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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re HALEY B., a Person Coming
Under the Juvenile Court Law.**

**CONTRA COSTA COUNTY
CHILDREN AND FAMILY SERVICES
BUREAU,**

Plaintiff and Respondent,

v.

DEBORAH C. et al.,

Defendants and Appellants.

A133767

**(Contra Costa County
Super. Ct. No. J0900530)**

Deborah C. (mother) and presumed father Sean B. (father), parents of Haley B., appeal from the juvenile court’s termination of their parental rights after a Welfare and Institutions Code section 366.26 permanency hearing (.26 hearing).¹ Mother and father contend the court’s denial of their request to continue the .26 hearing was an abuse of discretion. They also contend there was insufficient evidence to support the court’s finding Haley was likely to be adopted with a reasonable time. In addition, father contends the court erred by not following the relative placement preference requirements set forth in section 361.3.

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Haley B. was born in 2002 testing positive for methamphetamine and was removed from parental custody. She was returned to their custody when she was two and a half years old.

In April 2009, the Contra Costa County Children and Family Services Bureau (the Bureau) filed a section 300, subdivision (b) petition alleging parents' substance abuse problems prevented them from caring for Haley. The court detained Haley and placed her with her paternal aunt and uncle. The parties submitted to jurisdiction and the court declared Haley a dependent of the court, finding: (1) mother had a substance abuse problem impairing her ability to parent Haley; and (2) father drove under the influence of a controlled substance while Haley was in the car. At the dispositional hearing, the court ordered reunification services for parents.

Haley was diagnosed with posttraumatic stress disorder (PTSD) in 2010 and began attending therapy. At the six-month review hearing in February 2010, the court found parents had not complied with their case plans and ordered six additional months of reunification services. Following the 12-month review hearing, the court terminated reunification services and set a .26 hearing for October 2010.

The Court Continues the .26 Hearing Four Times

In its .26 hearing report, the Bureau recommended the court find Haley "has a probability for adoption" and asked the court to continue the .26 hearing by 180 days "to thoroughly assess the caretaker's commitment and have the home study completed[.]" The court continued the hearing to November 2010.

In November 2010, the Bureau asked the court to continue the .26 hearing for an additional 180 days to complete a home study. The Bureau explained Haley was "a specifically adoptable child as her aunt and uncle have declared a willingness to adopt her. However[,] given Haley's current issues, she is not a generally adoptable child. . . . So in order to ensure that permanence is obtained for Haley, it is the Bureau's recommendation that the home study be nearly completed, to the point that it can be said

with some degree of certainty that it will be approved, prior to the termination of parental rights.” The court continued the .26 hearing until February 2011. It opined Haley was adoptable and should stay in her current placement if adoption was not available.

In February 2011, the Bureau requested a third continuance because Haley’s aunt and uncle had cancelled visits with the home study worker. The court continued the .26 hearing to June 2011. In June 2011, the court continued the .26 hearing for a fourth time — to October 2011 — at the Bureau’s request and without objection from mother or father. The Bureau requested the continuance because Haley’s aunt and uncle had failed to complete their home study requirements. In late August 2011, Haley moved to a different placement where she thrived: she was well-groomed, and was enjoying a structured schedule filled with extracurricular activities such as swimming and soccer.

In its .26 hearing report, the Bureau recommended terminating parental rights. The Bureau stated, “Haley is an adoptable child. Haley is a healthy child and does not have any known medical problems. Haley’s cognitive development is being closely monitored by the prospective adoptive mother and she will be seeking appropriate resources. The adoptive mother is working with Haley on a daily basis to help her complete her homework and progress toward grade level. Haley is in a licensed concurrent home. The concurrent caretaker wishes to adopt Haley.” The report attached a June 2011 letter from Haley’s therapist recommending “the court consider other permanent placements for Haley as she is adoptable and young enough to make the adjustment. While her aunt and uncle have provided a loving home for her, they are unable to meet her everyday needs.” In a September 2011 letter written after Haley was placed with her prospective adoptive mother, the therapist noted Haley’s new home was “much healthier for her physically, emotionally[,] and especially in regards to her education. She is attending school every day, getting tutoring and extra help at her after school program.”

The Bureau’s .26 report also attached a September 2011 letter written by one of Haley’s other aunts, Marie B. In the letter, Marie B. expressed an interest in caring for

Haley. Marie B. and her husband had not seen Haley in five years and did not know “her placement was in jeopardy.”

The .26 Hearing

At the outset of the .26 hearing, mother asked the court for a continuance because Haley had been in her new placement for only six weeks and because it might not “necessarily work out[.]”² The court denied the request.

