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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re JOSELYN A., a Person
Coming Under the Juvenile
Court Law.

B280960

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK06570

Plaintiff and Respondent,

v.

VANESSA A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Juvenile Court Referee. Affirmed.

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

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

INTRODUCTION

Mother Vanessa A. appeals the order terminating her parental rights under Welfare & Institutions Code section 366.26.¹ Before a court may terminate parental rights, it must find by clear and convincing evidence that the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1).) A court may find that a child is “generally adoptable” (meaning her age and other factors do not make it difficult to find an adoptive parent) or “specifically adoptable” (meaning a willing adoptive family has already been found and no legal impediment to adoption exists). In this case, the court did not indicate whether it found Joselyn generally or specifically adoptable before it terminated mother’s parental rights.

Mother’s only argument on appeal is that the court erred in finding her daughter Joselyn adoptable. Specifically, mother asserts Joselyn is not generally adoptable because she has developmental delays and may require surgery in the future to correct an abnormality in her spine. Mother further argues there is insufficient evidence to support a finding of specific adoptability, notwithstanding the fact that Joselyn’s foster parents, with whom she has now lived for two and one-half years, wish to adopt her. We conclude substantial evidence supports a

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

specific adoptability finding and therefore affirm the order terminating mother's parental rights.

FACTS AND PROCEDURAL BACKGROUND

Mother has three children, Melodie (12 years old), Michael (9 years old), and Joselyn (3 years old).² The family unit first came to the attention of the Department of Children and Family Services (Department) a few months before Joselyn's birth, when mother, Melodie, and Michael were "found in nearby parks cleaning up; there were concerns that the family was homeless." During the initial investigation, Joselyn's father, F.C., tested positive for methamphetamine and the Department lost contact with mother and the two children. The Department filed a petition under section 300 and obtained a removal order concerning Melodie and Michael. On August 22, 2014, mother voluntarily surrendered the children to the Department and they were placed in foster care. On December 4, 2014, the court sustained the following allegations under section 300, subdivisions (b) and (d), with respect to Melodie and Michael:

- Mother "placed the children in a detrimental and endangering situation, in that on more than one occasion the mother left the children in the care of the mother's male companion, [F.C.], whom mother knew or reasonabl[y] should have known is a recent abuser of methamphetamine. Such a detrimental and endangering situation established for the children by the mother

² Melodie and Michael have the same father and are Joselyn's half-siblings. They are not the subject of this appeal.

endangers the children's physical health and safety and places the children at risk of harm."

- Mother "placed the children in a detrimental and endangering situation, in that the mother allowed the maternal grandfather, (name unknown) who sexually abused the mother when the mother was nine years old by raping the mother to have access to the children. Such a detrimental and endangering situation established for the children by the mother endangers the children's physical health and safety and places the children at risk of physical harm, damage, danger, and sexual abuse."

On September 1, 2014, the Department received a referral regarding Joselyn, who was born prematurely and weighed only 4 pounds, 4 ounces. Mother only received two prenatal visits during the pregnancy. Mother advised the Department she was unable to care for a newborn baby and consented to Joselyn's detention on September 5, 2014. F.C.'s whereabouts were unknown. The court later sustained the following allegations under section 300, subdivisions (b) and (j), regarding Joselyn:

- The child's "father, [F.C.] has a history of substance abuse and is a recent abuser of methamphetamine which renders the father incapable of providing regular care of the child. On 07/01/2014, the father had a positive toxicology screen for methamphetamine and amphetamine. The father's substance abuse places the child at risk of harm."

- Mother “placed the child’s siblings ... in a detrimental and endangering situation, in that on more than one occasion the mother left the child’s siblings in the care of the child’s father, [F.C.], whom mother knew or reasonabl[y] should have known is a recent abuser of methamphetamine. Such a detrimental and endangering situation established for the child’s siblings by the mother endangers the children’s physical health and safety and places the children at risk of harm.”

On September 9, 2014, the Department placed Joselyn in foster care with Ms. L. The Department contacted mother’s extended family to determine whether any family member might be interested in caring for Joselyn. In March 2015, mother’s cousin, Mrs. F., and her husband began having regular visitation with Joselyn. The couple expressed interest in becoming Joselyn’s foster parents if family reunification services were terminated. And Mr. and Mrs. F., as well as Joselyn’s foster mother Ms. L., expressed interest in adopting Joselyn.

