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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KEVIN L., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

B244029

(Los Angeles County  
Super. Ct. No. CK83797)

APPEAL from an order of the Superior Court of Los Angeles County, Sherri Sobel, Juvenile Court Referee. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

Appellant A.L. (Mother), mother of Kevin L., appeals from the juvenile court's order terminating parental rights under Welfare and Institutions Code section 366.26.<sup>1</sup> Mother contends the court's finding of adoptability was not supported by substantial evidence. Finding no error, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. Detention and Jurisdiction*

Mother and Kevin came to the attention of the Department of Children and Family Services (DCFS) in July 2010, when Kevin was five. A relative reported that Mother had locked herself in a bathroom with Kevin for two weeks, fearful that someone was going to hurt them or take Kevin away. She reportedly spanked Kevin if he tried to leave. Mother was placed on a "[section] 5150 hold" by the Department of Mental Health Services and Kevin was left in the care of a maternal aunt.<sup>2</sup>

On August 21, 2010, DCFS was called again when Mother and Kevin were found homeless and asking passersby for food.<sup>3</sup> The caseworker found a motel room for them and went there to assess Mother's ability to care for Kevin. During the interview, Mother began to behave erratically, screaming at the caseworker and

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Sections 5150 and 5151 permit authorities to take a person into custody and to detain him or her for 72 hours when there is probable cause to believe he or she is a danger to him or herself or others as a result of a mental disorder. (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1552.)

<sup>3</sup> DCFS had been unable to fully investigate the earlier referral because after her release from the hold, Mother had been eluding the caseworker.

locking herself and Kevin in the bathroom. Mother was placed on a second section 5150 hold. Kevin was detained and placed in the home of foster parents, the D.'s.<sup>4</sup>

Prior to the jurisdictional hearing, the caseworker learned that Mother had been prescribed psychotropic medication during the hold but refused to take it. The court sustained jurisdiction under section 300, subdivision (b) (failure to protect), finding that Mother suffered from mental and emotional problems that rendered her incapable of providing Kevin with regular care and supervision, and that she exhibited aggressive and assaultive behavior on the day Kevin was detained.<sup>5</sup>

Mother did not initially wish to visit or to regain custody of her son. She began visiting in September, but did not interact well with Kevin for some time. During the reunification period, their interaction improved and she changed her mind about wanting her son returned. Except for a brief period, however, she was unwilling to accept mental health treatment or services, and never acknowledged she had a need for them. Reunification services were terminated for Mother in November 2011, and the court set a March 2012 section 366.26 hearing.

### *B. Kevin's Developmental and Behavioral Issues*

At the detention hearing, Kevin's court-appointed attorney asked that the boy be given a psychological assessment and enrolled in individual therapy, as he was not communicating and seemed exceedingly fearful that someone was going to

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<sup>4</sup> The caseworker contacted a number of Kevin's relatives. None were willing to take him in.

<sup>5</sup> The court found that Kevin's father, who had not been involved with his family for many years, had failed to provide the child with the basic necessities of life. When located, Father did not want custody, visitation or reunification services. He reported severe mental problems, including auditory and visual hallucinations and suicidal thoughts. The court terminated Father's reunification services in April 2011. Father is not a party to this appeal.

hit him. The court ordered a psychological assessment which did not take place immediately.

Prior to the next hearing, the caseworker reported that Kevin had been medically examined and tested positive for tuberculosis. The caseworker had difficulty communicating with him and expressed concern that he was suffering from a speech delay.<sup>6</sup> The foster parents reported Kevin behaved aggressively, used profanity, and wanted to watch inappropriately violent television programs. At the September 2010 hearing, the court ordered a full evaluation -- “neuro, speech, mental health, tuberculosis” -- at a community based assessment and treatment center (CATC). The court subsequently arranged a court-appointed special advocate (CASA) for Kevin.

In October 2010, Kevin was enrolled in counseling and placed in a second foster home in order to be closer to Mother and maternal relatives. That same month, the CATC clinic evaluated Kevin and concluded he did not need a neurological exam, but did need therapy to address disciplinary issues. The clinic prescribed iron for anemia and began a nine-month drug regimen for tuberculosis.<sup>7</sup> The caseworker reported he was doing well behaviorally and interacting well with the children in the new home. Kevin’s teacher reported he spoke more Vietnamese than English, but was not proficient in either. The caseworker believed he had begun to show signs of separation anxiety.