Gyrlenn Ertmer of the Bureau’s adoption unit testified for father. Ertmer explained that Haley’s aunt and uncle had been identified as the prospective adoptive parents but the Bureau decided their home would not be an appropriate adoptive placement. Ertmer “was not given any potential family members for placement.” Ertmer stated she was “comfortable and confident in where [Haley]’s currently placed, and that the person has an approved adoptive home study.”

Ertmer further testified when a child reaches the age of nine, the child is sometimes considered unadoptable. Ertmer stated Haley is two years behind at school and could not do certain things that other children her age can do. Ertmer described Haley’s once-a-month visits with father as “generally positive” but noted that during a July 2011 visit — her last visit with her parents — mother and father appeared to be under the influence of drugs. Haley said she felt a “a little sad” about not being able to see her parents, but was not emotional after the visit.

Father testified Haley lived with him between the ages of two and seven. After the Bureau detained Haley in 2009, father visited her every weekend.³ Haley referred to father as “daddy” and, during one visit, ran up to him when she saw him. They share a bond, but “she kind of holds back” around him. Father did not want the court to terminate his parental rights.

² Although father did not explicitly request a continuance, he argued “more time would be prudent” before the court terminated parental rights.

³ A report prepared by Haley’s social worker stated father “made no efforts to visit Haley except for very recently” and during that recent visit, father “came for a brief time and left.”

At the conclusion of the hearing, Haley and the Bureau urged the court to terminate parental rights. Mother objected, arguing Haley was not likely to be adopted. Father contended Haley was not likely to be adopted within a reasonable time based on her age, the short duration of her current placement, and her “disabilities.” Father also argued the “connection” he shared with Haley “should not be severed.” In response, the Bureau stated Haley was not disabled; the Bureau explained, “[s]he’s a bright little girl” who was “educationally behind” in part because she missed school while she lived with her parents and with her aunt and uncle.

The court concluded by clear and convincing evidence Haley was adoptable, that no exceptions to adoption applied, and terminated parental rights.

DISCUSSION

The Court’s Denial of Parents’ Request for a Continuance Was Not an Abuse of Discretion

Parents contend the court’s denial of their request to continue the .26 hearing was an abuse of discretion because a continuance “was justified by good cause and would have served Haley’s best interests.”

We review the court order denying a continuance for abuse of discretion. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585 (*Elijah V.*)). A juvenile court may continue a dependency proceeding only if the continuance is not contrary to the minor’s best interests and the moving party demonstrates good cause. (§ 352, subd. (a); see also Cal. Rules of Court, rule 5.550.) “In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (§ 352, subd. (a).) Continuances in juvenile proceedings are expressly discouraged (*Elijah V.*, *supra*, 127 Cal.App.4th at p. 585), and “should be difficult to obtain.” (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242; see also *Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 197, fn. 6.)

Mother concedes continuances are discouraged in dependency cases but contends a fifth continuance of the .26 hearing was in Haley’s best interest because “los[ing] her

biological family . . . was too high a price for her to pay given that her relationship with her foster mother was so short.” We are not persuaded. The court did not abuse its discretion by denying the request for a continuance because neither parent demonstrated good cause. Mother asked for a continuance of an unspecified length to see whether the current placement would “work out” and father simply asked for “more time” without explaining what that additional unspecified period of time would accomplish. Moreover, the court had already continued the .26 hearing four times over a one-year period while the Bureau tried, diligently, to complete a home study for Haley’s aunt and uncle. Haley “was entitled to a prompt resolution of [her] custody status.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605.) The court properly denied the request for a continuance.

There is Substantial Evidence Haley Was Likely to be Adopted Within a Reasonable Time

Parents contend there is insufficient evidence to support the court’s conclusion that Haley was likely to be adopted within a reasonable time. “A child who cannot be returned to his or her parent must be placed for adoption, in legal guardianship, or in long-term foster care. [Citation.] ‘Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.] “Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child’s best interests are other, less permanent plans, such as guardianship or long-term foster care considered.”’” (*In re Jose C.* (2010) 188 Cal.App.4th 147, 157-158.) To select adoption as the permanent plan, the court must find, by clear and convincing evidence, the minor is likely to be adopted within a reasonable time after parental rights are terminated. (§ 366.26, subd. (c)(1); *In re B.D.* (2008) 159 Cal.App.4th 1218, 1231.)

““The issue of adoptability . . . 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” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406 (*Zeth S.*)). It is not necessary that the child already be placed in a preadoptive home or that a proposed adoptive parent be waiting. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) However, ““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 Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 (*Gregory A.*.)

