Filed 3/8/17 In re Dania L. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DANIA L., et al., Persons Coming Under the Juvenile Court Law.	B271546 (Los Angeles County Super. Ct. No. CK62771)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent. v. Y.L., et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County. Joshua D. Wayser, Judge. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant Y.L.

Matthew Chapman, under appointment by the Court of Appeal, for Defendant and Appellant Simon G.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Simon G. (father) and Y.L. (mother) each separately appeal from an order terminating parental rights. There are six children involved in this appeal: Dania L. (born June 2008); K.G. (born Oct. 2009); I.G. (born Mar. 2011); Simon G. (born Mar. 2012); Daphne G. (born Jan. 2013); and Silvia L. (born Jan. 2015).[1]

Father appeals from the order terminating his parental rights to Dania, K.G., I.G., Simon, and Daphne. He argues that he was not provided with adequate reunification services, and if adequate reunification services were provided, then the law is inadequate to protect the fundamental constitutional rights of parents.

Mother appeals from the order terminating her parental rights to Silvia. She argues that there was insufficient evidence supporting the juvenile court's finding that Silvia was adoptable. Mother argues that the order terminating her parental rights as to Silvia must be reversed.

FACTUAL AND PROCEDURAL BACKGROUND

The family had a history of involvement with the Department of Children and Family Services (DCFS) starting in 2006, when a petition was filed pursuant to Welfare and Institutions Code section 300 on behalf of three older children who are not subjects of this appeal.[2] The allegations of the prior petition were that mother and father engaged in domestic violence and that father had a history of substance abuse and was a user of cocaine. The petition was sustained, parental rights were terminated in 2008, and the three children were adopted.

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[1] Father is not the biological father of Silvia. Silvia's biological father remains unknown.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

In February 2013, a referral was made regarding then 10-month-old Simon. Simon had no muscle development in his legs and was observed only lying on his back. The referral observed that Simon's parents did not hold him or pay attention to him. In addition, he had not been seen by a doctor since birth. The caller informed DCFS that mother had delivered Daphne in January 2013.

DCFS initiated an investigation, and found that the children had not been taken to medical appointments. After DCFS became involved, the children received medical care and Regional Center services for unmet medical and developmental needs. Allegations of general neglect were substantiated as to Simon and newborn Daphne.

DCFS initiated voluntary services. In May 2013, the parents agreed to participate in family preservation services and parenting classes. However, by July 2013 the parents were having compliance issues. Mother had not undergone a psychiatric evaluation despite referrals, and father was hesitant to participate in parenting. Further, the parents were not keeping the children's medical appointments, Regional Center appointments or participating in early intervention programs. Services providers had attempted to contact the parents without response. All five of the children had special needs.

Section 300 petition, section 342 petition, jurisdiction and disposition on behalf of the five older children

DCFS filed a petition on behalf of Dania, K.G., I.G., Simon, and Daphne on August 26, 2013. At the time, Dania was five years old, K.G. was three years old, I.G. was two years old, Simon was 17 months old, and Daphne was six months old. The petition alleged that the parents committed medical neglect and left the children in a detrimental and endangering situation by

leaving the children home alone without adult supervision. The children were detained in foster care.

The jurisdiction/disposition hearing took place on October 4, 2013. The court declared the children dependents under section 300, subdivisions (b) and (j), and permitted them to remain in parental custody with services in place. The court specifically ordered that mother was not to be left alone with the children. Mother reported being overwhelmed with caring for her children and appeared to be suffering from mental and emotional problems. Mother had exhibited behavior such as banging her head on the wall, sleeping for long periods of time, not keeping up with personal hygiene, and suffering from feelings of depression, hopelessness and lack of motivation.

On January 10, 2014, DCFS filed a supplemental petition under section 342, alleging that the parents violated court orders by allowing mother to be alone with the children, and that father's eight-year history and current abuse of cocaine, amphetamine, methamphetamine and alcohol placed the children at risk. Further, the parents failed to keep medical and therapeutic appointments for the children. In its January 10, 2014 detention report, DCFS informed the court that a counselor and a therapist both noted that mother was incapable of caring for her children. Between October 2013 and December 2013, father failed to show for two drug tests, tested negative once but tested positive for methamphetamine and amphetamine on November 18, 2013. The juvenile court found that substantial danger existed to the minors and that there were no reasonable means to protect the minors without removal. The children were ordered detained in shelter care.

