Filed 9/20/12 In re King M. CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

**California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| In re KING M., a Person Coming Under the Juvenile Court Law. | B238424 |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>T.D.,<br><br>Defendant and Appellant. | (Los Angeles County Super. Ct. No. CK77851) |

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

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

T.D. appeals from the order of the juvenile court terminating her parental rights to King M. (Welf. & Inst. Code, § 366.26.) She contends there was insufficient evidence that King was adoptable. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

When the juvenile court declared then nine-month old King a dependent child his three older sisters were already dependents of the court. The Department of Children and Family Services (the Department) placed King with foster parents, Ms. B. and Ms. S., who described King as a " 'very good baby' " and "developmentally on track." The child presented no behavioral, developmental, or medical issues.

Five months after King arrived in their home, Ms. B. and Ms. S. filed a petition to be declared King's de facto parents. They stated that they had cared for King since he was five months old and he had become attached to them. They reported that King loved music, dancing and clapping. He loved to explore, have books read to him, and go to the park. They described King as having reached his developmental milestones early, was healthy, and used sign language to indicate hunger or thirst. They declared that King "is absolutely thriving, happy, giggles often," and "is the joy of our life!" The court denied the de facto parental status request stating that family reunification services were ongoing.

After seven months in their care, Ms. B. and Ms. S. reported King continued to thrive, was outgoing, developmentally advanced, and had no behavioral problems, except after visits from his grandmother. King was bonded with his caregivers, who wanted to adopt him.

King's paternal uncle and aunt in Arizona, where King's sisters had been placed, had agreed to take King. They felt King needed to be with his siblings and the family needed to take care of him. Ms. B. and Ms. S. became upset when they learned the paternal uncle and aunt had decided to adopt him.

Arizona approved the Interstate Compact for the placement of King there. The Department submitted a home study that had been conducted to determine whether the

paternal uncle could care for King. The juvenile court ordered King placed with the paternal uncle and aunt in Arizona.

King adjusted well to his new placement. Soon thereafter, the juvenile court terminated reunification services for King's parents and directed the Department to initiate an adoptive homestudy within the week.

In November 2011, the paternal aunt reported that King was advanced developmentally. The aunt indicated the child was fine emotionally and was adjusting. He ate and slept well and played like a normal child. She did not perceive any developmental or emotional issues with King. All of the aunt's children and King's siblings, with the possible exception of one sister, were reportedly " 'fine' " with King living with them, and " 'everything else seem[ed] to be going great.' " The paternal uncle and aunt also wanted to adopt King's three sisters and had been very cooperative and proactive throughout the adoption process. All that was left to be done was the home study approval. However, Arizona regulations precluded initiating adoption home studies until parental rights were terminated. The social worker opined that it was "very likely" that King would be adopted.

After finding by clear and convincing evidence that King and his siblings were adoptable, the juvenile court terminated parental rights. Mother appeals.

## DISCUSSION

Under Welfare and Institutions Code section 366.26, subdivision (c), "If the court determines, based on the assessment . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (Welf. & Inst. Code, § 366.26, subd. (c)(1).)

Mother challenges the adoptability finding with respect to King, her fourth child, only. She contends that the sole evidence of adoptability presented by the Department is that the paternal uncle and aunt wanted to adopt the child and had completed all the necessary paperwork. The willingness to adopt is insufficient in and of itself to support a finding of adoptability, mother argues.

The question of adoptability "posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.]" (*In re Sarah M*. (1994) 22 Cal.App.4th 1642, 1649-1650.)

It was the Department's assessment that King would "very likely" be adopted. (See Welf. & Inst. Code, § 366.26, subd. (c)(1) [adoptability finding based on Department's assessment].) Furthermore, the record is replete with evidence that King is young, healthy, and a very good, well-adjusted, developmentally advanced, thriving, outgoing, and happy baby who has bonded with his caregivers. There is more than ample evidence from which the juvenile court could find by clear and convincing evidence that King is singularly adoptable. (*In re Marina S*. (2005) 132 Cal.App.4th 158, 165 [appellate court review for substantial evidence to support juvenile court's finding by clear and convincing evidence].) Mother is wrong that the only evidence of King's adoptability is the desire of the uncle and aunt to adopt the child.

Citing *In re Jerome D*. (2000) 84 Cal.App.4th 1200, mother argues that the adoptive home study, which had not yet been completed because of Arizona policy, does not provide sufficient evidence of adoptability. *Jerome D*. is distinguished as the child's adoptability there was based on the prospective adoptive parent's willingness to adopt, and only brief mention was made of the child's mental and physical health, and sociability. (*Id*. at p. 1205.) By contrast, the juvenile court here had well-documented evidence that King's age, physical condition, and emotional state rendered him eminently adoptable. "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*. [Citation.]" (*In re Sarah M*., *supra*,

22 Cal.App.4th at pp. 1649-1650.) That the aunt and uncle wish to adopt King is simply some more evidence, in addition to King's own characteristics, supporting the juvenile court's adoptability finding. Added to all this evidence of adoptability is the fact that others, such as Ms. S. and Ms. B., have repeatedly expressed their desire to adopt King.

Mother cites *In re Amelia S.* (1991) 229 Cal.App.3d 1060, to argue there is a risk that the home study will not be approved with the result King could be left a legal orphan. However, as mother acknowledges, "there is no requirement that an adoptive home study be completed before a court can terminate parental rights. The question before the juvenile court was whether the child was likely to be adopted within a reasonable time, not whether any particular adoptive parents were suitable. [Citation.]" (*In re Marina S.*, *supra*, 132 Cal.App.4th at p. 166.) Welfare and Institutions Code section 366.26 states, "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." (Welf. & Inst. Code, § 366.26, subd. (c)(1).) Thus, " '[T]he question of a family's suitability to adopt is an issue which is reserved for the subsequent adoption proceeding.' [Citation.]" (*In re Marina S.*, *supra*, at p. 166.)

## DISPOSITION

The order is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.