Throughout early 2015, mother visited Michael and Melodie regularly but had infrequent visits with Joselyn. Mother continued to express the desire to reunify with all three of her children. But the Department was concerned because mother continued to live with F.C. in a relationship characterized by frequent domestic violence and had taken no steps to comply with the case plan. F.C. refused to participate in any court-ordered services, including a drug treatment program.

On June 26, 2015, the Department placed Joselyn with Mr. and Mrs. F. At Mrs. F.’s request, Joselyn was reassessed at the local Regional Center and she presented with “delays in

cognition/problem solving, fine motor, gross motor, adaptive/self help, social emotional, and receptive/expressive communication skills.”³ Joselyn began receiving occupational therapy. The Regional Center also recommended Mr. and Mrs. F. follow up with Joselyn’s primary care doctor regarding possible spina bifida. Mrs. F. subsequently requested speech therapy for Joselyn after the child began pulling her hair (sometimes hard enough to pull it out of the scalp) when she was frustrated.

On August 12, 2015, the court terminated F.C.’s reunification services but continued mother’s and directed the Department to provide mother with additional referrals for domestic violence shelters and counseling services. The Department made substantial efforts to assist mother in finding a shelter and enrolling in a domestic violence awareness program but mother failed to comply with the case plan.

On November 23, 2015, the court conducted a contested hearing under section 366.21, subdivision (f), at which time the court terminated mother’s reunification services and set the matter for a hearing under section 366.26. The court found “that the mother has not consistently and regularly contacted and visited with the children, that she has not made significant progress in resolving the problems that led to the children’s removal from the home, and that she has not demonstrated the capacity and ability both to complete the objectives of the treatment plan and to provide for the children’s safety, protection, physical and emotional well being, and special needs.”

³ The Regional Center assessed Joselyn in March 2015 and found her skills to be within average range. No therapeutic intervention was recommended at that time.

Due to a delay in obtaining an adoption home study, the section 366.26 hearing for Joselyn did not take place until February 7, 2017.⁴ She continued to live with Mr. and Mrs. F. during the intervening 14 months. According to the Department's status review report dated February 7, 2017, Joselyn was thriving in her placement with Mr. and Mrs. F. The social worker observed Joselyn to be calm and well behaved when she was with her foster parents, who were very loving and continued to express their desire to adopt Joselyn.

During the prior year, Joselyn received a variety of services from the Regional Center due to developmental delay and prenatal drug exposure. At the time of the hearing, she was receiving occupational therapy once a week to improve her cognitive, physical, sensory, and motor skills. In addition, she received infant stimulation and speech therapy as well as physical therapy twice a week to improve her motor skills and develop strength and range of motion. Mrs. F. reported, and the social worker observed, that Joselyn was making good progress as a result of the Regional Center therapies.

At the end of 2016, doctors performed an MRI on Joselyn that showed an abnormality in her spine which would require surgery.⁵ In January 2017, Mrs. F. met with a neurosurgeon at Children's Hospital Los Angeles who opted not to proceed with surgery at that time. Mrs. F. was informed that Joselyn's MRI

⁴ On October 7, 2016, the court terminated mother's parental rights as to Joselyn's half-siblings, Michael and Melodie.

⁵ Doctors were previously concerned about possible spina bifida. The December 2016 MRI of Joselyn's lumbar spine showed low level cord and fatty filum.

also showed an enlarged bladder and, therefore, an additional medical examination would be necessary to confirm whether her bladder and other organs were functioning properly. Joselyn was scheduled for a follow-up visit at Children's Hospital in March 2017.

Mother did not testify at the section 366.26 hearing on February 7, 2017, but the parties stipulated that her testimony would be that she had a strong relationship with Joselyn, that she had been unable to visit with Joselyn during the preceding two months due to a medical condition, and that she objected to termination of her parental rights. The court admitted several of the Department's reports into evidence and found by clear and convincing evidence that Joselyn was adoptable and it would be detrimental to return her to the custody of her mother. Accordingly, the court terminated mother's parental rights and designated Mr. and Mrs. F. as the prospective adoptive parents.

Mother timely appeals.

DISCUSSION

The adoptability finding is supported by substantial evidence.

