Filed 11/13/17 In re N.W. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re N.W., a Person Coming Under the Juvenile Court Law.	B282636 (Los Angeles County Super. Ct. No. CK99211)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DEBBIE B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Juvenile Court Referee. 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 William D. Thetford, Principal Deputy County Counsel, Counsel for Plaintiff and Respondent.

Debbie B. appeals the juvenile court's termination of her parental rights over her daughter N.W.[1] on the ground that she is not adoptable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

N.W. (born 2012) came to the attention of the Department of Children and Family Services in April 2013 after her father Edward W. assaulted Debbie B. in N.W.'s presence. N.W. became a dependent of the juvenile court under Welfare and Institutions Code[2] section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect).

N.W. was removed from Debbie B.'s custody and lived with her maternal aunt from April 2013 to April 2014, when she was returned to Debbie B.'s care. By September 2014, Debbie B. had stopped complying with court orders; N.W. was again removed from Debbie B. and returned to her aunt. At this time, Debbie B.'s infant son Gabriel B. (born January 2014) also was declared a dependent child and removed from her custody. Gabriel B. was placed with B.D., a nonrelative extended family member. In September 2016 N.W. was placed in the home of B.D. and her family, who were seeking to adopt Gabriel B.

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[1] Debbie B.'s notice of appeal states that she appeals from the termination of her parental rights as to both N.W. and her younger child Gabriel B. Mother's briefing focuses exclusively on her daughter and alleges no error in the termination of her parental rights with respect to her son. We therefore dismiss the appeal as to Gabriel B.

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

In April 2017, the juvenile court held a selection and implementation hearing pursuant to section 366.26. At this hearing, the court had before it several years of reports that included information about N.W.'s health, emotional state, and development. At age one N.W. had been described by a Multidisciplinary Assessment Team as a "very sweet, loving and attractive baby" who was friendly, charming, and playful and enjoyed being held and hugged. In a few areas her development appeared to lag, and her caregiver, the maternal aunt, reported some behavioral concerns. N.W. was fussy, difficult to soothe, and often clingy. She threw tantrums when she did not get the attention or items she wanted. N.W. bit herself or others or pulled individual hairs out of her head when she became frustrated or upset, although she stopped when she was gently redirected or held. The assessment team recommended mental health services for N.W. because of the trauma to which she had been exposed, her difficulty soothing, and her impulsive urges to pull her hair out or bite.

In November 2013, N.W., 17 months old, had been determined to be ineligible for Regional Center services because she "demonstrate[d] average language skills and high average to very superior cognitive, motor, social-emotional, and adaptive behavior skills." She no longer bit herself or pulled out hairs. She still bit others out of frustration and threw tantrums, but they were brief, and she did have moments where she played well with her cousins. She was observed to be overly affectionate to strangers.

In February 2014, N.W. had been described as thriving. She was "developing age appropriately and is getting all of her needs met by [her] maternal aunt." She was not receiving any

services at this time, and her aunt no longer had concerns about her mental or emotional status. The aunt wanted to adopt N.W. if reunification failed. As of December 2014, two-and-a-half-year-old N.W. was developmentally on target and was not receiving mental health services.

N.W. had been reported in July 2015 to be "a happy, smart, and very active little girl." Her speech had increased and was clear. She was growing age-appropriately and was not receiving therapy or psychotropic medication. Her behavior had improved slightly, although at age three she still struggled with sharing toys and playing with other children without fighting. She sought attention from the social worker.

In January 2016 N.W. was observed engaging in sexualized behavior, and she said she was being sexually abused by her father and her uncle. After investigation, DCFS concluded in April 2016 that the allegation against N.W.'s uncle was unfounded. The investigation as to N.W.'s father was inconclusive.

In April 2016 N.W. started play therapy, but her aunt stopped taking her to appointments, and she was dropped from the program.

When N.W. was placed with foster parents in September 2016 at age four, they observed she had poor boundaries, no stranger anxiety, indiscriminate attachment, hyperactivity, and tantrums. DCFS believed therapeutic services would help with the transition and N.W.'s attachment issues, and the foster mother obtained a driver's license so she could drive the children to appointments and visits. Shortly after placement, the foster parents, who were already committed to adopting Gabriel B., asked to adopt N.W. too.

By March 2017, N.W. reported that she loved living with the foster family, which was very close knit and cooperative, and that everyone in the home was nice to her. N.W. had been placed on three different waiting lists for therapy, but as of mid-March no therapist had become available to treat her. N.W. demonstrated some behavioral problems: she was observed to be hyperactive, aggressive, and not remorseful for misbehavior. The foster parents received calls from her preschool on most days. The foster parents, however, remained committed to parenting her and to obtaining the necessary services for her.

