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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re T.D. et al., Persons Coming Under
the Juvenile Court Law.**

**SAN FRANCISCO HUMAN
SERVICES AGENCY,**

Plaintiff and Respondent,

v.

T.D.,

Defendant and Appellant.

A133796

**(San Francisco City and
County Super. Ct. Nos.
JD08-3042 & JD08-3224)**

T.D. (Mother) appeals an order terminating her parental rights over her three sons T.D. (To.), born in August 2004; S.D. (Sa.), born in November 2006; and S.D. (Sh.), born in April 2008.¹ (Welf. & Inst. Code, § 366.26.)² Mother's sole contention on appeal is that the juvenile court's finding that the Minors are adoptable is not supported by substantial evidence. We disagree and affirm.

BACKGROUND

In May 2008, To. and Sa. were declared dependents of the juvenile court and ordered to reside with Mother under supervision by the San Francisco Human Services Agency (Agency). In November, the Minors were ordered temporarily detained in foster

¹ To., Sa., and Sh. are collectively referred to herein as the Minors.

² All undesignated section references are to the Welfare and Institutions Code.

care after being removed from Mother's home due to physical abuse and Mother's failure to protect them from Sh.'s father, A.G.³ Mother has an extensive history of domestic violence and the Minors have witnessed severe domestic violence. In April 2009, Sh. was declared a dependent of the juvenile court.

The Minors remained in foster care until July 15, 2009, when the court ordered them returned to Mother under a family maintenance plan. In October, the Minors were returned to protective custody and placed in the same foster home.

In January 2010, reunification services were terminated as to Mother and a section 366.26 permanency planning hearing (.26 hearing) was set for June 2. The Agency's June 2010 "366.26 WIC Report" recommended legal guardianship as the permanent plan and dismissal of the dependency. At the July .26 hearing the court found that termination of parental rights would be detrimental to the Minors because their foster parents were not yet in a position to adopt them. In September, the court reduced Mother's visitation with the Minors from one 2-hour visit per week to one 2-hour visit per month.

On March 9, 2011, the Agency filed a status review report recommending long-term placement as the permanent plan. A March 29 addendum report recommended setting a .26 hearing with adoption as the permanent plan. A .26 hearing was set for August 17 and was continued to September 21.

August 2011 .26 Report

The Agency's August 2011 .26 report by Agency social worker Christine Burns recommended termination of parental rights and adoption by the Minors' foster parents as the permanent plan. The report stated the following:

To. suffered speech delay and behavioral issues related to his posttraumatic stress disorder (PTSD) diagnosis. Attention deficit hyperactivity disorder (ADHD) medication had been prescribed; and audiology, ophthalmology, and psychiatry referrals had been made for him. To. qualified for special education at school due to his speech delay and

³ A.G., is not a party to this appeal, nor is W.H., the alleged father of Sa. The alleged father of To. is deceased.

received speech and language services at school. His cognitive abilities were average in all areas and he was well liked by students and teachers. He was described by the school psychologist as “resilient, engaging and intelligent . . . with a variety of strengths,” although he struggled to work at his academic level and required constant redirection in the classroom.

Burns described To. as “outgoing, engaging and sweet.” Although he had made tremendous progress at school managing his negative and impulsive behaviors, after resumption of his supervised visits with Mother, teachers noted a sudden regression in his behavior coinciding with the visits. To. was struggling with poor impulse control, physical and verbal aggression toward others, “ ‘emotional flooding’ ” relating to past trauma, and significant regression in reading skills. His PTSD symptoms were most acute before and after visits with Mother. To. had just begun individual and family therapy sessions. Seneca Center “wrap services” were providing in-school and in-home clinical and case management support to him and his foster parents.

To. had several supervised, therapeutic visits with Mother during the last review period. Although they both benefitted from the therapeutic intervention, before and after visits To. continued to display increased PTSD symptoms at the foster home and at school.

Sa. was evaluated at the Golden Gate Regional Center for a possible speech and language delay and found not to qualify for services. However, he was receiving services at school for a speech delay. He was also referred for a neurological evaluation to rule out cerebral palsy. Described by Burns as “shy, sweet and empathetic,” Sa. was having difficulty adjusting to the structured social environment at his prekindergarten program and would be selectively mute when staff tried to communicate with him. This appeared to be a behavioral issue. Sa. qualified for special education services at school and was attending family therapy sessions when appropriate.