On April 9, 2014, the juvenile court sustained the supplemental petition and continued disposition. The five children were placed with their maternal aunt, who had adopted their three older siblings in 2008.

Maternal aunt reported that the parents visited the children, but not frequently. When they did visit, they argued with one another and talked on their telephones. In addition, mother did not tend to the children's needs during the visits, but relied on maternal aunt to feed the children and change their diapers. Maternal aunt addressed this issue with mother, and requested that she focus her attention on the children and the children's needs throughout the visits. Maternal aunt further reported that one night at approximately midnight, mother had called stating that father had threatened to hurt her and she was having suicidal thoughts. Father had also insulted and spoken disrespectfully to maternal aunt. Father threatened mother a second time with a knife. Mother filed a police report. Father called maternal aunt several times inquiring about mother's whereabouts, and reported to maternal aunt that he intended to purchase a firearm.

Just prior to the disposition hearing, father was arrested for physically abusing and raping mother, who obtained a restraining order against him. Also, mother reported to DCFS that Dania told her that she had been inappropriately touched by paternal uncle, Pedro G. After father's arrest and the imposition of the restraining order, Pedro G. called mother and demanded that she drop charges against father, but mother did not give in to Pedro's demands.

On August 21, 2014, the juvenile court ordered the children suitably placed in the home of maternal aunt and ordered DCFS to provide reunification services and monitored visits.

The birth of Silvia, petitions, jurisdiction and disposition

Silvia was born on January 11, 2015, and DCFS initiated dependency proceedings on her behalf based on the open case with regard to the siblings. Silvia was born prematurely and weighed only four pounds at birth. She was

in intensive care but released to mother on January 23, 2015. Father denied paternity of the child and requested a paternity test. Mother was in compliance with services. The juvenile court detained Sylvia in mother's custody.

Silvia's petition was adjudicated in March 2015. Sylvia was declared a dependent of the court under section 300, subdivision (j), but the court allowed Sylvia to remain in mother's custody with services in place.

On April 18, 2015, law enforcement received a call to mother's home reporting that mother had locked herself in her bedroom along with the child and refused to open the door despite the caller's efforts. Mother was heard screaming and yelling that she was going to kill her child and pleading to the child, "Don't make me have to kill you." Mother also apologized to the child, stating "I'm sorry but I have to do this." Law enforcement was able to open the door to mother's bedroom and observed mother in the room alone with the child and a steak knife. The child was crying excessively. Lacerations and blood were observed on the child's fingers. Mother was placed on a section 5150 hold and admitted to a mental health center.[3] Silvia was placed in foster care. Mother stated that she was just trying to scrape hair from the baby's hand with a knife.

On April 22, 2015, a supplemental petition was filed pursuant to section 342 on behalf of Sylvia. The petition alleged that Silvia suffered lacerations to the second and third fingers on her right hand and two linear cuts to her left hand knuckles. The petition further alleged that such injuries would not normally occur except by the deliberate act of mother. On June 29,

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[3] Section 5150 permits a clinician or qualified officer to involuntarily confine a person who has a mental disorder that appears to make that person a danger to herself or others.

2015, the juvenile court sustained the section 342 petition. On August 4, 2015, the court removed Sylvia from mother's custody, denied reunification services, and referred the matter for a section 366.26 permanency planning hearing.

Reunification period for the five older children

In a status review report filed February 19, 2015, DCFS reported that mother would visit with the children when the maternal aunt brought them to Los Angeles for doctor appointments. Mother continued to interact minimally with the children. Mother had a difficult time processing all the children's behaviors at the same time. DCFS had not liberalized mother's visits because she was not fully compliant with the court's orders. In December 2014, mother informed the social worker that she could not take care of all of her children but wished for them to remain with their aunt. However, mother wanted to keep her then unborn child (Silvia) after she was born.

Father continued to work full time. He consistently completed his court ordered services and made efforts to request visits with the children. However, father created tension during the visits because he would call paternal uncle, Pedro, and allow him to speak with the children. DCFS had explained to father that this was not allowed. In February 2015, the court ordered that father's visits take place at the DCFS office. In April 2015, the court ordered DCFS to immediately set up visitation for father at least twice per week.