In March and April 2011, the school reported Kevin was showing improvement, learning to spell and to read, and had been interacting positively in

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<sup>6</sup> Kevin and Mother spoke Vietnamese, as did the caseworker who prepared the report. The foster parents also reported difficulty in communicating with Kevin, but they did not speak Vietnamese.

<sup>7</sup> Due to confusion on the part of Kevin’s new foster mother, the treatment was halted prematurely and re-started at a later date, and was not completed until February 2012.

small groups, but recommended that he be retained in second grade. The foster mother asked for a change in placement due to Kevin's behavior, which included urinating on the floor, defiance, and refusal to do his homework, which had a negative influence on the other children in the home. The caseworker convinced the foster mother to continue the placement. Kevin's therapist reported he was making progress, but continued to be defiant toward adults and aggressive toward peers.

In April 2011, the special advocate reported that the foster mother was frustrated because Kevin was continuing to urinate inappropriately, would not do his homework, and would not listen or respond to her.<sup>8</sup> The CASA also reported that he was performing below grade level in school and had made only limited progress in therapy. At the April review hearing, the court again ordered a psychological evaluation. An attempt was made to conduct an evaluation in June, but due to Kevin's young age and lack of cooperation and focus, the psychological testing was "inconclusive."

In May 2011, Kevin was placed for the first time in a foster home where the family spoke Vietnamese. The new foster parents described him as "a smart boy with a stubborn personality." He stopped bedwetting for a time. In October, the caseworker reported Kevin was adjusting well to the foster home and that his foster mother reported no behavioral issues other than a short attention span. The foster mother stated he had made progress in listening and in following instructions and directions.

In October 2011, Kevin was tested and diagnosed with "disruptive disorder" or "disruptive behavior not otherwise specified," which meant that he "exhibit[ed] . . . disobedience . . . d[id] not follow directions from adults, [and engaged in]

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<sup>8</sup> The foster mother expressed the belief that there was "something mentally wrong with [Kevin]."

aggressive behaviors and bullying behaviors towards peers.” (Capitalization altered.) The tests indicated he had low cognitive function -- in the borderline retarded range -- but the assessor noted that he had poor language skills and was easily frustrated, which could have influenced the score, and stated that his “true intellectual ability is likely to be higher than his obtained scores.” The assessor also described him as “close[d] off, insecure[,] and reluctant to establish bonds with people.” Kevin’s regular therapist stated that he was adjusting well to his new foster home and school and no longer displayed aggressive behaviors, but had begun to display poor interpersonal boundaries in that he engaged in conversations with strangers. At the November 2011 review hearing, the court stated that Kevin had “some of the most severe mental health issues that I’ve seen in quite a while” and that he has “very special needs.”

In February 2012, one month prior to the original date for the section 366.26 hearing, Kevin was placed in the home of prospective adoptive parents, the T.’s. Prior to the placement, Kevin had had three weekend visits and by the third, had asked if he could stay with the T.’s rather than return to his foster home. The T.’s were described as employed college graduates, calm, mature, and loving, with support from friends, family, and other foster parent families in their area. They had had an approved adoption home study since November 2010. They were aware of Kevin’s history and expressed a willingness to learn appropriate strategies for parenting him and to receive services from DCFS. In the March 2012 section 366.26 report, DCFS recommended termination of parental rights to free Kevin for adoption.

The special advocate’s March 2012 report stated that Kevin had regressed since learning about the new placement, behaving aggressively toward peers and having toilet accidents at school. In addition, Kevin’s therapist had recommended a longer period of adjustment before Kevin was moved to the adoptive home from

the foster home. The CASA recommended that parental rights not be terminated due to these factors and also because Kevin and Mother's visits had become more positive and Kevin enjoyed seeing Mother.<sup>9</sup> After reviewing the competing reports, the court continued the section 366.26 hearing 120 days, to July 10, 2012.

In the second section 366.26 report, filed in July 2012, the caseworker reported that since his placement with the T.'s, Kevin had had a few bedwetting incidents, primarily before and after visits with Mother and therapy sessions, and no accidents at school. He was adjusting well to the new school, doing better academically and behaviorally, and had shown progress in following adult directives at home. He was still being taken to see a therapist. He had begun to call the T.'s "momma and poppa." The T.'s had enrolled him in a martial arts program to improve his self-discipline, and had taken him to family functions to help him develop social skills.<sup>10</sup> They had developed a closer bond with the boy and remained willing and able to proceed with the adoption. The caseworker explained that they were especially motivated to adopt because of their inability to have biological children. The special advocate had been unable to prepare a report, which led the court to continue the section 366.26 hearing to the end of August.

