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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 G.C., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B297003 (Super. Ct. No. 17JD-00103) (San Luis Obispo County)
SAN LUIS OBISPO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. G.C., Sr., Defendant and Appellant.	

G.C., Sr. (father) appeals the juvenile court's order terminating parental rights to his minor child G.C. with a permanent plan of adoption. (Welf. & Inst. Code, § 366.26.) Father contends the court erred in finding that the parental benefit exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply, and in finding that G.C. was adoptable. We affirm.

FACTS AND PROCEDURAL HISTORY

G.C. was born in September 2007. In April 2017, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition as to G.C. after father was arrested for committing domestic violence against G.C.'s mother J.J. (mother).[1] The petition alleged that mother only had supervised visitation with G.C. and was too intoxicated to care for the child. The petition further alleged that "[t]his family has a long history of domestic violence[and] substance abuse issues, and [father] has made questionable decisions relating to entrusting people to care for his son."

G.C. had been the subject of 21 prior referrals to DSS. He was born with fetal alcohol syndrome (FAS) and was subsequently diagnosed with Disruptive Mood Dysregulation Disorder (DMDD) and Attention Deficit Hyperactivity Disorder (ADHD). When he was taken into custody and placed in foster care following father's April 2017 arrest, he was so dirty he had to be bathed three times and was unable to urinate in the toilet, use toilet paper, dress himself, put on his shoes, or brush his teeth. He was also severely malnourished and underweight.

G.C. was ordered detained and mother and father were granted supervised visitation. In its disposition report, DSS recommended that G.C. remain in out-of-home custody and that mother and father be offered reunification services. DSS reported that G.C. was doing well in his foster care placement and "has expressed that he would like to stay with [his foster family] if being placed with family is not appropriate at this time." At the conclusion of the disposition hearing, the court

[1] Mother is not a party to this appeal.

ordered G.C. removed and granted both parents reunification services with supervised visitation.

In its three-month and six-month review reports, DSS stated that G.C. was "flourishing" in his foster home placement and no longer needed the psychotropic medication that had been prescribed to treat his DMDD. Although father was consistent in his visitation with G.C., he did not consistently attend the child's medical appointments and had been "resistant to fully engaging in his services and case plan objectives." Father had been discharged from Drug and Alcohol Services (DAS) in July 2017 Prior to his discharge from DAS, father had repeatedly tested positive for methamphetamine, alcohol, and THC and had also submitted diluted samples. Between September and November 2017 he tested positive for alcohol and methamphetamine four times, submitted five diluted urine samples, and missed one test.

In its February 2018 nine-month review report, DSS stated that father "has made a significant turnaround since January 2018 and has begun to actively engage in his case plan objectives . . . ." Since then he had passed all of his drug tests and had begun seeing a new therapist.

In its report for the 12-month-review hearing, DSS recommended that G.C. remain a dependent in out-of-home placement and that mother and father receive an additional six months of reunification services. DSS reported that father "only recently began engaging in his treatment services at [DAS]; however, he also recently provided a positive drug test and a dilute test. [Father] needs to demonstrate over time that he can maintain his sobriety, engage in safe behaviors and behave in a protective manner without causing emotional trauma to [G.C.] [G.C.] cannot be returned to [father's] care until he demonstrates, for an extended period of time, that he is clean and sober and

that he can be empathetic towards his son." At the conclusion of the hearing, the court ordered that reunification services be continued for both parents and authorized a 30-day trial visit with father at the discretion of DSS.

In its reports for the 18-month review hearing, DSS recommended that reunification services be terminated for both parents and that the matter be set for a permanency planning hearing. In May 2018, father was convicted of inflicting corporal injury on a cohabitant (Pen. Code, § 273.5) based on the incident that led to G.C.'s removal and was placed on three years of probation. He had been unsuccessful in his outpatient treatment with Family Treatment Court "due to substance use issues, especially methamphetamine and alcohol." After he began Adult Drug Court in July 2018, he was picked up on two probation violations for possessing alcohol. Between April and August 2018 he submitted four positive tests for alcohol and methamphetamine, nine dilute tests, and missed two other tests. DSS concluded that "[a]lthough it may appear that [father] actively participates and attempts to be compliant in his case plan, particularly related to drug and alcohol treatment which has been his biggest barrier to reunification . . . [,] [he] was either unwilling or unable to take full advantage of all of the services that were being offered to him."

