Filed 2/5/14 In re J.D. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.D. et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B249733 (Super. Ct. Nos. J066111, J068097) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. B.D. et al., Defendants and Appellants.	

B.D. (Mother) and James D. (Father) appeal from an order of the juvenile court terminating their parental rights and declaring that their daughters J.D. and R.D. are adoptable. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)[1] We affirm.

FACTS AND PROCEDURAL HISTORY

In 2006, the Ventura County Human Services Agency (HSA) filed a dependency petition on behalf of J.D. J.D. was two years old and living with her parents. Mother had recently given birth to a boy who tested positive for methamphetamine. Mother also tested positive for methamphetamine and admitted to using it during the

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

pregnancy. HSA alleged that Mother and Father failed to protect J.D. and abused her sibling. (§ 300, subds. (b) & (j).) The boy is not subject to this appeal.

The juvenile court sustained the allegations of the petition and removed J.D. from her parents' home for one year while the family participated in reunification services. The court returned J.D., then three years old, to her parents in March 2007 under a family maintenance plan. Her sister R.D. was born in August 2007.

In December 2010, when J.D. was seven years old and R.D. was three years old, HSA filed a dependency petition on their behalf. HSA alleged that Mother and Father failed to provide the children with medical and mental health care and failed to protect them from verbal and physical altercations between Mother and Father. (§ 300, subd. (b).) R.D. was nonverbal and required seven root canals. R.D. was experiencing emotional difficulty. The juvenile court detained the children and gave HSA responsibility for their temporary care and placement. It ordered reunification services for both parents. HSA placed the children with a foster family in whose care they remain.

In January 2011, the juvenile court sustained the allegations of the petition and continued services for both parents. In November 2011, the court suspended J.D.'s visits with her parents after hearing her testimony and determining the visits were detrimental to her emotional health. R.D. continued to have supervised visits.

In March 2012, the juvenile court terminated reunification services to both parents, set a hearing to determine a permanent plan, continued R.D.'s supervised visits, and ordered HSA to prepare a section 366.21, subdivision (i) adoption assessment. The hearing was initially set for June 2012.

On June 11, 2012, HSA submitted its adoption assessment and its recommendation that the juvenile court terminate parental rights and order a permanent plan of adoption. HSA concluded that both children were adoptable in view of their good physical health, their "on target" developmental progress, their improved mental health, and R.D.'s "great strides" with speech and vocabulary, among other things. HSA also

reported that the foster parents, with whom the children had been placed since removal, wished to adopt them and that both children wanted to be adopted by them.

The juvenile court continued the permanent plan hearing to October 2012 after HSA reported that the foster home was being investigated for licensing violations. A few days before the October hearing, HSA reported that the foster home had been investigated for "personal rights violations and Type B deficiencies" that "included the children not receiving three meals daily and having two children sleeping in the same bed." The foster parents were also cited for interrupting an interview of the foster children. They agreed to a compliance plan to be completed by March 14, 2013. HSA recommended that termination of parental rights be postponed, and that the temporary plan for the children be long-term foster care. It said, "Should the foster parents . . . comply with the Facility Compliance Plan . . . , they [would] be reassessed for the adoption of [J.D. and R.D.]."

At the October hearing, the juvenile court ordered that long-term foster care with a specific plan of adoption was the appropriate plan for both children. It continued R.D.'s visits with her parents, and set the matter for review on March 18, 2013, after the foster parents' compliance plan was expected to be complete.

On March 18, 2013, HSA reported that the foster parents were in compliance with all aspects of their license and remained committed to adopting the children. HSA provided updated information on the children' developmental, educational, and emotional condition. HSA reported, "Previous barriers to permanency have been resolved and the children and foster parents are now ready to move forward together in the process of Adoption."

The juvenile court conducted a contested hearing in June 2013. It considered HSA's June 19, 2013, report and the testimony of Mother, Father and two social workers. In its report, HSA recommended the court terminate parental rights and free the children for adoption with their foster parents. HSA provided the initial adoption assessment and updated it by reporting that the foster parents had successfully completed their compliance plan and had ameliorated HSA's earlier concerns. Yolanda Pasmant, the

adoption social worker who prepared the initial adoption assessment, testified that she had met with the entire family in May 2013, about two months before the contested hearing, to "reassess" their commitment to adoption. The children showed no hesitation about being adopted and did not appear to be unhappy when she explained that they would not see their birth parents again. Pasmant saw no mental or emotional issues that needed to be addressed. R.D. had become more talkative and expressive and the children wanted to talk about changing their names. Pasmant testified that the foster parents' licensing issues were confidential but had nothing to do with the safety of the children.

