Filed 4/20/18 In re Jeremy B. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JEREMY B., et al., Persons Coming Under the Juvenile Court Law.	B283827 (Los Angeles County Super. Ct. No. DK03342)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. KENDRA B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph Diaz, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Kendra B., (mother) appeals from an order terminating parental rights. She argues the trial court abused its discretion in denying her petition under Welfare and Institutions Code section 388[1] to reinstate reunification services as to one of her three sons. She also claims there is insufficient evidence to support the court's finding that her youngest sons were adoptable. Finding no merit in mother's contentions, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Referral and Detention

Michael J. (born August 2007), and his half-brothers, Jeremy B. (born October 2010), and J.B. (born September 2012) are the subjects of this action. Michael's father is Michael J., Sr., and Christopher B. is the father of Jeremy and J.B.[2]

On December 10, 2013 respondent Department of Children and Family Services (DCFS) received a referral call claiming mother had a history of using drugs (ecstasy, methamphetamine, and marijuana) to the point of "passing out," and leaving her children neglected and unsupervised. The caller also claimed mother failed to provide basic necessities for the children, and frequently yelled profanities at them

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

[2] Neither father is a party to this appeal. Our factual recitation and discussion are tailored accordingly.

and called them names. About a month later, DCFS received another referral alleging that Christopher was a drug user and mother's supplier. The caller said the boys wore nothing but diapers, and that then six-year-old Michael did not attend school. A DCFS children's social worker (CSW) interviewed mother in mid-January 2014. Mother acknowledged that she had used marijuana on and off since age 13, most recently about two months earlier. She had also used ecstasy many years earlier, but denied ever using methamphetamine. She admitted yelling at her sons, but never called them "stupid" or used profanities. She also denied the boys were neglected,[3] left unsupervised or lacked basic necessities. Mother was pregnant with a fourth child at the time of the January interview, but planned to terminate the pregnancy.

Mother told the CSW there had been a single incident of domestic violence with Michael's father, who "beat [her] up." Michael did not see it happen. There were three incidents of domestic violence with Christopher, witnessed by the children. He had "choked her, tried to gouge her eyes, dragged her by her hair, and threatened her with knives." More recently, mother had been involved in a five-month relationship with Dante M., the father of her unborn child. During the latter portion of that relationship Dante had begun hitting hit her and

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[3] Medical records indicated that Michael had not been vaccinated since 2008, and that Jeremy and J.B. had received no immunizations. No boy had seen a pediatrician for a "long time."

had dragged her by the hair in front of the children. She left him at Christmas.

On January 14, 2014, mother tested positive for amphetamines, methamphetamine and marijuana. On January 22, mother instructed the CSW to "pick up [her] kids." She admitted using crystal meth with Christopher on January 12, and said she had used the drug on an off without her family's knowledge for two-and-one-half years, and had used cocaine for 20 years. She consumed $80 worth of methamphetamine per week, and $60 worth of marijuana per day. She had completed 9 months of a 12-month residential drug rehabilitation program at Shields for Families (Shields), and "felt like she learned everything she needed to" know. The children were removed from mother's care on January 31, 2014.

DCFS filed a section 300 petition in on February 5, 2014, and the operative first amended petition (FAP) on April 24, 2014. The FAP alleged that the boys' physical health and safety were endangered, and they were at risk of physical harm due to mother's violent altercations with their fathers and Dante, and to drug abuse by mother and Christopher, Christopher's physical abuse of Jeremy (he kicked Jeremy in the ribs), and mother's failure to protect her sons. The FAP was sustained as alleged on July 31, 2014. The boys were detained and placed in foster care.

Jurisdiction and Disposition

In March 2014, Michael told DCFS that he often had witnessed domestic violence by both Christopher and Dante against mother, and had seen both men use drugs. He denied any knowledge of drug use by mother. Michael liked his foster home but wanted to be with his mother and brothers.

Mother visited Michael twice each week. She visited the two younger boys as well, until they were put in a foster care placement outside Los Angeles County, and distance and transportation issues made visits difficult.