In the August 2012 interim report, the caseworker stated that Kevin had begun to resist visiting Mother, pretending to be asleep when he was driven to the site of the visits or going limp when his caretaker tried to take him out of the car. The T.'s remained willing and able to adopt him and DCFS continued to recommend adoption as the permanent plan. The CASA visited Kevin and the T.'s and found them to be loving and affectionate toward each other. Kevin's defiant

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<sup>9</sup> At this time, Kevin appeared conflicted, stating both that he wanted to stay with the adoptive family and that he wanted to live with Mother.

<sup>10</sup> In August, the T.'s, with court approval, took Kevin on vacation to visit family in Virginia.

behavior had drastically declined and he was doing well in school.<sup>11</sup> The CASA, while expressing concern that Mrs. T. was “overly focused on school performance,” joined in DCFS’s recommendation that the adoption proceed.

At the August 2012 hearing, the court ordered parental rights terminated. The court found by clear and convincing evidence that Kevin was adoptable and that none of the exceptions to termination applied.

## DISCUSSION

At the section 366.26 hearing, the court considers whether to terminate parental rights and order the dependent child placed for adoption, which is the preferred plan once efforts at reunification have been formally terminated. (§ 366.26, subd. (c)(1); *In re Cody W.* (1994) 31 Cal.App.4th 221, 230.) The court is assisted in its determination by a written assessment the agency is statutorily required to prepare and file prior to the hearing, which analyzes the likelihood that the child will be adopted if parental rights are terminated. (See § 361.5, subd. (g)(1); § 366.21, subd. (i)(1); § 366.22, subd. (c)(1).) “If the court determines by clear and convincing evidence, based on the assessment [citation] and any other relevant evidence, that it is likely the child will be adopted, the court must terminate parental rights and order the child placed for adoption.” (10 Witkin Summary of Cal. Law (10th ed. 2005) Parent & Child, § 687, p. 847.) “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.) We review a trial court’s determination of adoptability for substantial evidence, keeping in mind the heightened standard of proof. (*In re*

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<sup>11</sup> Kevin’s most recent report card showed grades of satisfactory and outstanding in all areas.



*R.C.* (2008) 169 Cal.App.4th 486, 491; see *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

“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.” (*In re I.I.* (2008) 168 Cal.App.4th 857, 870, quoting *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) There is no requirement that the minor be in a potential adoptive home to be considered adoptable, or that there be “a proposed adoptive parent ‘waiting in the wings.’” (*In re Sarah M., supra*, at p. 1649.) “[T]he child needn’t either be already placed with prospective adoptive parents, nor is it necessary even to have identified prospective parents, as long as there is clear and convincing evidence the child will be adopted in 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.) On the other hand, “the fact that a prospective adoptive parent has expressed interest in adopting the minor” is relevant to the question of adoptability because it constitutes clear 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 re Sarah M., supra*, at pp. 1649-1650.) “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.” (*Id.* at p. 1650, italics omitted.)

In some cases a minor who might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability may be deemed adoptable based solely on the willingness of a specific prospective adoptive parent or family to adopt the child. (*In re Sarah M., supra*, 22 Cal.App.4th at p. 1650; *In re R.C., supra*, 169 Cal.App.4th at p. 494.) In assessing adoptability, courts often

describe minors who are likely to be easily placed due to their young age and good health as “generally adoptable” and those who might otherwise be difficult to place due to being older or having significant physical or mental handicaps as “‘specifically’ adoptable,” indicating that a specific caretaker willing to adopt has been identified. (See, e.g., *In re R.C.*, *supra*, at pp. 492-494; *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1409; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062.) The juvenile court need not state on the record whether it found the child “generally adoptable” or “specifically adoptable”; we will affirm as long as clear and convincing evidence in the record establishes the likelihood that the dependent child will be adopted within a reasonable time. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) “The juvenile court’s reasoning is not a matter for our review. [Citation.] It is judicial action not judicial reasoning which is the proper subject of appellate review.” (*Ibid.*)