Mother contends the court erred in finding, by clear and convincing evidence, that Joselyn is likely to be adopted within a reasonable time. We disagree.

A hearing under section 366.26 is intended to provide a permanent plan for children who cannot be returned to parental custody. Section 366.26 provides the exclusive procedures for the termination of parental rights in a dependency proceeding. (§ 366.26, subd. (a).) Adoption, if possible, is the preferred plan

for such children. (See, e.g., *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799.)

Whether a child is likely to be adopted is the “pivotal question” under section 366.26. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 804.) “In order for a juvenile court to terminate parental rights under section 366.26, the court must find by clear and convincing evidence that it is likely that the child will be adopted. (§ 366.26, subd. (c)(1).) We review the juvenile court’s order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child is] likely to be adopted. [Citations.] ‘Clear and convincing’ evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. [Citation.]” (*In re Asia L.* (2003) 107 Cal.App.4th 498, 509–510.)

In assessing adoptability, courts have developed two categories: children who are “generally adoptable” and those who are “specifically adoptable.” A child is “generally adoptable” if the child’s traits, such as age, physical condition, mental state and other relevant factors do not make it difficult to find an adoptive parent. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) A finding that a child is likely to be adopted, however, does not require the child’s placement in the home of a prospective adoptive parent, or even that one be “‘waiting in the wings.’” (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223, fn. 11.) Thus, while the existence of a prospective adoptive family is a factor to be considered in making the determination, it is not dispositive. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) But as a general rule, “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*.” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649–1650.)

A child is “specifically adoptable” if the child is adoptable only because of a specific caregiver’s willingness to adopt. (*In re R.C.* (2008) 169 Cal.App.4th 486, 492–494.) “ ‘When a child is deemed adoptable *only* because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent’s adoption and whether he or she is able to meet the needs of the child.’ ” (*Id.* at p. 494.)

Here, the juvenile court made a finding of adoptability without specifying whether it found Joselyn generally or specifically adoptable. Mother argues no substantial evidence would support either finding. We conclude substantial evidence supports a finding of specific adoptability.⁶

As noted, a finding of specific adoptability focuses on the adoptive parents’ ability to meet the child’s needs and the existence of any legal impediment to adoption. (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 492–494.) In order to provide the court with the necessary information to make that assessment, section 366.21 requires the court to order, and the Department to prepare, a detailed assessment report evaluating the prospective

⁶ We do not consider whether substantial evidence would also support a finding that Joselyn is generally adoptable.

adoptive parents' commitment to the child and their ability to meet the child's specific needs. (§ 366.21, subd. (i)(1)(D).) In addition, the report must allow the court to evaluate the child's needs and should, therefore, discuss the child's medical, developmental, scholastic, mental and emotional status. (§ 366.21, subd. (i)(1)(C).) Mother contends the Department's reports fail to provide substantial evidence to support the court's adoptability finding.⁷

Citing *In re Valerie W.* (2008) 162 Cal.App.4th 1, mother contends the Department's reports lack substantial evidence regarding Joselyn's specific needs as well as Mr. and Mrs. F.'s ability to meet them. First, mother's reliance on *In re Valerie W.* is misplaced. There, the court made adoptability findings as to two minors, one of whom had developmental deficits and medical conditions so significant and numerous that genetic testing and an electroencephalogram (EEG) had been recommended during the dependency proceedings. (*Id.* at pp. 5–6.) But the agency never provided the court with the results or updated status of

⁷ The Department asserts mother forfeited the right to challenge the adequacy of the Department's reports because she did not raise that issue below. The Department misunderstands mother's argument on appeal. "Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.' [Citations.] Thus, 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." (*In re Brian P.*, *supra*, 99 Cal.App.4th at p. 623.) We understand mother to argue here that the reports prepared by the Department do not contain substantial evidence to support the court's adoptability finding.

that testing and did not disclose the results of subsequent pediatric examinations. (*Id.* at p. 7.) Nevertheless, the court found the child adoptable. The Court of Appeal reversed, concluding the absence of evidence concerning the child's medical condition made it impossible for the court to assess, as required by statute, whether the potential adoptive parents could meet the child's specific needs.