Mother revealed that she had used ecstasy since age 13, and admitted using amphetamine, methamphetamine and marijuana. She re-enrolled in Shields outpatient program on February 7, 2014. By mid-March 2014, she was in jeopardy of being terminated from the program for lack of participation. Between February 24 and April 29, 2014, one half of the eight drug tests mother took were positive for marijuana, methamphetamine or amphetamines, and she had been a no show for the other four. By April 7, mother had been discharged from Shields.

In March, DCFS expressed concern that Jeremy, whose speech was limited to three-word sentences, was developmentally delayed and initiated a Regional Center evaluation,[4] and began the process of

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[4] Nonprofit community-based Regional Centers oversee services for individuals with developmental disabilities. (See Lanterman Developmental Disabilities Services Act (§ 4500 et seq.); *Harbor*

moving him to a D-Rate specialized foster home.[5] By mid-May 2014, DCFS reported that Michael's paternal aunt, D.J., would be an approved placement for that child.

After the boys were removed from parental custody, mother was given monitored visits and reunification services. Her case plan included a drug treatment program with random testing, domestic violence and parenting counseling, a psychiatric evaluation, and individual counseling to address domestic violence and substance abuse.

Reunification Period

In January 2015, DCFS reported that Michael was living with D.J., and J.B. had been moved to the same foster placement (with Ms. I) as Jeremy. Jeremy was a Regional Center client. He had undergone a neurological consultation, and been prescribed medication to help regulate self-harming conduct and hyperactivity. J.B. had been diagnosed with behavior consistent with Autism Spectrum Disorder, Global Developmental Delay, and Borderline Intellectual Functioning, and was also eligible for Regional Center services. An operation had been scheduled to remove extra digits from J.B.'s hands. DCFS

Regional Center v. Office of Administrative Hearings (2012) 210 Cal.App.4th 293, 307.)

[5] "D-Rate" foster care providers receive special training to care for children with special needs due to a mental health diagnosis. (http://dcfs.co.la.ca.us/katieA/D_RATE/index.html.)

reported that Michael was struggling with schoolwork, and was attending individual counseling to address issues regarding anger management, self-esteem and confidence.

Mother visited Michael three or four times during the first three months of 2015. She saw all three boys in later December 2014, but had not otherwise visited Jeremy or J.B. since October 2014.

Mother had not maintained sobriety. She initially did well in a residential treatment program that she began (for a second time) in July 2014, but left that program within in two months after testing positive for cocaine, marijuana and methamphetamine. Two weeks after leaving the program, mother told a CSW she was not ready to have her children back and wanted them to be adopted by certain family members. Mother had recently been hospitalized after suffering a mental health breakdown.

As of early April 2015, the boys' status remained unchanged: Michael was living with D.J., and Jeremy and J.B. remained in Ms. I's care. All the boys were healthy and the operation to remove extra digits from J.B.'s hands had gone well. The Regional Center had referred Jeremy to a specialized classroom. DCFS reported that mother's visits during the previous six months were inconsistent, and she had not re-enrolled in services. Mother was arrested in late April for felony domestic violence.

W.B., the paternal grandmother (PGM) of Jeremy and J.B., and her husband (or live-in companion), Joe A. (collectively, PGPs), had three visits with the boys in January, February and March 2015. The

initial visit was a bit rocky, but subsequent visits went well. PGM, who wanted Jeremy and J.B. to be placed in her care, had completed a background check and was awaiting a criminal exemption waiver. Meanwhile, Ms. I wanted to proceed with a permanent plan to adopt Jeremy and J.B.

On May 6, 2015, the court found that mother had failed to make significant progress in resolving the problems that led to the children's removal, had not demonstrated the capacity or ability to satisfy the objectives of her case plan or to provide for her sons' safety, physical and emotional well-being or special needs, and found that it was not substantially probable the children would be returned to her custody within the next review period. The court terminated reunification services and set a section 366.26 hearing.