The 18-month review hearing took place on June 29, 2015. DCFS filed a report in anticipation of the hearing. The children remained placed in the home of maternal aunt and were doing well. Mother had not enrolled in parenting classes or participated in individual therapy. She consistently

stated that she was not ready to have her children returned to her. Father continued to participate in domestic violence classes and random drug and alcohol testing. Father was living in a home with his brother, Pedro. Father had sufficient beds for the children and stated that his brother Pedro and sister-in-law would act as primary caregivers for the children while he was at work. He also informed the social worker that a family friend would help with childcare, but upon questioning from the social worker, father eventually acknowledged that he did not know the person. Neither father, his brother Pedro, nor his sister-in-law had a drivers license or insurance. Father had seven drug tests between February 2015 and June 2015; all were negative.

Mother had visited the children five times between February 25, 2015 and May 8, 2015. The visits typically lasted two to three hours. Mother showed little interest in increasing the number of visits. The caregiver believed mother had no interest in reunifying with her children based on her minimal efforts to spend time with them.

Father had four visits with the children between May 3 and June 7, 2015. The social worker attempted to increase the frequency of visits for father, but the social worker did not have the means to transport all five children and the caregivers were not always available to assist with transportation. The social worker assisted in monitoring visits on May 3 and May 24, 2015, and observed on both occasions that father primarily engaged with Dania, K.G. and I.G. during the visits. Father fed Simon but did not engage with him, and initiated little to no contact with Daphne. The caregiver reported that when the social worker was not assisting with the visits, father seemed to interact only with K.G. and showed little interest in interacting with the other children. Father was also reported to be

frequently on his phone during the visits and not paying attention to the children.

DCFS recommended terminating family reunification services for both mother and father and proceeding to a section 366.26 permanency planning hearing. Mother had not been compliant with her case plan and visited the children inconsistently. Father appeared to lack significant parenting skills and DCFS was also concerned because father was residing with his brother, Pedro. DCFS had previously received information that K.G. and Dania were victims of a threat of sexual abuse by their uncle Pedro. Although the investigation proved to be inconclusive, DCFS was concerned about Pedro acting as a primary caregiver and did not think that was an appropriate arrangement.

After the June 29, 2015 hearing, the juvenile court found that DCFS provided reasonable efforts to reunify the family, terminated reunification services, and referred the matter for a section 366.26 hearing. The parents were personally served with notice of their writ rights. Over the objection of both DCFS and the children's attorney, the court permitted father to have unmonitored day visits and gave DCFS discretion to further liberalize visits.

Preliminary section 366.26 proceedings

On October 26, 2015, the juvenile court held a section 366.26 hearing as to the five older children. DCFS filed a report on the same date. The children had been placed with the maternal aunt and uncle since April 2014. The caregivers were willing to adopt the children. Maternal aunt reported that although she usually took the children weekly to visit the parents, the parents were usually late and did not bring car seats for the children. Therefore, maternal aunt had not permitted any unmonitored visits. The matter was continued for an adoptive home study.

On December 1, 2015, the juvenile court held a section 366.26 hearing as to Silvia. DCFS reported that Silvia was medically healthy, and was receiving physical and occupational therapy through the Regional Center due to her premature birth. She had been in placement with her foster mother, Mrs. S., since she was two months old. The foster mother wanted to adopt Silvia. Mother visited Silvia weekly without incident. The matter was continued for an adoptive home study.

On January 4, 2016, a status review hearing took place for all six children. DCFS reported that the children continued to thrive in their respective placements. The five older children visited with father once or twice per month. However, maternal aunt reported that father consistently failed to arrive for his visits on time. Father would not notify maternal aunt in advance when he would be arriving late. On one occasion, maternal aunt waited more than two hours for father to arrive. Maternal aunt also noted that father did not monitor the children during the visits and she often had to interject to ensure that the children were not putting themselves in unsafe situations. Simon and Daphne needed to be closely monitored and father was not providing adequate supervision for them. Maternal aunt was uncomfortable with the idea of father having unmonitored visits. Father did not appear to be concerned that maternal aunt remained present during the visits. At no time had father notified maternal aunt that he was in possession of car seats for the children, so no unmonitored visits could take place.