Sh. had been diagnosed with mild valvar pulmonic stenosis, a congenital heart condition for which semi-annual follow up visits were recommended, but required no restriction of activities. Possible developmental delays were noted, Sh. was recently

evaluated for possible fetal alcohol syndrome, and he was referred to the Golden Gate Regional Center for a developmental assessment. It appeared Sh.'s developmental delays would require ongoing monitoring and evaluation, and the school district was to determine if he qualified for special education services. Described by Burns as "rambunctious and fearless," there were concerns Sh. had an attachment or other developmental disorder. He generally had an aversion to positive and nurturing touch, although he was sometimes affectionate toward strangers.

Before and after visits with Mother, all three Minors demonstrated increased aggression and anxiety.

Foster Parents

The Minors' foster parents, D.D. and C.J., with whom the Minors had resided between February and July 2009 and continuously after October 2009, were ready and willing to adopt the Minors, and had agreed to a postadoption contact agreement which provided for mail contact between the Minors and Mother. The adoptive home study was in progress but had not yet been completed. A joint adoptability assessment was completed in July 2011. The assessment noted D.D. and C.J. had been cleared for criminal and "CWS" histories as part of their foster family licensing requirements. They had been actively involved in the Minors' lives since February 2009 and had been providing the Minors excellent care and protection. D.D.'s experience as a special education teacher enabled her to be proactive in obtaining the Minors the necessary academic, medical, and mental health support services. D.D. and C.J. do not have children of their own; they treat the Minors as their own and are committed to providing them a permanent adoptive home. The assessment states, "It is clear that each boy's special needs and strengths are acknowledged and nurtured by [D.D. and C.J.]" It noted that D.D. and C.J. had completed all foster parent trainings, had been foster parents for five years, and were very informed about caring for children with special needs. Their commitment to adopting the Minors was demonstrated in their follow through with the myriad of services and providers the Minors required in order to stabilize their behavior at home and at school. To. stated he wanted to live with the foster parents and felt safe in

their home. Sa. and Sh. were too young to give a statement, but Burns observed them to be thriving in the foster parents' care.

The report concluded that due to the foster parents' perseverance and commitment, the initial service goals had been met and the "Seneca in-home wrap-around services" would terminate. Although the foster parents had previously agreed only to legal guardianship for the Minors as services were put in place and assessments completed, the foster parents obtained a clearer idea of each child's special needs, said they were confident they could meet those needs, and said they were committed to adopting them. Dr. Castro would continue therapy with To. to manage his PTSD and would work with the foster parents, Sa., and Sh. on developing strong and healthy emotional attachments. Burns had obtained funding to enable the family to continue this therapeutic work.

November 2011 Addendum Report

Burns's November 2011 addendum report provided an update on the Minors' progress. To., age 7, continued to have difficulty managing his PTSD symptoms. His behaviors were most acute around visits with Mother and he seemed relieved when told he would be having his final visit with her. To.'s therapist did not recommend any ongoing contact with Mother, although it was recommended that Mother maintain her connection with To. through letter writing or e-mail. To. was being followed at a hospital psychiatric department and had been prescribed medication which appeared to be helping him manage his PTSD and anxiety symptoms. It was recommended that To. continue in individual and family therapy to address his past trauma and learn to cope and manage his anxiety and PTSD symptoms.

Sa., age 4, was receiving weekly speech and language services and making good progress in the classroom. He began therapy sessions in October 2011 and would continue to work on his trauma issues in the context of family therapy sessions with the foster parents.

Sh., age 3, had recently been diagnosed with ADHD and was being evaluated for medication. Given his marked lack of interest in potty training, he was in daycare and unable to be enrolled in a Headstart program. Since visits with A.G. were terminated, Sh.

did not display the behaviors he had previously displayed before and after visits. Sh. was very responsive to D.D.'s behavioral interventions. He would continue to participate in family therapy with the foster parents.

The addendum report noted that To. had been removed from Mother's home seven times, and Sa. and Sh. had been removed from her home four times due to her failure to protect them from physical abuse and neglect. It also noted that previously, in Florida, Mother had two older children removed from her custody due to abuse and neglect.

The addendum report stated that the Minors' foster parents were ready and willing to adopt the Minors, all of whom had "thrived and blossomed" in their care. It was recommended that To. continue in individual and family therapy to address his past trauma and learn to manage his anxiety and PTSD symptoms.