Permanency Planning

On September 2, 2015, DCFS reported that mother's visitation remained inconsistent. She had seen the boys four times, at most, since January. Michael remained in the home of his aunt, D.J., with whom he had developed a strong emotional bond, and who wished to adopt him. Jeremy and J.B. had adjusted well in Ms. I's care. Ms. I said the boys had made great progress. She loved having them in her home and wanted to adopt them. An adoption assessment had been completed and adoption identified as the most appropriate permanent plan. With respect to whether Jeremy and J.B. were likely to be adopted within a reasonable time, DCFS informed the court that both boys were

physically healthy. J.B. ate well and related well to Ms. I. Concerns remained, however, about his aggressive behavior, short attention span and impaired social interactions. Jeremy was personable, but had some eating problems, engaged in self-harming behavior, had at least one learning disability, impaired social interactions and required (unspecified) specialized equipment. Jeremy received occupational therapy in a specialized kindergarten classroom setting. J.B. received speech and play therapy services through school, and was assigned to a behaviorist. No developmental concerns were reported as to Michael, who was in third grade. DCFS facilitated monthly sibling visits, which the boys enjoyed.

By early November 2015, mother had not had any contact with her sons. The PGPs visited Jeremy and J.B. twice per month, and developed a loving bond with the boys, who were sad when visits ended. The PGPs had passed background investigations, and wanted to be considered as potential adoptive parents for Jeremy and J.B. Ms. I also wanted to adopt them. D.J. now wanted to be Michael's legal guardian.

Jeremy still took medication, and wore a helmet at times due to his self-harming behavior. J.B. continued to face challenges engaging with other children and following directions in his specialized classroom. His school was arranging an emergency IEP to get him one-on-one classroom supervision. Michael displayed some behavioral problems that seemed to relate to mother's absence. "Despite their ongoing needs, challenges and struggles," DCFS reported that "the children appear[ed] to be happy, healthy, and progressing."

In January 2016, DCFS recommended permanent plans of legal guardianship for Michael, and adoption for Jeremy and J.B. In late January, J.B. began taking Clonidine to address his hyperactivity and distractibility. J.B. engaged in aggressive behavior, frequent tantrums and head banging, and was said to have an "incredible amount of energy." However, for the most part, he got along well with peers, liked being with adults and was affectionate towards them, and was making progress academically and in speech therapy. His behavior improved and his sleep patterns became regulated after he began taking medication.

By mid-March 2016, Jeremy and J.B. were having overnight visits with the PGPs, whose home had been approved for placement, and both PGM and Joe had completed D-Rate certification classes. The PGPs expected that the boys would be living with them by the end of March, and were preparing so that appropriate schools and services would be in place by then. Educational rights were transferred to PGM in April 2016.

On April 18, 2016 the juvenile court granted D.J. legal guardianship of Michael and terminated jurisdiction. Jurisdiction was later reinstated after DCFS learned D.J.'s home was not yet ASFA approved, and filed a section 388 petition requesting Michael's case be reopened. ASFA approved D.J.'s home for Michael's placement in January 2017.

In early May 2016, DCFS reported that Jeremy and J.B. had adjusted well to placement in PGM's home, and an adoptive home study

for the PGPs was in progress. Adoption remained the most appropriate permanent plan for Jeremy and J.B. All the boys faced challenges, but each was happy, healthy and making progress.

On May 16, 2016, mother filed a section 388 petition, requesting that the court reinstate reunification services, and that the children be placed with a maternal aunt (MA). Mother said she had enrolled in a substance abuse and detox program. She also expressed concern that PGM's "recent health concerns" and advanced age made it unlikely the PGPs could provide for the children's needs. Mother stated the requested change would benefit her children because she was "making significant efforts to correct problems which led to [their] detention," that she and her sons wanted to maintain a parent-child relationship, and that MA was willing and able to provide for the children's needs.[6] The court never addressed this petition.