At the contested 18-month review hearing, G.C.'s social worker testified that G.C. had conveyed to her that father had told him during their recent visits "[G.C.] was going to be . . . asked who he wanted to live with and that [G.C.] needed to tell the social worker and the courts that he wanted to live with his dad." At the conclusion of the hearing, the juvenile court terminated reunification services and set the matter for a section 366.26 hearing.

In its report for the section 366.26 hearing, DSS recommended that parental rights be terminated and that adoption be selected as G.C.'s permanent plan. The social worker stated that "[G.C.]'s first nine years were full of complicated issues, but in spite of those set-backs, he is sensitive, curious, excited about life, and he is adoptable." One of the prospective adoptive parents had known G.C. since she began mentoring him, and her partner had known him since June 2018.

According to the social worker, "[G.C.], and his kind spirit struck [the prospective adoptive parents] early on and their time together has grown to the point where they want to become a family through adoption." The social worker found the prospective adoptive parents "to be open, compassionate, flexible and thoughtful in their attempts to understand the myriad of issues that [G.C.'s] life entails. They are open to keeping him connected to relatives that he is close to as long as their presence in his life is in his best interest."

DSS also reported that "[G.C.] is very aware of his need for a long-term, stable home. Over the last two years he has asked his foster parent if he could stay there because they represent the 'only family he has ever had who takes care of him, feeds him and helps him every day.' As [G.C.] spends more time with [the prospective adoptive parents] he will understand that they can and will care for him just as his current foster parents do." The plan was "for [G.C.] to move into his concurrent plan home once adoption is agreed to be the permanent plan. Once that happens, the social worker will continue working with his new family to ensure they have the support they need to incorporate him into their home. Judging from [G.C.]'s excitement and anticipation about spending time with his concurrent plan family, he appears to be ready to start moving toward permanency with his new

family and finding the safety and solitude he has become accustomed to."

G.C.'s Court Appointed Special Advocate (CASA) submitted a memorandum "enthusiastically support[ing]" DSS's recommendation. The CASA reported that "[o]n our January 15, 2019 visit, I asked [G.C.] . . . whether he wished to return to live with his father. He replied in the negative. Without further prompting, and after a few minutes of reflection, he went on to add that he wanted to live with the [prospective] adoptive parents. When I repeated this back to him in the form of a question, he responded with a vigorous assent and wide smile. To me, this left no doubt about his feelings in the matter."

Prior to the section 366.26, father filed a section 388 modification petition requesting that reunification services be reinstated and G.C. returned to father's custody.[2] The hearing on the section 388 petition was combined with the contested section 366.26 hearing.

At the combined hearing, G.C.'s social worker opined that although G.C. had special needs he was generally adoptable "[b]ecause he is a wonderful, resilient, smart, energetic, tricky little boy who has shown that he wants to be in a family, and he responds to parenting and discipline." The social worker had also observed one of G.C.'s visits with the prospective adoptive parents and characterized it as "just a very easy comfortable time." The social worker concluded that G.C. "would receive great harm if he wasn't transitioned into the home of his concurrent plan parents" and was "very aware of where he has been and where he is now and where he would like to see himself in the future. And so I think he sees his concurrent plan parents

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[2] Father does not challenge the denial of his section 388 petition.

as people who will support him and allow him to get to where he wants to be in his future." The social worker further opined the benefits G.C. would derive from the concurrent plan of adoption outweighed any benefits he received from continuing his relationship with father.

At the conclusion of the hearing, father requested that G.C. be returned to his custody or that a permanent plan of guardianship be ordered "so that [father] can continue to be the father to this young man who needs his father in his life while having the support of a lot of other folks in his life." Counsel for DSS responded that although father's counsel did not expressly refer to the parental benefit exception to adoption, she seemed to be arguing for that exception but it did not apply. G.C.'s counsel agreed with DSS and added, "It's clear that [G.C.] is adoptable. Any exception to the presumption that he should be adopted hasn't been met by either parent."

The juvenile court denied father's section 388 petition, found that G.C. was adoptable, and terminated parental rights with adoption as the permanent plan. The court found "no question" that G.C. "is adoptable, if not in the home of his prospective adoptive family, but certainly by another family." In finding that the parental benefit exception did not apply, the court reasoned that "given the trauma that [G.C.] has experienced and the bond that he has right now, to me, it's a far, far better thing in his interest to have the permanency of an adoptive family rather than to be in a guardianship where both the . . . guardianship parents and the biological parents would be wondering what is the next step . . . . I don't think that would be in [G.C.'s] best interest at all."