Davitt Conley, the children's primary social worker, testified that he saw the children at least once a month since he had been assigned to the case in October 2012. R.D.'s "verbal expression [had] increased significantly" and she considered her foster parents to be her "mom and dad." Past concerns about J.D.'s mental health were successfully addressed with therapy in which the foster parents actively participated. Conley said the foster parents' licensing concerns were confidential, but "there was a substantiation with regards to concerns about the children not being provided three square meals a day as well as them sharing a bed within the home. Both of those were ameliorated very quickly, and the foster parents' license is in good standing and current." He had no concerns about the safety of the children during the compliance plan period.

Mother testified that she completed counseling eight months earlier and continued to participate in an "AA/NA" group. She said Father had been working in landscaping and had a new construction job and she was looking for work. She and Father continued to live with Father's parents as they had since R.D. was one year old. Mother said that visits with both children were positive at first. J.D. eventually became more withdrawn. After they stopped seeing J.D., someone explained that it was too hard for J.D. because she was having memories. Mother said their visits with R.D. were good until the past October when R.D. did not want to visit. After that, visits were reduced to once a month. Since then, Mother said that R.D. is "fine up until . . . the end" of the visit, when she becomes "a little . . . standoffish."

Father testified that he was working and had completed marriage counseling. He and Mother were attending bible fellowship once a week. He said R.D. was happy to see them during visits. R.D. told him the foster mother was going to change her name and she seemed sad about it. J.D. had become withdrawn at their last visit. He and Mother had no further contact with J.D. after the last visit.

The juvenile court found by clear and convincing evidence that the children are adoptable. It terminated parental rights, finding that no exception had been shown.

DISCUSSION

We review the record to determine whether it contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the children were likely to be adopted within a reasonable time. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) We do not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. (*Ibid.*) When a parent challenges an assessment report as inadequate, we evaluate any deficiencies in the report in view of the totality of the evidence in the appellate record. (*Id.* at p. 591 [deficiencies were harmless in view of strength of other evidence of adoptability in the record].) On the other hand, deficiencies in an assessment report go to the weight of the evidence and, if sufficiently egregious, may impair the basis of a court's decision to terminate parental rights. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 14.)

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless there is a compelling reason to determine that termination would be detrimental to the child due to an enumerated statutory exception. Before a hearing to terminate parental rights, the agency supervising the child must submit an adoption assessment. (§ 366.21, subd. (i).) The assessment must include, among other things, a review of contact between the parent and child; an evaluation of the child's medical, developmental, scholastic, mental, and emotional status; a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent and the duration

and character of their relationship with the child; a description of efforts to be made to identify a prospective adoptive parent; and an analysis of the likelihood that the child will be adopted if parental rights are terminated. (*Id.*, subd. (i)(B)-(G).)

Mother and Father argue that there is no substantial evidence to support a finding that the children were likely to be adopted in a reasonable time because (1) the adoption assessment was not completed, (2) the prospective adoptive parents recently completed a compliance plan addressing substantiated allegations, and (3) HSA made no other efforts to identify a prospective adoptive parent.

HSA completed the adoption assessment before the section 366.26 hearing. Its June 2012 assessment satisfied all the requirements of section 366.21, subdivision (i). That report and its supplements provided substantial evidence that the children were likely to be adopted because they were healthy, well-adjusted children who had lived with the same foster family since their removal. The prospective adoptive parents had strong and enduring relationships with both children and demonstrated ability to meet their needs. This case is unlike *In re Valerie W., supra*, 162 Cal.App.4th 1, where one of the children had a serious, unresolved medical condition and the assessment report did not include any information about diagnosis, prognosis, or pending genetic and neurological testing. There is no evidence here that either child had any unresolved conditions or special medical needs.

The foster parents' licensing concerns were resolved and do not undermine the adoptability determination. "[T]he inquiry as to whether a child is likely to be adopted does not focus on the adoptive parents, but rather, on the child." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 733.) Moreover, the July 2013 report and the uncontradicted testimony of Pasmant and Conley establish that the foster parents' licensing concerns were completely resolved by the time of the contested hearing and that the children were never in danger while in the care of their foster parents. Even if the foster parents were not eligible to adopt the children, the juvenile court could have found the children adoptable based on the overwhelming evidence in the record that they were in good physical, emotional, and developmental condition. "The fact that the child is not

yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted." (§ 366.26, subd. (c)(1).)

Mother points out that the prospective foster parents were undergoing a private adoption home study at the time of the contested hearing. "[T]here is no requirement that an adoptive home study be completed before a court can terminate parental rights." (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.) HSA fulfilled the adoption assessment requirement. (§ 366.21, subd. (i).)

Mother notes that counsel and the juvenile court expressed concerns about the case. The record demonstrates that the court did not have any reservations about its decision. The trial court told counsel, "I understand some of your concerns . . . about there's something about this case, but the more I think about my conversation [with Father in chambers at the hearing to terminate visitation] . . . I don't feel as uncomfortable about what's happening today as you." Substantial evidence supports its conclusion that the children were adoptable.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant B.D.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant James D.

Leroy Smith, County Counsel, Linda Stevenson, Assistant County Counsel, for Plaintiff and Respondent.