On August 5, 2016, mother filed a second section 388 petition making essentially the same arguments. She stated that she had enrolled in a substance abuse program and was undergoing treatment for unspecified medical issues. In addition to concerns previously expressed regarding PGM's care, mother alleged that PGM was alienating the boys by keeping them from maternal relatives. The petition was summarily denied.

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[6] In March 2016, MA, who had not visited any child since 2014, contacted DCFS to express a desire to adopt all three boys. MA had one monitored visit with the children on April 8, 2016.

In November 2016, DCFS reported that PGM was meeting all of Jeremy's and J.B.'s needs. The boys had adjusted well to life in the PGPs' home, and they told the CSW they loved their PGPs. Jeremy was doing well in his new school. He liked jokes, playing with PGM and listening to music. He knew his age, colors, and how to dress himself and brush his teeth. J.B., who had received an autism diagnosis, was able to state his age, knew a few colors, and could wash his face and hands. He had a favorite animal and cartoon, and liked the family's dogs. Mother had not visited the boys.

In February 2017, DCFS reported that Jeremy had also been diagnosed with autism, and remained a client of the Regional Center. He could take simple direction, and communicated well. He still wet himself, but had made progress. Jeremy was in first grade. J.B., who was in preschool, could count numbers with some assistance and knew how to brush his teeth. Both boys continued to take Clonidine. The PGPs understood the boys' special needs and were committed to ensuring they received appropriate services.

Mother had to cancel a scheduled visit for mid-December 2016; she was ineligible to leave a new treatment program in which she had enrolled for 30 days. In her prior program, mother had visited Michael once or twice a month. Beginning February 2017, mother was scheduled to have twice monthly monitored visits with Jeremy and J.B., and to call them twice per week.

Mother's Third Section 388 Petition

On January 26, 2017, mother filed a third section 388 petition. She stated that she had been enrolled in a residential treatment program, had received "comprehensive inpatient treatment for substance abuse," and was committed to a clean and sober life and reuniting with her children.[7] She requested that the boys be placed in her custody, or alternatively that reunification services be reinstated, or the boys be placed with MA. Mother claimed she had done everything she could do in order to visit the boys,[8] but accused the CSW of being unresponsive. She expressed concern about Jeremy and J.B.'s placement with PGM, based on PGM's age, her health and her alleged effort to alienate the boys from their maternal relatives. The petition was summarily denied as to Jeremy and J.B. An evidentiary hearing was scheduled to address the petition as to Michael.

In response to mother's petition, DCFS reported that Michael said he did not like living with D.J., and wanted to stay with his maternal

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[7] Mother attached a letter from Patterns Women and Children Recovery Center indicating she entered the first phase of a six-month residential treatment program on December 8, 2016. The letter said mother had shown a commitment to change and sobriety. She had four negative drug tests between December 8, 2016 and January 12, 2017.

[8] She underwent drug testing, and had participated in drug, alcohol and relapse prevention education, attended individual and group counseling, and took parenting, domestic violence and anger management classes.

grandmother until mother finished her program. Such a placement was not possible because of the grandmother's significant criminal history. D.J. told DCFS she considered Michael to be her son and wanted to be his legal guardian. DCFS noted that MA had not made herself available for evaluation as a relative placement.

Section 366.26 Proceedings

The section 366.26 hearing was conducted on July 10, 2017, preceded by a hearing on mother's section 388 petition. By February 3, 2017, Jeremy and J.B. had been living with the PGPs about one year. The boys' medical, developmental, educational, and mental and emotional status remained stable.

Mother had entered a six-month residential drug treatment program on December 8, 2016. The program included alcohol and drug education, 12-step meetings, relapse prevention, individual and group counseling, co-dependence classes, parenting and child development classes, and programs on self-esteem, anger management and domestic violence. Mother had 10 negative drug tests between December 8, 2016 and March 31, 2017. Progress letters from the program, written in March and May 2017, reported that mother showed a commitment to sobriety, was taking accountability for her poor choices, and working to achieve independence and seeking transitional housing. Mother completed the program on June 8, 2017 (after taking each class for 12 weeks, attending 25 outside meetings and maintaining sobriety). She had reportedly shown "remarkable changes in correcting her behaviors,"

and had "accepted . . . responsibilities on how her negative life decisions have affected hers and her children's lives." Program staff opined that mother could be a successful member of society if she was able to maintain her transitional discharge plan.