Though mother showed little interest in visiting the five older children, she visited Silvia weekly at the DCFS office for two to three hours per visit. Mother rarely canceled the visits, and no issues were reported.

The maternal aunt's adoptive home study was completed on January 25, 2016. Dania, K.G., and I.G. all provided statements that they wished to remain with their maternal aunt and uncle. Simon and Daphne were too young to make meaningful statements. DCFS recommended termination of parental rights with a plan of adoption for these five children.

On February 2, 2016, DCFS reported that an adoption home study was completed for Silvia's caregiver. There were no barriers to adoption and Silvia was thriving in the home. DCFS had no concerns regarding the care of the minor by the applicant.

Father's section 388 petition

On January 29, 2016, father filed a section 388 petition seeking reinstatement of reunification services and an increase in visitation to include weekend and overnight visits. Regarding changed circumstances, father alleged that he had successfully completed all court-ordered programs including drug and alcohol programs and had tested drug free for a year. In addition, father alleged that he had maintained regular and consistent visitation "despite non cooperation from the current caretaker." As to the best interests of the minors, father alleged that the children lived with him since birth until time of detention and were bonded to him.

At a February 2, 2016 hearing, father's counsel reported that father was "having problems with visitation with the caretaker being obstructive." The court ordered DCFS to set up a visitation schedule for the father in a neutral location, without the caretaker acting as monitor. Father was to receive unmonitored day visits for two hours, two times per week. The court set father's section 388 petition for hearing on April 6, 2016, the same date as the section 366.26 hearing.

Interim review report and response to father's section 388 petition

In its interim review report for the April 6, 2016 hearing, DCFS provided a response to father's section 388 petition. While father had completed his programs, DCFS noted that his therapist recommended that father continue in treatment and he did not do so. In addition, father adamantly denied that he exposed his children to any abuse which led to their detention. Instead, father reported that mother was responsible for all the problems in the home. Even under prompting from the social worker, father continued to deny any wrongdoing. In addition, father consistently arrived late to visits with his children.

The social worker interviewed the children. Dania stated that she did not want to live with father because of her Uncle Pedro's behavior. She accused Pedro of "start[ing] to hit [K.G.]" and pulling her finger back. Dania stated that Pedro said bad things to mother and called I.G. a "little stupid baby." In addition, the social worker had received a letter from the regional center providing services to Dania. The letter indicated that Dania exhibited concerning behavior after visiting with father. When asked about her father, or when his name came up, she would yell that she never wanted to see him again. K.G. and I.G. also provided statements that they did not want to live with father but wanted to remain with maternal aunt. The children did not appear bonded to father and did not indicate any desire to reunify with him.

DCFS reiterated that Dania and K.G. had reported sexual touching by their Uncle Pedro. Father denied that Pedro, with whom father lived, was sexually inappropriate with the children. DCFS believed that reunifying the children with father would place the children at risk for abuse.

DCFS recommended denying father's section 388 petition, terminating parental rights and proceeding with the adoptions.

Trial

The contested hearing on father's section 388 petition and the contested 366.26 hearing took place on April 6, 2016. The court conducted the hearing on father's section 388 petition first. Father did not testify but relied on documentary evidence and his counsel's arguments. Father's counsel argued that father had complied with every directive that the court and DCFS had given. Father had shown a willingness, and asked to be given "one more chance . . . to reunite with his five children." DCFS argued that father's petition should be denied. DCFS did not believe father was in full compliance with court orders, and even if he were, it was not in the children's best interests to reunite with him at that time. The children had been in the system since 2013, and had bonded to their caretakers. Father's visitation was only once or twice per month, and although father had been granted unmonitored visits, the visits continued to be monitored.

The juvenile court denied father's 388 petition. The court was mindful of father's progress, but stated:

> The children are relatively young and they have special needs, but they do have a voice. And they're happy with their current placement. And in light of the fact that they have been there for approximately 20 months, and it is a stable placement, and they are special needs children, and their issues are being addressed and part of the reason the case came to the court in 2013 was that their issues were not being addressed, I don't think I can make a best interest finding, and I think we have changed circumstances, but not completely changed circumstances. And I have to respectfully deny the 388 petition.