DISCUSSION

Parental Benefit Exception (§ 366.26, subd. (c)(1)(B)(i))

Father contends the juvenile court erred in finding that the parental benefit exception to adoption did not apply. We disagree.

"At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. [Citations.] 'If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans.' [Citations.] In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. [Citations.] The court, 'in exceptional circumstances,' may 'choose an option other than the norm, which remains adoption.' [Citation.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)" (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395, italics omitted.) "We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. [Citations.]" (*Id.* at p. 395.)

The juvenile court did not abuse its discretion in finding that the parental benefit exception did not apply. The court

correctly found that although father had maintained visitation with G.C., he failed to meet his burden of proving the parent/child relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) In making this determination, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*Ibid.*) The strong preference for adoption is overcome only "[i]f severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed." (*Ibid.*)

Father made no showing that G.C. would suffer great harm if his parental rights were terminated. He demonstrated, at most, that G.C. would benefit from continuing his relationship with him. The statutory scheme, however, "makes it plain that a parent may not claim entitlement to the [parental benefit] exception . . . simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.) "Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*Id.* at p. 1350.)

Father failed to meet his burden of proving this is such an extraordinary case. To the extent he cites evidence and inferences therefrom that would have supported contrary findings by the court, he misapplies the applicable standards of review. Contrary to father's assertion, neither DSS nor the court

based their conclusions on the possibility that the prospective adoptive parents would allow father to continue having contact with G.C. after he was adopted. In her testimony at the section 366.26 hearing, the social worker unequivocally opined that any benefit G.C. would obtain from continuing his relationship with father was outweighed by the benefits he would obtain through adoption. It is also clear that although G.C. loved his father, he never looked to him to meet his needs. G.C. told his CASA he did not want to live with his father and never expressed that he missed him. G.C. also made clear that he wanted to live with his prospective adoptive parents and complained that father had pressured to him to say otherwise. In light of this evidence, the court did not err in finding that the benefit G.C. would derive from continuing his relationship with father would not outweigh the benefits of a permanent home with his prospective adoptive parents.

Adoptability

Father contends the juvenile court erred in finding that G.C. was adoptable. He claims that G.C. was not generally adoptable due to his developmental delays, and that he was not specifically adoptable because he had yet to be placed with his prospective adoptive parents and "it was premature to conclude they were able to meet his needs as they had not yet been able to do so." We are not persuaded.

"A juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citation.] The 'likely to be adopted' standard is a low threshold. [Citation.] On review, '"we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted

within a reasonable time. [Citations.]" [Citations.] We give the court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]' [Citation.]" (*In re J.W.* (2018) 26 Cal.App.5th 263, 266-267.)

A child is generally adoptable if his or her age, physical condition, mental state, and other factors make it likely that the child will be adopted within a reasonable time by either a prospective adoptive family or another family. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1526; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) A child is specifically adoptable "'where the child is deemed adoptable based solely on the fact that a particular family is willing to adopt him or her . . . .'" (*In re I.W.*, at p. 1526; accord, *In re J.W.*, *supra*, 26 Cal.App.5th at pp. 267-268.)

That there is a prospective adoptive parent "'is evidence that the child's age, physical condition, mental state, and other matters relating to the child are not likely to discourage others from adopting the child.' [Citation.] [¶] In other words, '[w]hile, generally, the present existence or nonexistence of prospective adoptive parents is, in itself, not determinative, it is a factor in determining whether the child is adoptable.' [Citation.] As one court has explained, 'in some cases a minor who ordinarily might be considered unadoptable [because of] 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.]" (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1526.)

The trial court did not err in finding that G.C. was both generally and specifically adoptable. His prospective adoptive parents expressed their commitment to adopting him

notwithstanding his special needs. Moreover, there is nothing in the record to indicate that the prospective adoptive parents will be unable to meet G.C.'s needs or that some legal impediment will prevent them from completing the adoption. Father could have offered evidence of a possible legal impediment to adoption at the section 366.26 hearing, but declined to do so. (See *In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) Since DSS and the adoptions social worker had the duty to investigate possible legal impediments to adoption and did not report any, we must presume, absent record evidence to the contrary, that they completed the required investigation and found no possible impediments. (Evid. Code, § 664.) Father did not rebut this presumption either below or on appeal. His attack on the finding that G.C. is adoptable thus fails.

DISPOSITION

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Charles S. Crandall, Judge
Superior Court County of San Luis Obispo

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

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