We determine whether the record contains substantial evidence from which the court could find Haley was likely to be adopted within a reasonable time. (*Gregory A.*, *supra*, 126 Cal.App.4th at pp. 1561-1562; *Zeth S.*, *supra*, 31 Cal.4th at p. 406.) The evidence must be ““sufficiently strong to command the unhesitating assent of every reasonable mind”” (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205.) We give the court's adoptability finding the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of the judgment. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

Here, substantial evidence supported the court's finding Haley was likely to be adopted within a reasonable time, notwithstanding her PTSD diagnosis and her educational delays. The Bureau's assessment report, ““a cornerstone of the evidentiary structure' upon which the court, the parents and the child are entitled to rely” in dependency matters, examined Haley's circumstances and found her likely to be adopted. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 11; § 366.21, subd. (i)(1).) Haley's mental health issues improved dramatically when the court limited contact with her parents; Haley made additional progress when placed with her prospective adoptive mother. Although Haley was “sad” about not being able to see her parents, the Bureau described Haley as a “healthy child” with no “known medical problems.” At the .26 hearing, Haley was “well groomed[,]” looked “healthy,” and seemed to be thriving in a more structured environment. Haley was described as “well-behaved,” “bright,” and “adorable.”

Parents contend Haley's purported emotional “problems,” are a barrier to adoptability. We disagree. This is not — as parents contend — a situation like those in *In re Asia L.* (2003) 107 Cal.App.4th 498, 510-512, and *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1063-1065, where the appellate court found insufficient evidence the

minors were likely to be adopted within a reasonable time because of their severe emotional, developmental, and physical problems. Here, Haley’s therapist remarked on the progress Haley had made in therapy and the Bureau described her as healthy and lacking any medical problems.

We reject mother’s suggestion that Haley was not adoptable because of her age. Haley’s age was not an impediment to adoptability, given the willingness of her prospective adoptive mother to adopt her. (*In re A.A.* (2008)167 Cal.App.4th 1292, 1312.) There was not, as mother contends, a “rush to . . . terminate parental rights[.]” Haley’s current dependency case spanned a two-year period, and the .26 hearing was continued *for over a year* while the Bureau tried, unsuccessfully, to complete a home study enabling a permanent placement with Haley’s paternal aunt and uncle.

Father contends there “was a lack of substantial evidence Haley was adoptable by her current caretaker.”⁴ When a child’s adoption cannot be predicted with confidence as a result of his or her relatively advanced age, poor physical health, physical disability, or emotional instability, the child is said to be not “generally” adoptable. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408 (*Brandon T.*)). In these circumstances, the child may be found likely to be adopted under section 366.26 if a person has been identified who is willing to adopt. Such children are deemed “specifically” adoptable. (*Brandon T.*, at p. 1408.) We reject father’s argument because there was substantial evidence Haley was generally adoptable.

Father’s Argument Regarding the Relative Placement Preference of Section 361.3 Has No Merit

Father’s final contention is the court erred by failing to evaluate and place Haley with Marie B. and her husband pursuant to the relative placement preference of section 361.3, once she had to be moved from the home of her paternal aunt and uncle. Section

⁴ Father’s contention that if Haley’s paternal aunt and uncle did not adopt her, “it would be very difficult to place Haley anywhere else due to her attachment to them” is difficult to understand, given that Haley was thriving in the home of her prospective adoptive mother.

361.3 provides: “[i]n any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” Under section 361.3, subdivision (a)(8), relatives desiring placement “shall be assessed” and “[t]he county social worker shall document these efforts. . . .”

Assuming father has standing to appeal the denial of placement with these relatives, his argument fails for two reasons. First, section 361.3 does not apply here because Haley had been placed with her prospective adoptive mother in August 2011 and the Bureau did not intend to move Haley to another placement. Section 361.3, subdivision (d) provides: “Subsequent to the [dispositional] hearing . . . whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child’s reunification or permanent plan requirements.” Second, father did not raise the relative placement preference issue in the trial court. He did not file a section 388 petition, nor did he ask the court to order a relative assessment.⁵ Moreover, none of the interested parties requested a hearing to litigate the issue of relative placement.

⁵ The issues before the juvenile court at a section .26 hearing are: (1) whether the minor is adoptable; and (2) whether any exceptions to adoption apply. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 160; § 366.26, subd. (c).) Because father did not file a section 388 petition, the relative placement issue was not properly before the court. Section 388, subdivision (a) provides, in relevant part: “Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made”

DISPOSITION

The order terminating parental rights is affirmed.

JONES, P.J.

We concur.

SIMONS, J.

NEEDHAM, J.