In re Valerie W. is not on point. There, the child's severe developmental and medical issues had been preliminarily identified but not yet explored or diagnosed. Here, Joselyn's developmental delays (which were not, in any event, as severe or numerous as was the case in *In re Valerie W.*) have been identified, treated, and as of the time of the section 366.26 hearing, have improved as a result of therapy. In addition, Joselyn's doctors have identified an abnormality in her spine and have referred her for surgery at some point in the future. But these identified health issues do not resemble the situation in *In re Valerie W.* and, further, the Department's reports are both comprehensive and fully up to date. Accordingly, we find mother's analogy to that case unpersuasive.

Further, mother argues there is some uncertainty about Joselyn's health care needs in the future which precludes a finding of adoptability. We reject this argument by noting, as other courts have, that "[n]owhere in the statutes or case law is certainty of a child's future medical condition required before a court can find adoptability. [Citations.]" (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79.)

Mother also suggests Mr. and Mrs. F. may be financially unprepared to meet Joselyn's needs because they applied for caregiver funds at the enhanced Regional Center rate and asked

the court for assistance in obtaining the enhanced rate after their application was rejected. She asserts “[t]he caregivers’ desire to contest the denial of the Regional Center rate indicates, at the very least, they were concerned about the financial burden of caring for Joselyn.” Apparently, mother would have us infer that any caregiver who seeks state funding allocated for the care of a dependent child may be financially unable to care for the child. Such an inference is unwarranted in the absence of some additional evidence suggesting the cost of caring for the child would place the family in financial distress.

Finally, mother’s contention that “none of the reports over the course of the year preceding the section 366.26 hearing in February 2017 addressed the adoptive caregivers’ ability and commitment to meet Joselyn’s psychological, behavioral, therapeutic and medical needs in a meaningful and constructive way” is without merit. The Department’s reports in this case were consistently thorough and detailed and contained, as required, “a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent.” (§ 366.21, subd. (i)(1)(D).) Giving “the court’s adoptability finding the benefit of every reasonable inference and resolv[ing] any evidentiary conflicts in favor of the judgment,” *In re Valerie W.*, *supra*, 162 Cal.App.4th at p. 13, we see ample evidence in the record establishing both the commitment and ability of the adoptive parents to meet Joselyn’s needs.

The Department’s reports reflect that from their earliest involvement in the dependency proceedings, Mr. and Mrs. F. expressed and exhibited a commitment to adopt Joselyn. And they also immediately displayed concern for Joselyn’s health and need for stability: although the couple said they would be

interested in adopting Joselyn, they did not want her placed with them unless family reunification services were terminated.

Mrs. F. told the social worker “she would not like to place additional stress on Joselyn by having her reside in their home for a few months, then have her removed to be returned to the care of her parents.” Instead, Mr. and Mrs. F. began visiting Joselyn at her foster home so they could all get to know each other gradually while leaving Joselyn in her initial placement, where she was reportedly doing well.

The family has also shown a commitment to Joselyn’s well-being and the ability to advocate on her behalf. For example, although Joselyn had been assessed by the Regional Center in March 2015 and no significant issues were found, Mrs. F. requested a reassessment in July 2015 after the change in placement. The second assessment found Joselyn presented with delays in cognition/problem solving, fine motor, gross motor, and other skills. The Regional Center recommended occupational therapy and infant stimulation, which Mr. and Mrs. F. facilitated. And those therapies resulted in significant improvements in Joselyn’s physical abilities. In addition, the second Regional Center examination also identified a possible spinal issue. Mrs. F. took Joselyn to Children’s Hospital and appeared for follow-up visits as recommended.

It is reasonable to infer from these facts that Mr. and Mrs. F. are proactive and observant parents who are both willing to investigate potential challenges and capable of acting as strong advocates for Joselyn. They remain committed to implementing the solutions Joselyn requires, which have previously included a multitude of weekly therapy sessions. As developmental delays and health conditions have been discovered, Mr. and Mrs. F. have

addressed the issues diligently and remained unwavering in their commitment to adopt Joselyn. In short, the evidence in the record is more than adequate to support a finding that Mr. and Mrs. F. are willing and able to provide Joselyn with a loving and permanent home. The record contains no indication that any legal impediment exists concerning the adoption, which should proceed forthwith.

DISPOSITION

The order terminating mother's parental rights is affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.