The court then turned to the section 366.26 proceeding. Mother was in agreement that Dania, K.G., I.G., Simon and Daphne all be adopted by maternal aunt. Mother understood the consequences of termination of her parental rights as to these children. Mother opposed the adoption of the

youngest child, Silvia, and mother testified only as to Silvia. Mother's testimony concerned the benefit to Silvia of continuing the parental relationship. Mother stated that she visited the child weekly until visits were limited to monthly. Mother did not know why her visits were limited. Her visits were monitored at all times. Mother described the nature of the visits and how Silvia responded positively to her. Mother also expressed concern that Silvia was not getting visits with her siblings. Mother's attorney made no reference to Silvia's adoptability.

The children's attorney recommended terminating parental rights.

After closing arguments, the juvenile court terminated parental rights over all the children. The court found that Silvia was adoptable, both generally and specifically. The court designated Silvia's current foster parent as the prospective adoptive parent, noting that Silvia had lived there for over six months and the foster parent had expressed a commitment to adopt the child.

Notices of appeal

Mother filed a notice of appeal on April 6, 2016, but did not reference the order from which she was appealing.

Father filed a notice of appeal on May 20, 2016, from the April 6, 2016 order terminating parental rights and the denial of his section 388 petition.

DISCUSSION

I. Father has waived his right to appeal from the juvenile court's finding that sufficient reunification services were provided to him

Father argues that adequate reunification services were not provided, and that if adequate reunification services were provided under the law, the law is inadequate to protect the fundamental constitutional rights of parents. Father contends that DCFS had a bias against the parents from the outset of

this case due to the case involving the three older children, and that DCFS intentionally limited father's time with his children as part of its design to ultimately deprive him of reunification.

Father has waived review of the sufficiency of reunification services by failing to file an extraordinary writ after reunification services were terminated and the matter was referred for a section 366.26 hearing on June 29, 2015.

Section 366.26, subdivision (l), provides:

> "(1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:
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> "(A) A petition for extraordinary writ review was filed in a timely manner.
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> "(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.
>
> "(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.
>
> "(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section."

The order setting the 366.26 hearing, and all ancillary orders imposed simultaneously, must be reviewed by way of extraordinary writ after filing a notice of intent. (*In re Charmice G.* (1998) 66 Cal.App.4th 659, 669 [order denying section 388 petition made contemporaneously with order setting 366.26 hearing not appealable because the order was "'integrally related'" to the order setting a section 366.26 hearing].) If the circumstances specified in

section 366.26, subdivision (l) do not exist, then orders imposed at the permanency planning-setting hearing are "final and binding and may not be attacked on an appeal from a later appealable order. [Citations.]" (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 (*Meranda P.*) [finding that mother waived her claims of inadequate representation by failing to petition for extraordinary writ review of the order setting the section 366.26 hearing].)

At the June 29, 2015 hearing, the juvenile court found that DCFS provided reasonable efforts to reunify the family, terminated reunification services, and referred the matter for a section 366.26 hearing. The parents were personally served with notice of their writ rights. The juvenile court's finding that sufficient reunification services were provided to father was integrally related to its order setting the section 366.26 hearing. Father was advised of his right to writ review of the order pursuant to section 366.26, subdivision (l)(3)(A).[4] Father failed to file a timely petition for extraordinary writ. Thus, in this appeal from the April 6, 2016 order terminating parental rights, we may not consider his challenges to the findings and orders made at the June 2015 hearing.

We decline to make an exception to the requirements of section 366.26, subdivision (l) in this case. The Legislature has made clear its "intent . . . to restrict appeals challenging orders setting a .26 hearing." (*Meranda P.,*

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[4] Section 366.26, subdivision (l)(3)(A) provides: "A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order."

supra, 56 Cal.App.4th at pp. 1156-1157.) Strict application of section 366.26, subdivision (l) furthers the State's interest in "expedition and finality" in juvenile dependency matters, as well as the child's interest in "securing a stable, 'normal' home." (*Meranda P.*, at p. 1152.) Permitting "an appeal from the termination order by a parent who has neglected to bring a petition for extraordinary writ review of the order setting the .26 hearing would necessarily invalidate the order setting such hearing, a result which would seem to defeat the Legislature's express command that the order setting the .26 hearing be unimpeachable by appeal 'at any time' in the absence of all of the conditions listed in section 366.26, subdivision (l)(1)." (*Meranda P.*, at p. 1157.)