Mother had not visited the children. DCFS identified the PGPs as prospective adoptive parents for Jeremy and J.B., and recommended the court terminate parental rights. Michael could not be placed in mother's custody, because she had not demonstrated an ability to provide stable, appropriate housing. DCFS was also unable to recommend that Michael be placed with MA, who lacked sufficient space in her home.

In a last minute information DCFS advised that PGM's home study would not be complete by the July 10 hearing. The home study had to be updated to reflect the PGPs' criminal history, and the CSW who had to review those records was on vacation. The PGPs had previously disclosed to DCFS that, in 1999, Joe was convicted for possession of cocaine and served three years in prison, and that PGM was convicted of petty theft in 2010, and had received a sentence of 24 months probation and a fine. There had been no additional criminal activity, and PGPs had been cleared for child welfare history, and in other respects, and had several favorable character references. The PGPs had a spacious home in Apple Valley, and a comfortable income. Both PGPs had been diagnosed with "ongoing medical conditions," but had received medical clearances for the purpose of adoption. DCFS noted that Jeremy and J.B., who had lived with the PGPs since March

2016, appeared to be very attached to PGM and were thriving in her care. The PGPs were committed to adopting the children. DCFS informed the court it had no reason to expect any additional delays or barriers to approval of the PGPs' adoption home study, and recommended termination of parental rights.

At the hearing, the court turned first to mother's section 388 petition as it related to Michael. Mother's counsel noted mother had completed a residential treatment program the month before, and argued that her sobriety constituted a changed circumstance. Counsel also noted that mother had continued to visit Michael, with whom she shared a bond, and was working to obtain stable housing. Mother requested that Michael be placed in her care or, alternatively, that reunification services be reinstated. DCFS argued mother had shown changing, not changed, circumstances. The court agreed and denied the petition.

Proceeding to the section 366.26 hearing, the court found by clear and convincing evidence that Jeremy and J.B. were adoptable, freed them from parental custody, and designated the PGPs as the boys' prospective adoptive parents. Mother appeals.

DISCUSSION

1. *Section 388 Petition*

A. *The Standard of Review*

"The grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed on appeal

unless an abuse of discretion is clearly established. [Citation.]" (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) "'"When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court."' [Citation.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319; *In re J.C.* (2014) 226 Cal.App.4th 503, 525–526.)

B. *The Juvenile Court Did Not Abuse Its Discretion by Denying Mother's Section 388 Petition*

Mother contends the trial court abused its discretion in denying her section 388 petition requesting reunification services as to Michael, because reinstating those services would address her son's need for permanency and stability.[9] She contends that her petition demonstrated a change in circumstances sufficient to warrant a modification of the court's prior orders.

"Section 388 allows a parent . . . to petition the juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).) 'Section 388 provides the "escape mechanism" that . . . must be built into the process to allow the court to consider new information.' [Citations.] The petitioner has the burden of showing by a preponderance of the evidence (1) that there is new evidence or a

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[9] Mother does not take issue with the trial court's denial of her section 388 petition as it related to Jeremy and J.B. in any respect, nor with regard to her request to have Michael placed in her care.

change of circumstances and (2) that the proposed modification would be in the best interests of the child. [Citations.] That is, '[i]t is not enough for [the petitioner] to show just a genuine change of circumstances under the statute. The [petitioner] must show that the undoing of the prior order would be in the best interests of the child. [Citation.]' [Citation.] Furthermore, the petitioner must show changed, not changing, circumstances. [Citation.] The change of circumstances or new evidence 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.' [Citation.]" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615 (*Mickel O.*), italics omitted.) In evaluating whether circumstances have changed, "[t]he court may consider factors such as the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the passage of time since the child's removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. [Citation.] In assessing the best interests of the child, 'a primary consideration . . . is the goal of assuring stability and continuity.' [Citation.]" (*Id.* at p. 616.)