The evidence supported the juvenile court’s finding that Kevin was likely to be adopted. He was still quite young -- age seven -- at the time of the section 366.26 hearings. His most serious health issue -- tuberculosis -- had been resolved, and there was no evidence of any other significant physical or medical problems. He had been examined multiple times by psychologists and no evidence of serious mental illness was found. One test suggested he might be developmentally delayed or mildly retarded; however, the examiner expressed the opinion that the low score was likely due to language difficulties and frustration. This is borne out by the report of his Vietnamese foster parents that he was “smart” but “stubborn” and by his latest report card, which indicated he was doing much better after being placed in a stable home with parents who expected him to achieve academically. Not surprisingly, he had behavioral issues. This led to the diagnosis of “disruptive disorder” or “disruptive behavior not otherwise specified,” but as explained, this merely meant that he was often disobedient, failed to consistently follow adult

direction, and engaged in aggressive behavior with his peers -- none of which is unusual for a young boy from a troubled background or indicative of serious emotional or mental problems that would preclude adoption or a finding of general adoptability. (See *In re R.C.*, *supra*, 169 Cal.App.4th at pp. 489, 492-494 [although minor experienced symptoms of drug exposure at birth and appeared to suffer speech delays, his positive characteristics -- he was less than one year old and had a “great disposition” -- supported a finding of general adoptability]; *In re A.A.*, *supra*, 167 Cal.App.4th at pp. 1312-1313 [children who suffered from attachment disorder and developmental delays and behaved aggressively toward each other, but had made significant progress through family and individual therapy, were properly deemed generally adoptable]; *In re Helen W.* (2007) 150 Cal.App.4th 71, 74-75, 79-80 [although children suffered from various physical and developmental conditions, including susceptibility to brain tumors and mild autism, record supported finding of general adoptability based on their appealing characteristics, including young age, affectionate personality traits and history of positive interactions with others].) Finally, the fact that DCFS was able to locate a prospective adoptive family for Kevin, who remained willing to adopt after being advised of his behavioral and developmental issues and caring for him for six months, supported the finding that he was “likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family.” These factors constituted substantial evidence that Kevin was generally adoptable.

Pointing to the court’s statement at the November 2011 hearing that Kevin had “severe mental health issues” and has “very special needs,” Mother presumes that Kevin could only be deemed specifically adoptable. She contends that the court and DCFS failed to adequately inquire into the ability of the T.’s to provide for his medical, developmental, educational, emotional and other special needs. Even had the court been persuaded that Kevin’s developmental and behavioral

issues rendered him not generally adoptable, leading the court to rely solely on the willingness of the T.'s to adopt, the adoptability finding would be supported by clear and convincing evidence. In that situation -- "[w]hen a child is deemed adoptable only because a particular caretaker is willing to adopt" -- the court should focus more intently on the prospective adoptive parent or family to determine whether "there is any legal impediment to the . . . adoption and whether [the prospective adoptive parent or family] is able to meet the needs of the child." (*In re Helen W.*, *supra*, 150 Cal.App.4th at p. 80; accord, *In re Carl R.*, *supra*, 128 Cal.App.4th 1062.)<sup>12</sup> Here, the adoption assessment report included ample evidence that the T.'s fully understood the responsibilities of adoption, were aware of Kevin's behavioral and developmental issues, and were prepared to deal with them. There was no evidence of any legal impediment to their ability to adopt and the couple appeared financially secure, emotionally mature, and highly motivated. They had already begun to integrate Kevin into their family and had communicated multiple times their commitment to adopting him. This was clear evidence that Kevin was likely to be adopted once parental rights were terminated. (See *In re Jayson T.*, *supra*, 97 Cal.App.4th at p. 85 ["[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the

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<sup>12</sup> As explained in *In re G.M.* (2010) 181 Cal.App.4th 552, dependency cases do not always "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." (*Id.* at p. 562.) Instead "[t]hese scenarios represent opposite ends on the continuum of when a child is likely to be adopted." (*Ibid.*) Adoption assessments prepared by the agencies generally describe "a combination of factors warranting an adoptability finding, including . . . the availability of a prospective adoptive parent." (*Ibid.*) "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." (*Ibid.*)

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.”].)

Pointing to evidence indicating that Kevin’s behavioral and developmental issues had not been fully resolved, Mother contends the evidence does not demonstrate that the T.’s fully understand the boy’s special needs or have the ability to meet them. Evidence carefully culled from the record to support the appellant’s position does not demonstrate that reversal is required. Viewed as a whole, the evidence supported the court’s finding that Kevin was likely to be adopted and that the T.’s were committed to giving him a stable and permanent home.

**DISPOSITION**

The order terminating parental rights is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.