Father did not meet the criteria set forth in section 366.26, subdivision (l). Thus, we may not consider father's factual and constitutional challenges to reunification services at this time.

II. Mother's appeal

Mother argues that the juvenile court's finding that Silvia was generally and specifically adoptable is not supported by sufficient evidence.

A. Lack of jurisdiction and forfeiture

We first briefly address and reject DCFS's arguments that: (1) we have no jurisdiction to hear mother's appeal; and (2) mother has forfeited her appeal.

DCFS argues that mother's notice of appeal is fatally defective in that it fails to reference any order from which she appeals. However, California Rules of Court, rule 8.100(a)(2) states that a notice of appeal must be liberally construed. Further, as set forth in *In re Joshua S.* (2007) 41 Cal.4th 261, 272, "'it is . . . the law of this state that notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear

what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.' [Citations.]"

Here, the order from which mother intended to appeal is reasonably clear. Mother, who required an interpreter throughout the case and whose mental health was in question, completed and filed the notice of appeal herself. Although she did not mention that she was appealing from the April 6, 2016 hearing pursuant to section 366.26, she dated the notice of appeal April 6, 2016, and she filed it on April 6, 2016. Under the circumstances, it is reasonably clear that mother was appealing from the order terminating her parental rights entered on April 6, 2016.

Further, DCFS has failed to show prejudice. Under the circumstances, we liberally construe mother's notice of appeal and entertain her appeal on the merits.

DCFS further argues that mother has forfeited her argument regarding Silvia's adoptability because she did not raise it at the section 366.26 hearing. While points not raised in the trial court generally cannot be raised on appeal (*In re Seaton* (2004) 34 Cal.4th 193, 200), a contention that a judgment is not supported by substantial evidence can be an exception to this rule. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) This exception applies where a parent makes a substantial evidence challenge to a juvenile court's finding of adoptability. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400.) "Because it was [DCFS's] burden to prove adoptability by clear and convincing evidence, to hold otherwise would dilute [DCFS's] obligation to provide the juvenile court with the necessary facts regarding adoptability." (*Id.* at p. 400.)

Therefore, we address the merits of mother's argument.[5]

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[5] Although mother did not forfeit her argument that there was insufficient evidence of adoptability by failing to object at trial, she did forfeit

B. Applicable law and standard of review

A juvenile court may terminate parental rights "only if it determines by clear and convincing evidence that it is likely that the child will be adopted within a reasonable time. [Citations.]" (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060; § 366.26, subd. (c)(1).) The question of whether a dependent child is likely to be adopted "focuses on the child rather than on the prospective adoptive family." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650.) When determining adoptability, the court must determine whether the child's "age, physical condition, and emotional state" will make it difficult to find someone willing to adopt the child. (*Id.* at p. 1649.) "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." (*Id.* at pp. 1649-1650.) However, if a child's age, poor physical health, physical disability, or emotional instability suggests that the child will have a difficult time finding someone willing to adopt the child, the child may nevertheless be considered adoptable if "a prospective adoptive family has been identified as willing to adopt the child." (*Id.* at p. 1650.)

In reviewing the juvenile court's adoptability finding, "'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

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any argument that DCFS failed to provide an assessment report in compliance with the requirements of section 366.21. (*In re Brian P, supra,* 99 Cal.App.4th at p. 623 ["while a parent may waive the objection that an adoption assessment does not comply with the requirements provided in section 366.21, subdivision (i), a claim that there was insufficient evidence of the child's adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court"].)

likely to be adopted within a reasonable time. [Citations.]' [Citations.]" (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562.) "We give the court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]" (*Id.* at p. 1562.)

C. The adoptability finding as to Silvia was supported by sufficient evidence

The court found, by clear and convincing evidence, that Silvia was adoptable. The court's finding was supported by the evidence.

Silvia was born on January 11, 2015. By the time of the first 366.26 hearing on December 1, 2015, Silvia had been living with her prospective adoptive mother for over seven months, since she was two months old. Silvia was a healthy baby. She was referred for Regional Center services due to her premature birth, and was referred for an ophthalmology appointment for strabismus.[6] In a well baby check in October 2015, the results were normal. Silvia appeared to be bonded with her prospective adoptive mother; Silvia was observed to move her arms and legs and smile when she saw her.