The problems precipitating this dependency action included mother's long-term drug abuse, serial relationships involving significant domestic violence with her sons' fathers, and her fragile mental state which, at one point, necessitated hospitalization in a psychiatric facility after she suffered a mental breakdown.

Mother completed a six-month residential drug treatment plan the month before the hearing on her third section 388 petition.

Mother's history of significant substance abuse dates back to when she was 13 years old. She has a history of numerous failed attempts at attaining sobriety. Given that history, the trial court acted within its discretion when it found one month an insufficient amount of time for mother to establish an ability to maintain sobriety and resist the triggers that previously had caused her to relapse, in order to demonstrate the requisite significantly changed, not just changing, circumstances.

It is reasonable to conclude that a parent's long-term struggle with substance abuse cannot be ameliorated within a few months, no matter how earnest a parent's intentions. Numerous courts have agreed. (See, e.g., *In re J.C.* (2014) 233 Cal.App.4th 1, 7 [seven months of sobriety insufficient to show parent was not at risk of relapse]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 ["Given the severity of [mother's] drug problem the court could reasonably find her [three months of] sobriety . . . was not particularly compelling"]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [the nature of drug addiction, requires that parent be "'clean' for a much longer period than 120 days to show real reform"]; *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423-424 [200 days of sobriety was insufficient to demonstrate that parent would suffer no further relapses].) Given the lengthy history and severity of mother's drug abuse, her ability to maintain sobriety within the confines of a strictly supervised (but relatively short) residential treatment program until just a month before the hearing on her petition was insufficient to demonstrate an equivalent ability to

navigate an unsupervised drug-free life on a long term basis. We do not intend to denigrate mother's accomplishments. She has completed an intensive drug treatment, and acquired some insight about and accepted responsibility for her actions and poor decisions, and their effect on her children. Nevertheless, the juvenile court's conclusion that mother demonstrated changing, not changed, circumstances finds ample support in the record.[10]

2. *Substantial Evidence Supports the Court's Determination that Jeremy and J.B. Are Adoptable*

Mother contends that there is insufficient evidence to support the juvenile court's finding that Jeremy and J.B. were adoptable, both because they are a "a bonded sibling set with serious developmental issues that would make it difficult to find a family willing to adopt them," and because the relatives with whom the boys were placed who wanted to adopt them lacked an approved home study or assessment. We do not agree.

"In order to select adoption as the permanent placement plan the juvenile court must find by clear and convincing evidence that it is likely that the child will be adopted. In making that determination the

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[10] Mother failed to establish the first half of a two-part test, each of which is necessary to obtain relief on a section 388 petition. Accordingly, we need not address the parties' arguments whether reinstatement of reunification services would serve Michael's best interest.

court focuses on whether the child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt [him]." (*In re J.I.* (2003) 108 Cal.App.4th 903, 911; see § 366.26, subd. (c)(1).) To be considered adoptable, the child need not already be placed with prospective adoptive parents, nor is it necessary that there be an identified prospective adoptive, so long as there is clear and convincing evidence the child will be adopted within a reasonable time. (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 85, disapproved on another ground in *In re Zeth S.* (2003) 31 Cal.4th 396, 414.) However, "the fact that a prospective adoptive parent has expressed interest in adopting the" child bears closely on the question of adoptability because it is clear evidence "that the [child's] age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting" the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649–1650.) We review a determination of adoptability for substantial evidence, bearing in mind the heightened standard of proof. (*In re R.C.* (2008) 169 Cal.App.4th 486, 491; see *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

In assessing adoptability, children likely to be placed are deemed "generally adoptable," while those who may be difficult to place because they have significant physical or mental disabilities, are called "specifically adoptable," which typically means a specific caretaker willing to adopt has been identified. (See, e.g., *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1409 (*Brandon T.*); *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062.) The trial court need not state whether it finds

a child "generally" or "specifically" adoptable. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) We review the court's ruling, not its reasoning.[11] (*Ibid.*)

"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.) "Usually, 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.' [Citation.] However, 'in some cases a minor who ordinarily might be considered unadoptable

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[11] There is no one-size-fits-all approach to a determination of adoptability; each child's circumstances are unique.

