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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re E.L., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B282104 (Super. Ct. No. J070476) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. ALAN L., Objector and Appellant.	

Alan L. (father) appeals from an order terminating parental rights to his son, E.L. (child), pursuant to Welfare and Institutions Code section 366.26.[1] Appellant contends that the

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

evidence is insufficient to support the juvenile court's finding that child is likely to be adopted. We affirm.

Facts

We summarize only those facts relevant to the issue of whether child is likely to be adopted. Child was born in April 2013. The most recent section 366.26 report was prepared by social worker Leann Engeldrum in March 2017. Engeldrum had previously opined that child is specifically adoptable "due to his difficult behaviors." But in the March 2017 report she concluded that he is "generally adoptable." She noted that child had "made progress" and "appears to be positively attached to his current care givers, and responds positively to consistency, love and clear boundaries." Although at home his "behaviors have been stabilized," at school he "hits other children in the classroom."

Since September 2015, when child was two years old, he has been placed with the same prospective adoptive family. They expressed concern that child's father was diagnosed with schizophrenia. They knew this "from speaking to the father directly." They were surprised when a social worker told them that father's medical history would not be disclosed before the adoption was finalized. Engeldrum told them that, "[w]hile the father had a diagnosis of schizophrenia by one mental health professional, his ongoing therapist disagrees, and has diagnosed him with PTSD [Post-Traumatic Stress Disorder] and depression."

According to the March 2017 report, the prospective adoptive parents "are fully committed to adopting [child]." They "have expressed to . . . Engeldrum that they love [child] and have a special place in their heart for him and cannot imagine their life without him."

At the section 366.26 hearing conducted in April 2017, Engeldrum testified: She had originally designated child as specifically adoptable because he was sometimes "aggressive" and did not listen. But "[t]he last . . . two to three months he's made considerable progress." "[T]he therapy is working for him." Child's preschool said: "[T]here's lots of other little boys there just like him. He's a rambunctious four year old."

Engeldrum continued: "[T]here are families that will adopt him, although I believe [his prospective adoptive family] is the most appropriate for him." "[H]e has characteristics that . . . make him adoptable. He's . . . healthy. . . . [T]here's no physical disabilities. He's young. He's a cute kid. He's a personable kid. And . . . his behaviors have become manageable." Child has been diagnosed with an "adjustment disorder, which is typically [what] the children that come through our system have." The disorder is "usually due to trauma." If his prospective adoptive parents decided not to adopt him, it would probably take only a week to find him another home.

On cross-examination, Engeldrum testified that by January 2017, incidents of physical aggression committed by child in school and at home had declined from 72 to 30 per month. Incidents of verbal aggression had declined from 80 to 28 per month. In January 2017 child was reported "to have poor impulse control and tantrums." Engeldrum testified that "[a]t times" this is "still a problem."

At the conclusion of the section 366.26 hearing, father's counsel contended that the evidence does not "support[] the fact that at this point [child] has all of a sudden become generally adoptable." Counsel declared, "[I]f you look at the

totality of the evidence, I think that this child is specifically adoptable but I don't think he's generally adoptable."

The court found that child "is generally adoptable." The court reasoned, "[I]t's obvious that [he] will continue to have issues, but they're not so substantial . . . to preclude a finding of general adoptability." Accordingly, the court determined by "clear and convincing evidence that [child is] likely to be adopted."

Discussion

""The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.]' [Citation.]" (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561.) The "likely to be adopted" standard has been characterized as a "low threshold." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.) "'In reviewing the juvenile court's order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time. [Citations.]' [Citations.] We give the court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]" (*In re Gregory A.*, *supra*, 126 Cal.App.4th at pp. 1561-1562.) We do "not reweigh the evidence. [Citation.]" (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) Nor do we "evaluate the credibility of witnesses." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) "The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts.

[Citation.]" (*Ibid.*) "The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

The statutory framework does not distinguish between a child who is "generally adoptable" and one who is "specifically adoptable." But some courts have drawn such a distinction. A child is "generally adoptable" if his "age, physical and emotional condition and other personal attributes are not likely to dissuade individuals from adopting him. [Citation.]" (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 492.) A child "who is not generally adoptable because of age, poor physical health, physical disability or emotional instability may nevertheless be [specifically] adoptable because a prospective adoptive family has been identified as willing to adopt the child. [Citation.] '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.' [Citations.]" (*Id.* at p. 494.) "A selection and implementation hearing does not provide a forum for a parent to contest the 'suitability' of a prospective adoptive family as long as the minor is generally adoptable. [Citation.]" (*Ibid.*)

Father maintains that the evidence shows that child is specifically adoptable, not generally adoptable, "because of his severe and ongoing history of behavioral issues, the circumstances of his current placement, and because his current foster parents were the only ones identified and willing to adopt him." Father asserts, "[T]he evidence before the court about

[child's] progress in ameliorating his issues and becoming generally adoptable was not sufficient, reasonable, credible, and of solid value to support the court's findings."

