.s and the children's half-sibling visited again with the children, this time in California, from September 26 through September 28, 2017. Mr. and Mrs. N. participated in the children's therapy sessions and had unmonitored visits with the children at the zoo and an art museum. The children had difficulty, however, being separated from their current caregivers, and their behaviors regressed.

Mrs. N. was medically certified by the children's hematologist in October 2017. Mr. N. could not attend the certification training because of a work-related emergency, but he agreed to be certified in Nevada. Mother was also present during Mrs. N.'s medical training and certification. Although mother consented to a neurological assessment for Howard, she would not consent to the child receiving the influenza vaccine. Howard's pediatrician emphasized that it was important for both children to receive their regular immunizations, including an annual flu shot. Although mother, and not Mrs. N., had objected to the influenza vaccine, the Department expressed concern that the N.s might not consent to regular immunizations for the children and recommended that the juvenile court order vaccinations for the children.

The children's CASA submitted an updated report in October 2017 stating that that children were receiving medical services on a regular basis and met with a hematologist every two months. Both children were doing well despite occasional emergency room visits for complications caused by their sickle cell disease. The CASA reported that Mrs. N. understood the concerns regarding the children's sickle cell disease and their exposure to trauma, and that both Mrs. N. and her husband were committed to providing the children with a permanent home through adoption. The CASA further noted that the children had interacted positively with Mrs. N. during a recent visit.

Attached to the CASA's report were several letters from the children's service providers. Howard's therapist stated that she had provided Mrs. N. with information regarding mental health and educational services in Nevada. Children's Hospital submitted two separate letters. One letter stated that Mrs. N. had participated in family therapy with Jamaya and set forth recommendations for transitioning the child to the N.'s home in

Nevada. A second letter stated that Mrs. N.'s medical training was sufficient for Jamaya to be placed in the N.'s home and that the nurse practitioner who had provided the medical training had "no concerns regarding [Mrs. N.] and her ability to care for the children."

At the contested section 366.26 hearing held on October 19, 2017, the juvenile court admitted into evidence the CASA's updated report, various Department reports, and mother's section 388 petition that the court had previously denied. The court granted a motion by Jamaya's caregiver, Ms. H., for de facto parent status.

The Department's counsel, joined by the children's attorney, argued for termination of parental rights based on the children's adoptability and the existence of willing adoptive parents. Both the Department's counsel and counsel for the children identified, in addition to Mr. and Mrs. N. in Nevada, a second adoptive applicant in Los Angeles County; however, no additional information was provided to the court about the second applicant.

Mother's counsel argued that the children would benefit from continuing their relationship with her and that termination of parental rights would be detrimental to the children under section 366.26, subdivision (c)(1)(B)(i). Mother also addressed the juvenile court directly, stating that she wanted Mr. and Mrs. N. to receive additional medical training for the children's sickle cell disease. In response, the Department's counsel pointed out that Mrs. N. had completed the necessary medical training, and that Mr. N., who had missed the training because of a work emergency, could be trained in Nevada. The Department's counsel further stated that the Department would ensure that all necessary medical training was completed before the children were placed in Nevada.

The juvenile court found that the children were specifically adoptable and were likely to be adopted, that they would benefit from adoption in a permanent home where their medical and emotional needs would be met, and that no legal impediment or exception applied to preclude finalizing their adoption. The court then terminated parental rights.

The juvenile court thereafter discussed with the parties the plan for transitioning the children to the N.'s home in Nevada. The children's counsel pointed out that a written transition plan had been created with input from the children's caregivers, therapists, social workers, and medical providers, and that the plan could be revised as necessary if new developments arose.

Jamaya's defacto parent, Ms. H., asked the juvenile court to order vaccinations for the children based on her assumption that "the family in Nevada does not believe in immunization or flu shots." Counsel for the children referred the court to the October 2017 letter from the children's doctor stating that it was "imperative" that both Jamaya and Howard receive regular immunizations, including an annual flu shot. The children's counsel stated that she did not know Mr. and Mrs. N.'s position on immunizing the children. In response, the juvenile court ordered the children to be vaccinated with flu shots and ordered the Department to reevaluate the children's placement in Nevada if the N.s were opposed to flu vaccinations.

Ms. H. then expressed concern that Mr. and Mrs. N. intended to withdraw the children from therapeutic services. The juvenile court responded that there was no evidence before it regarding the N.'s views on therapy, but that the Department and the agency in Nevada would "need to ensure that everything medically and emotionally appropriate is going to be provided to this family in order for them to be cleared to adopt these kids." The children's counsel pointed out that the court had previously

ordered both children to be provided appropriate mental health services. The juvenile court stated that it would order continued counseling and that the Department provide updated reports to ensure that all of the children's issues were being addressed.

Mother filed the instant appeal.

DISCUSSION

I. Applicable law and standard of review

As a prerequisite to terminating parental rights under section 366.26, a court must find by clear and convincing evidence that the children are likely to be adopted within a reasonable time. (§366.26, subd. (c)(1).) "In determining adoptability, the focus is on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. [Citations.] To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent "'waiting in the wings.'" [Citation.] Nevertheless, 'the 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*.' [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

There are two alternative methods of demonstrating adoptability. "General adoptability" is demonstrated when an agency proves that a child's personal characteristics are sufficiently appealing that it is likely an adoptive family will be located for the child in a reasonable time, regardless of whether a prospective adoptive family has yet been found. "Specific adoptability" refers to an agency's demonstration that it has

located a committed adoptive family for a child whose adoptability is otherwise in question, most often because the child is part of a sibling group, has a physical or mental disability requiring a high level of care, or is relatively old. (See § 366.26, subd. (c)(3).) When a prospective adoptive family has been found for such a child, the child is found likely to be adopted, not in the abstract, but because that specific adoptive family has committed to adoption. (See, e.g., *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060-1061 (*Carl R.*); *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650 (*Sarah M.*).)