The legal constructs of "general" and "specific" adoptability are points on a spectrum. "Not all dependency cases fall neatly into one of two scenarios: one, the availability of a prospective adoptive parent is *not a factor whatsoever* in the social worker's adoptability assessment; or two, the child is likely to be adopted *based solely* on the existence of a prospective adoptive parent. These scenarios represent opposite ends on the continuum of when a child is likely to be adopted. However, many adoption assessments that recommend an adoptability finding fall somewhere in the middle. They consist of a combination of factors warranting an adoptability finding, including, as in this case, the availability of a prospective adoptive parent. This is the reality we confront, notwithstanding appellate arguments that assume a child is either generally adoptable without regard to a prospective adoptive parent or specifically adoptable based solely on the availability of a prospective adoptive parent." (*In re G.M.* (2010) 181 Cal.App.4th 552, 562.)

due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child.' [Citation.]" (*Brandon T., supra,* 164 Cal.App.4th at p. 1408.) In determining whether a child is specifically adoptable, courts consider such factors as the length of time the child has been in the placement, the prospective adoptive parents' awareness of the child's special needs, the prospective adoptive parents' commitment to adoption, the nature of the bond between the child and the prospective adoptive parents, and whether any legal impediment exists. (*Id.* at pp. 1409–1410.) Here, these principles compel affirmance.

Mother's brief focuses on the boys' history of behavioral and developmental issues, and contends these significant challenges establish that adoption was improbable. Not so. DCFS had identified the PGPs as prospective adoptive parents committed to adopting both Jeremy and J.B., with full knowledge and an understanding of challenges the boys presented.[12]

The PGPs began to visit the boys regularly in January 2015, and welcomed them into their home by March 2016. Both PGM and Joe

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[12] Indeed, DCFS had identified two prospective adoptive families willing to adopt the boys. In fall 2015, Ms. I repeatedly expressed interest in adopting Jeremy and J.B. In the absence of facts that contraindicate adoptability, a foster parent's expressed interest in adopting a child is sufficient to support a finding of general adoptability. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526–1527.)

completed the specialized training required for a D-Rate certification in order to provide appropriate care for Jeremy's and J.B.'s special needs. Before the boys were placed in their home, the PGPs freely undertook the burdensome tasks of arranging for the necessary services and schooling to meet the boys' developmental needs. As a result, DCFS reported in May 2016 that the boys' adjustment to their new home was going well and they seemed happy, healthy and had made observable progress. In addition to ensuring that the boys received appropriate services, the PGPs repeatedly affirmed their affection for the boys and commitment to adoption. The boys, in turn, shared an emotional bond with the PGPs.

By the time of the section 366.26 hearing, the boys had lived with PGPs for 16 months. Their behavior had slowly improved, and their educational and developmental abilities were progressing. DCFS had determined that the PGPs possessed the financial ability to provide for the children's material needs, and had a spacious home in which to raise them. The PGPs understood the boys' special needs, and were committed to ensuring they obtained appropriate services.

Nevertheless, at the time of the section 366.26 hearing, the PGPs adoptive home study awaited final approval. Mother concedes that an unapproved adoptive home does not constitute a "legal impediment" to the boys' "specific adoptability." But, she argues that the absence of an approved home study is an important factor that demonstrates "the evidence the trial court considered could not, as a matter of law, have supported the finding the children would be adopted within a

reasonable period of time." She is mistaken. There is no necessity that there be any evidence of a home-study approval for prospective adoptive parents, or even evidence of a back-up plan in case a prospective adoption fails. (*In re I.W., supra,* 180 Cal.App.4th at p. 1527.) "'[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the only indications are that, if matters continue, the child will be adopted into that home, adoptability is established. In such a case, the literal language of the statute is satisfied, because "it is likely" that that particular child will be adopted.'" (*In re K.B., supra,* 173 Cal.App.4th at p. 1293; see *In re I.W., supra*, 180 Cal.App.4th at p. 1527 [existence of particular committed family intent on pursuing adoption, with knowledge of children's challenges, is substantial evidence of children's adoptability].)[13]