November 2011 .26 Hearing

At the November 2011 .26 hearing, Burns opined the Minors are adoptable because they can adequately attach to their prospective adoptive parents and their special needs are well addressed in their current placement. She also noted that the Minors' physical health is good and they engage easily with people. In describing the Minors' special needs, Burns said To.'s PTSD presents as high anxiety and creates behavioral issues at home and at school. The Minors have speech issues for which they are getting resources at school. Burns said the prospective adoptive parents are very much aware of the Minors' special needs. In addition, the foster mother works in a special education classroom and is well-educated as to how to assess and cope with special needs in that setting. Burns said the Minors behavioral and emotional issues have "vastly improved" since living in a home with no trauma. She said that their current caretakers want to adopt the Minors and that, if adopted, their needs would be met in their current home. All three Minors have lived with their current caretakers for at least two years. Burns said there was no reason why the Minors should not be adopted.

Burns described the Minors' current foster home as an intensive therapeutic foster home. She said the current foster parents had received many services in the last 18 months. In particular, they had received intensive Seneca wrap-around services,

however, those services would be ending that month because “they’ve completed their goals.” Burns acknowledged that in July 2010, four days before the guardianship hearing, the prospective adoptive parents “backed out” of becoming the Minors’ legal guardians due to the extent of the Minors’ special needs. However, Burns said the prospective adoptive parents were now willing and ready to adopt them. Burns said the Minors had always lived together, are closely bonded, and it is important that they remain together in a placement. Burns opined that the Minors are adoptable even assuming the prospective adoptive parents do not adopt them.

At the conclusion of the .26 hearing, the court concluded, by clear and convincing evidence, that the Minors are adoptable.

DISCUSSION

Mother contends the court’s finding that the Minors are adoptable is not supported by substantial evidence. In particular, she argues, because the Minors all have special needs and behavioral issues which render them not generally adoptable and there is no guarantee the prospective adoptive parents will be approved to adopt them or are committed to adopting them with a full understanding of their special needs, the adoptability finding must be reversed.

Section 366.26, subdivision (c)(1) provides: “If the court determines, based on the assessment provided . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the minor will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . .” We review a finding of adoptability for substantial evidence. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060-1061.) In doing so, we review the record in the light most favorable to the court’s findings and draw all evidentiary inferences that support the court’s determination. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

In determining adoptability, the focus is on whether a child’s age, physical condition, and emotional state will create difficulty in locating a family willing to adopt. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) “[T]he law does not require a juvenile court to find a dependent child ‘generally adoptable’ before terminating parental rights.

All that is required is clear and convincing evidence of the likelihood that the dependent child will be adopted within a reasonable time. [Citations.] The likelihood of adoptability *may* be satisfied by a showing that a child is *generally* adoptable, that is, independent of whether there is a prospective adoptive family “ ‘waiting in the wings.’ ” [Citation.]” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) However, the court may consider “a prospective adoptive parent’s willingness to adopt as evidence that the child is likely to be adopted within a reasonable time. [Citation.]” (*Ibid.*) “[T]he existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child’s age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the child is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. [Citation.]” (*Id.* at p. 1312.)

If the court finds the child is likely to be adopted, it does not examine the suitability of the prospective adoptive home. (*In re Carl R., supra*, 128 Cal.App.4th at p. 1061.) Only if the child is “specifically adoptable,” meaning he or she is adoptable “only because one family is willing to adopt” (*id.* at p. 1062), does the analysis shift 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” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80).

Mother argues, since To. was seven years old at the time of the .26 hearing, he was nearing an age which was not favorable to adoption. In support of this contention she relies on *In re Kristin W.* (1990) 222 Cal.App.3d 234, 253 [children ages 10, 8, and 7 might be difficult to place for adoption due to their ages]. However, that case does not hold that a minor upon reaching a certain age is per se not generally adoptable. Age is but one of the factors juvenile courts are to consider in deciding general adoptability. (*In re David H., supra*, 33 Cal.App.4th at p. 378.) That To.’s age is not an impediment to a ruling of his general adoptability is shown in the willingness of prospective adoptive parents, D.D. and C.J., to adopt him. (*In re A.A., supra*, 167 Cal.App.4th at p. 1312.)

Mother also argues the prospective adoptive parents did not have a completed home study and had not been approved to adopt the Minors. Her failure to provide any legal authority in support of the argument forfeits the contention on appeal. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) In any case, “where there is no evidence of any specific legal impediments to completing the adoption process, parental rights may be terminated to a specifically adoptable child regardless of whether a home study has been completed.” (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1410.) In addition, under these circumstances, a special needs child may be deemed adoptable before the prospective adoptive parent has been “approved.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1293.)