On March 21, 2017, N.W. had an intake appointment with a children's counseling center, but the center refused to treat her without a court order. On March 23, at DCFS's request, the juvenile court ordered that N.W. receive mental health services and authorized the foster parents to arrange them.

As of April 2017, N.W. was "stable and safe" with the foster parents, and she was doing well. Friendly and energetic, N.W. was now fully toilet-trained and increasingly independent. She continued to struggle at preschool but her behavior at home had improved. Her referral for individual counseling remained pending. N.W. continued to grow age-appropriately and was not a client of the Regional Center. She was described as "always smiling and showing affection toward[] her younger brother and her foster family." Her younger brother loved to play with her. N.W. was "closely bonded and happy" with her foster mother.

The juvenile court terminated Debbie B. and Edward W.'s parental rights over the children on April 26, 2017, and identified the foster parents as prospective adoptive parents. Debbie B. appeals.

DISCUSSION

"At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan." (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted within a reasonable time if parental rights are terminated. (§ 366.26, subd. (c)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 406.) "The issue of adoptability posed in a section 366.26 hearing 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 Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Review of the juvenile court's finding of adoptability is limited to determining whether it is supported by substantial evidence. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

Substantial evidence supports the juvenile court's conclusion that N.W. was adoptable. She was just under five years old. She was healthy, her development was generally age-appropriate, and she was regularly observed to be a smart, attractive, and friendly child. N.W. had been exposed to violence, neglect, and possibly abuse, and she experienced emotional and behavioral problems as a result, but she remained a generally happy child who bonded with her foster parents and loved her brother. When placed in a safe, stable home with a reliable caregiver, she made progress on her behavioral and emotional challenges and developed in a healthy and age-appropriate way.

At the time of the adoptability determination, N.W. had been living with her prospective adoptive parents for seven

months. The prospective adoptive parents were fully aware of the challenges she faced and were committed to parenting her. They were working with DCFS to meet her needs and were committed to obtaining whatever services were needed for her.

This evidence is sufficient for the juvenile court to have concluded, as it did, that based on her age, physical condition, and emotional state, as well as the existence of prospective adoptive parents, it was likely that N.W. would be adopted. (§ 366.26, subd. (c)(1); *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.) "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." (*In re Sarah M.*, *supra*, at pp. 1649-1650, italics omitted.)

Debbie B. contends that N.W. was not generally adoptable because she was "a deeply traumatized child in desperate need of therapy—therapy her prior caregivers nor her current adoptive caregivers ever provided to her." Here, she refers to the January 2016 allegation of sexual abuse, the aunt's failure to take N.W. to her therapy appointments while N.W. was in her care, and the delay in obtaining therapy once N.W. was placed with the prospective adoptive parents. Debbie B. likens this case to *In re Brian P.* (2002) 99 Cal.App.4th 616, in which the court held that general evidence that a child had "blossomed" into a healthy child was insufficient to support a finding of adoptability in light of the specific evidence that he had only recently learned to dress

himself, his speech and gait were still in the process of improving, and he was unable to make a statement to his social worker, who had to rely on his facial expressions and gestures to infer that he was happy in his foster placement. (*Id.* at p. 624-625.)

This case is not akin to *In re Brian P.*, *supra*, 99 Cal.App.4th 616, because the information available about N.W. tends to demonstrate her general adoptability. While it is regrettable that her aunt kept N.W. from therapy and that the prospective adoptive parents were prevented by waiting lists and a court order requirement from obtaining services for her as quickly as would have been ideal, N.W. was not facing the profound challenges that made the adoptability of the child in *In re Brian P.* so uncertain. Despite her history of trauma and her behavioral problems, N.W. was a smart, friendly, active, healthy four-year-old child who loved her brother, bonded with her caregivers, and was making progress in the home of her prospective adoptive parents. "We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Substantial evidence supports the court's conclusion that N.W. was adoptable, and we decline Debbie B.'s invitation to reweigh the evidence and substitute our judgment for that of the juvenile court.

Debbie B. also contends that N.W. was not specifically adoptable, questioning the ability of the prospective adoptive

parents to meet her needs, but if substantial evidence supports a finding the child is generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re R.C.* (2008) 169 Cal.App.4th 486, 493-494.) The issue of a family's suitability to adopt a generally adoptable child is reserved for the subsequent adoption proceeding. (*Id*, at p. 494.)

Debbie B. also argues that the adoptability finding should be reversed because the adoption assessment did not provide the court with "enough information to make an informed decision about the prospective adoptive family's capability to meet N.W.'s behavioral and therapeutic needs." As the capability of the prospective adoptive parents to meet N.W.'s needs is irrelevant in light of the substantial evidence supporting a finding of general adoptability (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 493-494), we need not evaluate the adequacy of the report in this regard.

DISPOSITION

The appeal is dismissed as to Gabriel B. In all other respects, the order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J. SEGAL, J.