Substantial evidence supports the trial court's finding that child is generally adoptable. His current caregivers "reported that they are fully committed to adopting [him]." ""'Usually, 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 Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562.) In explaining why child is generally adoptable, Engeldrum testified: "He's . . . healthy. . . . [T]here's no physical disabilities. He's young. He's a cute kid. He's a personable kid. And . . . his behaviors have become manageable." Other than an "adjustment disorder," there is no evidence that child has any mental disorder or disability. The adjustment disorder does not render him specifically adoptable. Engeldrum noted that the disorder is "typically [what] the children that come through our system have." It has not deterred his current caregivers from wanting to adopt him.

Father argues that the "adoptability finding is not supported by sufficient evidence because the evidence did not include critical information, which had it been before the court would show [child] was not likely to be adopted within a reasonable time." The missing "critical information" is

"additional information about [child's] emotional and psychological status" and "family medical history." Father notes that he was diagnosed as suffering from schizophrenia. He contends that child's "severe behavioral issues could well be due to an undiagnosed mental health disorder, which may be related to father's history. However, that was never ascertained in this matter as [child] was never formally evaluated or examined for that purpose, and father's medical records of his mental health history were withheld from the foster parents." "The issue here is [child] not being evaluated or assessed for [a mental health condition] in light of father's mental health issues." Child "was never evaluated by a psychiatrist or psychologist to diagnose or rule out mental health disorders for his severe behavioral issues." "Accordingly, [child's] severe behavioral issues could well be due to an undiagnosed mental health disorder . . . . If [child] were diagnosed as having a mental disorder it was not likely his foster parents would still want or be able to adopt him."

Father misconstrues the substantial evidence rule. The rule is that the appellate court "determine[s] whether the *record* contains substantial evidence from which the juvenile court could find clear and convincing evidence the child was likely to be adopted within a reasonable time. [Citations.]" (*In re Michael G.*, *supra*, 203 Cal.App.4th at p. 589, emphasis added.) We do not consider whether, as alleged by father, "critical information" not in the record "would show [child] was not likely to be adopted within a reasonable time" had the information "been before the court." The content of this missing "critical information" is entirely speculative. "It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of

matters which were before the trial court for its consideration.' [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

Moreover, the allegedly missing critical information - an evaluation of child by a psychiatrist or psychologist to determine whether he suffers from a mental health disorder - is not required in the assessment report prepared pursuant to section 366.21, subdivision (i). Section 366.21, subdivision (i)(1)(C) requires "[a]n evaluation of the child's medical, developmental, scholastic, mental, and emotional status." It does not say that the evaluation must be performed by a psychiatrist or psychologist. Thus, we cannot conclude, as the appellate court concluded in *In re Valerie W.* (2008) 162 Cal.App.4th 1, 15, that the juvenile "court's finding of adoptability is not supported by substantial evidence" because "deficiencies in the assessment report were significantly egregious to undermine the basis of the court's decision. [Citation.]" Child's assessment report was not deficient because he had not been examined by a psychiatrist or psychologist. Appellant has not cited any evidence in the record suggesting that child is manifesting symptoms of schizophrenia.

If father believed that it was critical for child to be examined by a psychiatrist or psychologist to determine whether child's "behavioral issues could well be due to an undiagnosed mental health disorder," he should have requested that the juvenile court order such an examination. Father concedes: "[H]e did not challenge the adequacy of [child's] adoption assessment in the juvenile court. Failure to object to adequacy of agency's assessment in the juvenile court operates as a waiver or forecloses any challenge of the issue on appeal. [Citations.]" Having failed to raise the missing "critical information" issue in the juvenile court, father cannot raise it now in this appeal. (See

Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 533; *In re A.A.* (2008) 167 Cal.App.4th 1292, 1317; *In re Joshua G.* (2005) 129 Cal.App.4th 189, 200, fn. 12.)

Disposition

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Andre F. F. Toscano, under appointment by the Court of Appeal for Objector and Appellant.

Leroy Smith, County Counsel, Martha Jennifer Wolter, Assistant County Counsel, for Plaintiff and Respondent.