Silvia's prospective adoptive mother had never waivered in her desire to adopt Silvia. By February 2016, an adoption home study had been completed for Silvia's prospective adoptive mother. There were no barriers to adoption, and Silvia was thriving in the home. DCFS had no concerns regarding the care of the minor by her prospective adoptive mother.

This evidence is sufficient to support the juvenile court's finding of adoptability. Silvia was only two months old when placed with her prospective adoptive parent. At the time of the section 366.26 hearing, she was only one year old. This is well below the seven-year-old age threshold set

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6 Strabismus is a visual problem in which the eyes are not aligned properly and point in different directions. (www.aao.org/eye-health/diseases/what-is-strabismus.)

by the Legislature to support a finding that the child is not adoptable. Further, Silvia was healthy.

Even if Silvia's age, physical condition, and emotional state did not render her adoptable, the evidence showed that she was adoptable because her prospective adoptive mother was willing to adopt her. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650.) A home study had been completed and there were no barriers to adoption.

Mother argues that the only evidence presented by DCFS in support of its assertion that Silvia was adoptable was the December 1, 2015 section 366.26 report. Mother argues there was insufficient information within that document, presumably because it was to be completed at a future date. We note that the December 1, 2015 section 366.26 report repeatedly states that a home study had not yet been completed. However, we disagree with mother's position that insufficient evidence of adoptability was included. DCFS documented each of Silvia's health examinations. It also documented her age and noted developmental problems. Further, DCFS informed the court that adoption was the most appropriate permanent plan for Silvia and that a willing prospective adoptive parent had been identified. DCFS reported, "The child has been adoptively placed since the child was two months old. The child is doing well and she has adjusted to her adoptive placement. Further, the child's medical, mental and emotional needs are being met by the prospective adoptive parent." This is clear and convincing evidence of adoptability. (*In re Roderick U.* (1993) 14 Cal.App.4th 1543, 1550 [foster mother's testimony that she would be more than willing to adopt minor sufficient to support finding of adoptability].)

In re Valerie W. (2008) 162 Cal.App.4th 1 (*Valerie W.*), relied upon by mother, is distinguishable. *Valerie W.* involved a four-year-old girl and her

three-year-old brother. The girl was emotionally fragile and her behaviors were deteriorating; her brother had unresolved neurological and genetic issues that required further testing. (*Id.* at p. 13.) The prospective adoptive parents, who had made a joint application for adoption, were mother and daughter, and did not live together. Thus, the children's living arrangement was not clear. (*Ibid.*) In reversing the adoptability finding, the Court of Appeal noted that information about the results of the boy's most recent tests and doctor visits was not provided to the juvenile court. In addition, the record contained "conflicting and unclear information regarding the identity of the prospective adoptive parents." (*Ibid.*) The relationship between the children and each applicant was not clear, and DCFS had made inaccurate statements in describing the eligibility of the applicants. (*Id.* at pp. 13-14.) Further, DCFS had not made any assessment of the prospective adoptive parents' ability to meet the needs of the children. (*Id.* at p.14.) The incomplete assessment of the boy's health undermined a finding that he was generally adoptable, and there was no evidence that the prospective adoptive parents were informed of his possible diagnosis or any need for treatment or special care. Under those circumstances, the Court of Appeal determined that the juvenile court's finding of adoptability was not supported by substantial evidence. (*Id.* at p. 15.)

Here, in contrast, all medical information for Sylvia was up to date. There was no unresolved testing. Nor was there any confusion about the relationship between Silvia and her prospective adoptive parent.[7] DCFS

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[7] Mother speculates that because the prospective adoptive mother was referred to in the record as "Mrs. S," that she must have had a husband who had not been disclosed to the court. This is pure speculation, and we reject the argument. The evidence showed only one applicant to adopt Silvia.

provided evidence that Silvia's prospective adoptive mother was meeting the child's medical, mental, and emotional needs.

Deficiencies in an adoption assessment go to the weight of the evidence, and if insignificant in light of the facts of the case, such deficiencies are not reversible error. (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 413.) Here, reviewing the evidence before the court, including evidence of Silvia's age, health, her bond with her prospective adoptive parent, and the parent's commitment to adopting her, we conclude there was ample evidence to support the juvenile court's adoptability finding.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT