Filed 9/25/17 In re A.A. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.A., A Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.G., Defendant and Appellant.	B280182 (Los Angeles County Super. Ct. No. DK08920)

APPEAL from an order of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Affirmed.

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

Mary C. Wickam, County Counsel, R. Keith Davis, Assistant County Counsel, Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

N.G. (mother) appeals from the order terminating her parental rights over her son A.A. Mother contends the court's finding that the child is adoptable is not supported by sufficient evidence. We disagree and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

In December 2014, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition[1] on behalf of 15-month-old A.A. (born in September 2013), based on mother's arrest for shoplifting alcohol while the child was in her care. The petition alleged mother had a history of substance abuse and was under the influence on multiple occasions while she cared for A.A. The petition also alleged mother had mental and emotional problems but failed to take her prescribed psychotropic medication. A.A. was detained in foster care. In 2015, the petition was sustained and A.A. was placed in the foster home of Mr. and Mrs. L. Mother's reunification services were terminated in February 2016 and the case was set for a section 366.26 hearing.

In January 2015, A.A. had been found to be developing largely on target, except for some language delay and potential

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

gross motor challenges, for which he received regional center services. In July 2015, A.A. was diagnosed with fetal alcohol spectrum disorder with developmental delay. In January 2016, the examining physician discussed A.A.'s fetal alcohol issues with his caregiver, who was identified by the last name Garcia; the physician observed that A.A. was "making exceptionally good progress in the care of the Garcia family" and recommended that he remain permanently placed with that family.[2] The social worker agreed with that assessment and found that A.A. had bonded with his foster parents, whom he called "ma" and "pa." A.A. continued to receive speech and occupational therapy through the regional center and in September 2016 was reported to be making significant progress, understanding English and Spanish, using nouns, and forming sentences. The foster parents were involved in his regional center services and in November 2016 began transitioning him to services through the local school district.

Although the foster parents consistently expressed interest in adopting A.A., initially DCFS pursued permanent placement with the maternal grandmother, and the foster parents declined to undergo a home study if A.A. would not remain in their care. At the initial section 366.26 hearing in June 2016, A.A.'s counsel requested, and the court ordered, that A.A. not be removed from the foster parents' home. The assessment of the grandmother's home was delayed to allow her adult son to secure a criminal

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[2] The reference to the Garcia family in the body of the medical evaluation form appears to be in error since elsewhere in the form Mrs. L. is identified as A.A.'s caregiver, and DCFS's contemporaneous progress report identifies Mr. and Mrs. L. as A.A.'s foster parents.

waiver, and was abandoned when she failed to submit the requisite documentation.

DCFS then began pursuing adoption by the foster family, whose home study was under way in September 2016. By then, the foster parents had submitted their live scan clearances and some of the required documentation. The completion of the home study was delayed when Mrs. L. had a family emergency that required her to travel abroad. All requisite documentation was submitted on November 22, 2016, but DCFS requested a continuance to review the home study because of four referrals against the foster parents between 1998 and 2012, three of which were deemed unfounded and one of which (for general neglect) was deemed inconclusive. On November 29, 2016, the court issued an order to show cause, to be heard the next day, and DCFS immediately reported that the foster parents' home study had been completed and approved.

The court conducted a final section 366.26 hearing on December 30, 2016. Mother's counsel requested that DCFS reconsider placing A.A. with the grandmother, whose adult son had left her home. A.A.'s counsel disagreed, arguing that A.A. had bonded with the foster parents. The court found that the parental relationship exception did not apply, and terminated the parents' rights. It found A.A. adoptable by clear and convincing evidence. The court designated Mr. and Mrs. L. prospective adoptive parents based on the length of time A.A. had lived with them, their commitment to adopt him, and the steps they had taken toward adoption.

This appeal followed.

DISCUSSION

Mother's only challenge on appeal is to the court's finding that A.A. is adoptable. Before a court may terminate parental rights, it must find by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1), *In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) On appeal, we review the entire record for substantial evidence supporting that finding. (*Id.* at pp. 1312–1313.)

Whether a child is generally adoptable depends on the child's age, physical condition, and emotional state. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) To be generally adoptable, the child need not be in an adoptive home, or have a prospective adoptive parent even though such a parent's expressed willingness to adopt indicates that the child is generally likely to be adopted. (*Id.* at pp. 1649–1650.) When a prospective adoptive parent is willing to adopt a child otherwise considered unadoptable because of age, or physical or emotional problems, the court may consider whether there is any legal impediment to that specific adoption. (*Id.* at p. 1650.)