Mother next argues the Minors’ behavioral issues and special needs and their sibling bond which required joint placement “undermined the opinions of” the Agency and Burns that the Minors are generally adoptable. We disagree.

In re Helen W. is persuasive. In upholding an adoptability finding the court stated, “Both children suffer from conditions that require time to determine the full severity of the issues they will face. But [the agency] methodically reported the children’s medical, developmental, emotional, and behavioral conditions throughout the two years of their dependency. The adoption assessment included a synopsis of the children’s conditions. And the foster mother—the prospective adoptive parent—accompanied the children to appointments, advocated for services, and was fully aware of their medical and psychological conditions. Nowhere in the statutes or case law is certainty of a child’s future medical condition required before a court can find adoptability. [Citation.]” (*In re Helen W.*, *supra*, 150 Cal.App.4th at p. 79; see also *In re K.B.*, *supra*, 173 Cal.App.4th at pp. 1292-1293 [adoptability finding supported by prospective adoptive parents’ willingness to adopt three siblings despite awareness of children’s developmental delays and behavioral problems].) Here, the Minors’ developmental delays and psychiatric and behavioral issues were thoroughly documented in the Agency’s reports and were well known to the prospective adoptive parents who had cared for them for more than two years. The prospective adoptive parents had been proactive in seeking out assessments

and services for the Minors and had created a safe, nonabusive family environment for the Minors wherein the Minors were “thriv[ing] and blossom[ing],” which brought about a marked improvement in their behavior. We conclude substantial evidence supports the juvenile court’s finding that the Minors were likely to be adopted.

Mother also argues that it is unclear whether the court relied solely on the prospective adoptive parents’ willingness to adopt in finding the Minors adoptable. She asserts that if the court relied solely on the prospective adoptive parents’ willingness to adopt, its finding was unsupported by substantial evidence. She concedes there appears to be no legal impediment to adoption and concedes the prospective adoptive parents had an understanding of To.’s and Sa.’s special needs; but argues the full extent of Sh.’s special needs was not known, services for the Minors were about to end, and, therefore, there is no substantial evidence that the prospective adoptive parents would be willing or able to meet the Minors’ special needs.

In re K.B. is persuasive. There the court stated: “Here, the children had been residing with their prospective adoptive parents since October 2005. It had been reported since 2002 that Kr. and Ka. had developmental delays resulting from fetal alcohol syndrome, and all three children had speech and educational problems. Ka. had apparently at some earlier point exhibited the behaviors that motivated the prospective adoptive mother’s request for a psychiatric evaluation. Despite these problems, the prospective adoptive parents wished to adopt the children, and they remained committed to adopting the children as of the date of the termination hearing, despite the continuing and perhaps increased difficulties described by the parents. There is no evidence that the adoption will not take place as soon as the legal process permits. This is sufficient to support the conclusion that it is reasonably likely that the children will be adopted within a reasonable time: ‘[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the only indications are that, if matters continue, the child will be adopted into that home, adoptability is established. In such a case, the literal language of the statute is satisfied, because “it is likely” that that

particular child will be adopted.’ [Citation.]” (*In re K.B., supra*, 173 Cal.App.4th at pp. 1292-1293.)

Similarly, here, the Minors had resided with the prospective adoptive parents, D.D. and C.J., for more than two years. That their home had been designated an intensive therapeutic foster home establishes their commitment to resolving the Minors’ special needs. The prospective adoptive parents had been instrumental in obtaining assessments and services for the Minors, treated them like their own children and, as of the .26 hearing, were committed to adopting all three of them. No evidence suggests that the prospective adoptive parents were not fully aware of Sh.’s special needs and the possibility that he suffers from fetal alcohol syndrome, attachment disorder, or developmental delays, or would be unwilling to adopt him or the other Minors if such problems are conclusively identified in the future. In addition, D.D. and C.J. had completed all foster parent trainings, had been foster parents for five years, and were very informed about caring for children with special needs—particularly in light of D.D.’s work as a special education teacher. In addition, D.D. and C.J. had amply demonstrated their ability to meet the children’s needs, as reflected by the marked improvement in the Minors’ behavior since being placed with D.D. and C.J. Finally, the prospective adoptive parents were willing to encourage the Minors to maintain written contact with Mother, as recommended by the Minors’ therapist. We conclude that even if the juvenile court had relied solely on the prospective adoptive parents’ willingness to adopt, the court’s adoptability finding would be supported by substantial evidence.

DISPOSITION

The .26 hearing order is affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUNIERS, J.