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[13] We reject the assertion that the court lacked sufficient evidence to make a finding of adoptability because there was no comprehensive assessment report of the PGPs' eligibility and commitment to adopt the boys. Mother forfeited this contention by failing to object to the adequacy of DCFS' adoption assessment at the trial court. (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)

Even if this issue were not forfeited, the record is replete with evidence of DCFS' comprehensive efforts to investigate the PGPs' eligibility and commitment to adopt the boys. DCFS investigated and reported on the PGPs' living arrangements, retirement and financial status, established the absence of any child welfare history, revealed their criminal histories, addressed concerns about Joe's ability to adopt due to a medical condition (for which he received a doctor's clearance), and obtained favorable character references. DCFS reported on the nature of the boys' relationship with PGM and Joe, the fact that they had lived with the PGPs for 16 months, and had appropriately provided

In any event Jeremy and J.B. possess appealing characteristics which support a finding of general adoptability. First, at six and four years old, the boys are young enough to make adoption likely. They are healthy and are not physically disabled (apart from the extra digits on J.B.'s hands, which have been removed). Particularly since they have begun taking medication, each of the boys has continued to progress in his ability to engage in self-care, and to regulate his behavior. Jeremy likes school, and has progressed academically and in speech therapy. The children are personable and affectionate with their caregivers, with whom they relate well and for whom they have expressed their love. Despite their special needs, the boys are consistently described as healthy, happy and progressing. These appealing characteristics constitute substantial evidence the boys are generally adoptable. Accordingly, even in the unlikely event the absence of an approved home study may impede their status as "specifically adoptable," there is substantial evidence to support a finding that they are nevertheless likely to be adopted.

Further, the fact that the children's behavioral issues have been diminishing under "the care of a stable, nurturing and attentive caregiver . . . permits the reasonable inference that an equally dedicated adoptive parent could manage [their] behaviors without difficulty." (*In*

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for all the boys' educational, developmental and basic needs and remained committed to adopting them. DCFS substantially satisfied the requirements for a preliminary assessment. (See generally, §§ 361.5, subd. (g)(1)(D), 366.21, subd. (i)(1)(D), 366.22, subd. (c)(1).)

re Michael G. (2012) 203 Cal.App.4th 580, 592–593; see *In re A.A., supra*, 167 Cal.App.4th at p. 1312 [affirming finding of adoptability "[g]iven the children's positive attributes, the progress they were making in overcoming their behavioral and emotional problems, as well as the current and former caregivers' willingness to adopt them"].) Indeed, even before the boys' behavioral issues began to recede, Ms. I had expressed a desire to adopt Jeremy and J.B. In light of the significant progress the boys have made, there is no reason to believe that, as with the PGPs and Ms. I before them, "equally dedicated [potential] adoptive parent[s] could manage [the boys'] behaviors without difficulty." (*In re Michael G., supra,* 203 Cal.App.4th at pp. 592–593.)

Finally, it is irrelevant to the court's finding of adoptability that the boys are members of a sibling set. Interference with a child's membership in a sibling set may be relevant to the sibling exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(v).) But the determination of adoptability addresses whether a child's individual characteristics would make it difficult to find someone willing to adopt him, and is an individual determination. (*In re Zeth S., supra*, 31 Cal.4th at p. 406; *In re I.I.* (2008) 168 Cal.App.4th 857, 871-872.) In any event, there is no indication that the court's finding regarding adoptability as to Jeremy or J.B. contemplates separating the siblings.

We conclude that the juvenile court's finding that Jeremy and J.B. were adoptable finds substantial legal and evidentiary support.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.