Mother argues that the evidence DCFS submitted at the section 366.26 hearing was insufficient to establish adoptability. Specifically, she challenges the adoption assessment report under section 366.21 as outdated and inadequate because it was prepared when DCFS was pursuing placement with the grandmother. Mother's challenges to the adequacy of that report are forfeited because they were not raised at the hearing. (See *In re A.A.*, *supra*, 167 Cal.App.4th at p. 1317; see also *In re Brian P.* (2002) 99 Cal.App.4th 616, 623; *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411.) Her reliance on *In re Valerie W.* (2008) 162 Cal.App.4th 1 is

misplaced because the appellant in that case specifically challenged the adequacy of the adoption assessment in the juvenile court. (*Id*. at p. 7.) Absent a timely challenge, inadequacies in the adoption assessment go solely to the weight of the evidence and may be supplemented with other evidence in the record to show that a child is likely to be adopted. (See *In re Crystal J*., at p. 413; *In re Diana G.* (1992) 10 Cal.App.4th 1468, 1481–1482.)

The record indicates that A.A. is both generally adoptable and that he is likely to be adopted by his foster family within a reasonable time. Mother analogizes this case to *In re Brian P., supra*, 99 Cal.App.4th 616, where the record included "fragmentary and ambiguous evidence" about the child's medical condition and raised "as many questions as assurances about his adoptability." (*Id*. at pp. 624–625.) Here, in contrast, the record makes clear that A.A. was diagnosed with fetal alcohol spectrum disorder with developmental delay for which he received regional center services. By September 2016, two months before the final section 322.26 hearing, three-year-old A.A. had started to use nouns and form sentences. The only regression observed at that time was during visits with mother and the grandmother, who did not elicit verbal responses from him. A.A. was bilingual and by November 2016 was being transitioned from the regional center to his local school district. DCFS's conclusion that he had made progress in his language ability is supported by substantial evidence.

Additionally, DCFS's last-minute update indicates that at the time of the hearing the prospective adoptive parents had an

approved home study.[3] Like the assessment report, mother did not challenge the home study at the hearing, and the study is not in the record, but its approval is substantial evidence supporting the adoptability finding. (See *In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1422 [approval of home study moots challenge to adoptability]; *In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649–1650 [specific family's interest in adopting minor is evidence of adoptability].)

On appeal, mother argues that the home study was hastily approved, in light of DCFS's stated concerns regarding one unsubstantiated and several unfounded past referrals against the foster parents. However, she cites no authority that an old inconclusive referral, let alone unfounded ones, constitute a legal impediment to adoption, especially since the reports of the foster parents' care of A.A. are invariably positive. (Cf. *In re C.F.* (2011) 198 Cal.App.4th 454, 462, quoting Pen. Code, § 11165.12, subds. (a) & (c) ["'[u]nfounded report' " is one "determined . . . to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect"; "'[i]nconclusive report'" is one determined "not to be unfounded, but . . . there is insufficient evidence to determine whether child abuse or neglect . . . has occurred"].)

Mother is incorrect that there is insufficient or conflicting information about the foster parents in the record. Notwithstanding the single errant reference to the Garcia family in one portion of the January 2016 physician's report, the foster parents are consistently identified as Mr. and Mrs. L., a married

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[3] The requirements for a home study of foster parents who have had a minor in their care for at least six months are set out in Family Code section 8730.

couple with at least one older child. The record indicates they have been advised of A.A.'s medical condition, have been actively involved in his services, and have been instrumental in his progress. Mother also is incorrect to suggest that the record indicates the foster parents' ambivalence towards adoption. Statements to that effect must be read in the context of DCFS's initial preference to seek placement of A.A. with the grandmother.

Nothing in the record suggests that the child's medical condition renders him unadoptable, that the foster parents are unable to meet his needs, or that there exists a legal impediment to their adoption of A.A. *In re Valerie W.*, *supra*, 162 Cal.App.4th 1, on which mother primarily relies, is therefore distinguishable. In that case, there was evidence the children had unresolved medical and emotional problems that required further testing. There also was insufficient evidence their caregivers, a mother and daughter, were eligible to adopt the minors jointly, and whether the foster mother would be capable of meeting their needs on her own. (*Id*. at pp. 14–16.) Here, mother has shown neither that A.A. suffers from a serious unresolved medical condition with which the foster parents are incapable of dealing, nor that there is an actual legal impediment to adoption.

We conclude that the court's adoptability finding is supported by substantial evidence.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.