Because specific adoptability depends upon a successful adoption by the designated prospective adoptive family, the judicial inquiry must, to a limited degree, include that family. "When a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child. [Citation.]" (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) This limited inquiry into the characteristics of the prospective adoptive family is necessary because a demonstration that the family is legally prevented from adopting or is incapable of caring for a child with special needs would preclude a finding of adoptability. (See, e.g., *Carl R., supra,* 128 Cal.App.4th at pp. 1061-1062; *Sarah M., supra,* 22 Cal.App.4th at p. 1650.) Even in these situations, however, the inquiry must be balanced against the concern that "[i]f an inquiry into the suitability of prospective adoptive parents were permitted at the section 366.26 hearing, many hearings would degenerate into subjective attacks on those prospective adoptive parents -- a result not envisioned by the statutory scheme. [Citation.] Those types of inquiries might also discourage people from seeking to adopt, a result that would

contravene the strong public policy favoring adoption." (*Carl R.,* at pp. 1061-1062.)

It is important to note that the law does not require a juvenile court to find a dependent child "generally adoptable" or "specifically adoptable" before terminating parental rights. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313 (*In re A.A.*).) All that is required is clear and convincing evidence of the likelihood that the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 406 (*Zeth S.*).)

We review the juvenile court's finding of adoptability for substantial evidence, viewing the evidence in the light most favorable to the judgment, drawing every reasonable inference and resolving all conflicts in the evidence in favor of the juvenile court's order. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) An appellant challenging an adoptability finding bears the burden of showing the evidence is insufficient to support the juvenile court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

II. Substantial evidence of adoptability

Mother contends the evidence does not support the juvenile court's finding that Jamaya and Howard were specifically adoptable because the record shows that Mr. and Mrs. N. did not intend to provide the children with basic health care, specifically, regular vaccinations and annual flu shots that were essential to their survival given their sickle cell disease. There is no evidence in the record to support mother's assertion that the prospective adoptive parents did not intend to vaccinate the children or to have them receive annual flu shots. Rather, the record shows that mother, not Mrs. N., objected to the children receiving the influenza vaccine at a medical training session she attended in October 2017. Statements made at the section 366.26 hearing by Howard's de facto parent, Ms. H., that the N.s were opposed to

vaccinating the children are unsupported by the record and do not constitute evidence within the meaning of the Evidence Code. (*Zeth S., supra,* 31 Cal.4th at p. 414) Mother's own statements at the section 366.26 hearing and statements by counsel for Howard Sr. that the N.s lacked sufficient medical training to care for the children similarly do not constitute admissible evidence of the prospective adoptive parents' inability to care for the children. (*Ibid.*)

The record shows that Mrs. N. completed the necessary training to be medically certified to address the children's sickle cell disease. The medical staff who provided Mrs. N.'s training stated that there were "no concerns regarding [Mrs. N.'s] ability to care for the children." Although Mr. N. had not yet been medically certified, he agreed to undergo the necessary medical training in Nevada, and the juvenile court's order required the Department to ensure that both prospective adoptive parents were properly medically trained before the children were placed in their home.

The record also shows that the prospective adoptive parents were capable of meeting the children's mental health and emotional needs. Mrs. N. had participated in the children's therapy sessions and received referrals for therapeutic services in Nevada. The transition plan formulated by the children's therapists, social workers, CASA, and current and future caregivers provided for collateral therapy sessions via telephone with the N.s while the children were being transitioned to their home.

Carl R., on which mother relies, undermines rather than supports her position. The appellants in that case argued that parental rights should not have been terminated because the juvenile court did not consider whether the prospective adoptive parents could meet the educational needs of an eight-year-old

child who suffered from cerebral palsy, a seizure disorder, and uncontrolled and severe psychomotor delay and who had the emotional maturity of an eight-month-old. (*Carl R., supra*, 128 Cal.App.4th at p. 1058.) In affirming the order terminating parental rights, the appellate court noted that because the social services agency's "obligation is to provide only preliminary information, the court's inquiry should also be preliminary, and need not include an in-depth assessment of specific educational plans." (*Id.* at p. 1063.) Here, the information provided by the Department, and the inquiry undertaken by the juvenile court, was more than a preliminary assessment of the prospective adoptive parents' ability to meet the children's needs. The Department, in consultation with the children's doctors, therapists, CASA, and current and future caregivers, formulated a detailed plan for transitioning the children to their adoptive home in Nevada that included medical certification of the prospective adoptive parents, collateral therapy sessions for the prospective adoptive parents while the children were being transitioned to their new home, and referrals for appropriate medical providers and mental health services in Nevada.

Mother failed to demonstrate that the N.s were incapable of meeting the children's medical and mental health needs or that there is any legal impediment to their adopting Jamaya and Howard. Substantial evidence supports the juvenile court's finding that Jamaya and Howard were specifically adoptable,[5] and we accordingly affirm the order terminating parental rights.

---

[5] Because substantial evidence supports the finding that Jamaya and Howard were specifically adoptable, we do not address the parties' arguments as to whether the children were generally adoptable. (*In re A.A., supra,* 167 Cal.App.4th at p. 1313.)

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT