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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

SAN FRANCISCO HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

A.S. et al.,

Defendants and Appellants.

A140466

(City & County of San Francisco  
Super. Ct. No. JD12-3091)

Mother and father appeal from an order terminating their parental rights to their now two-year-old daughter. They contend the court’s finding that the daughter is adoptable is not supported by substantial evidence and that the court did not comply with notice requirements of the Indian Child Welfare Act (ICWA). We find no merit in either contention and shall affirm.

**Factual and Procedural History**

In March 2012, after mother and her newborn daughter tested positive for PCP, the San Francisco Human Services Agency (agency) filed a Welfare and Institutions Code<sup>1</sup> section 300 petition and placed the daughter in emergency foster care. In August, the court sustained the allegations in the petition and established jurisdiction. At the disposition hearing, the daughter was declared a dependent of the court and mother was

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

ordered to engage in reunification services. At a status review hearing in May 2013, the court found that mother had failed to make adequate progress towards reunification, terminated services, and set a section 366.26 hearing. On July 30, 2013, the court denied mother's writ petition challenging the court's termination of services and the setting of the permanent plan hearing. (*Ana C. v. Superior Court* (July 30, 2013, A138752) [nonpub. opn.] )

On August 27, 2013, the agency filed a section 366.26 report recommending that parental rights be terminated and the daughter be approved for adoption. The social worker opined that "[t]he child's potential for adoption is high because [she] is in a foster-adopt placement and the present caretakers have expressed interest in adopting [her]." The child is described in the report and as a "happy and delightful toddler."

According to the report, mother had attended visits but was still unstable. Father and his extended family had not contacted his daughter since birth.

The report details the child's current medical and developmental situation as follows: "**Medical:** [The child] was seen by Dr. Brown on 5/18/13 for a CHDP examination. During this appointment, Dr. Brown raised concerns about [her] wobbly balance, weak legs, lack of core muscles, and verbal delays; and that an assessment had not started. [¶] [The child] is current with her immunization shots. She has a medical diagnosis of Anemia and is taking Iron supplement. [¶] **Developmental:** [The child] was assessed for Regional Center services on 5/20/13 and 6/12/13. She is eligible for Early Start/Regional Center services based on physical delays and has an Individualized Family Service Plan (IFSP). According to the IFSP, [she] will receive case management services and physical therapy evaluation and physical therapy sessions. [¶] [She] had a physical therapy evaluation on 6/19/13; and has been receiving physical therapy sessions once a month since 7/10/13. [¶] On 7/24/13, the substitute caregiver informed the undersigned that [the child] has made progress with her gross motor skills and is now walking on her own. However, the substitute caregiver raised concern regarding [the child's] verbal skills. [¶] On 7/25/13, undersigned referred [the child] to the Multidisciplinary

Assessment Center for language and speech assessment and [she] has an appointment on 8/21/13.”

The report includes an assessment of the prospective adoptive parents. They are a married couple with a seven-year-old daughter, both employed, and have an extensive support network. The child “was placed in the home of the prospective adoptive parents on 4/29/13. [She] had visits with this family prior to the placement date. . . . The parents have taken time off from their employment to provide [her] their full time and attention to help her adjust to their home.” The prospective parents “are motivated and expressed desire in adopting [the child] and having her as a permanent member of their family.” According to the report, the child is affectionate and at ease with her foster family, and has formed a strong attachment—evidenced, for example, by how she tried to follow them around the house or by her excitement when they came to pick her up from daycare. She is thriving and well cared for. The report continues, “[T]he parents are capable of meeting [the child’s] needs. [The child] has made significant progress on her over-all well being during the short amount of time that she has been with the parents. . . . [¶] The parents are proactive in regards to scheduling needed appointments . . . . They have advocated for [the child] to receive needed assessments sooner than later. Also they are quite open to receiving services themselves as needed to ensure that they are meeting [the child’s] needs. They are aware that [she] was born with a positive toxicology screening result of PCP and have done their own research of the possible side effects.” The prospective parents understand the legal and financial responsibilities of adoption.

The section 366.26 hearing was held on December 6, 2013. At the hearing, the author of the report testified and the report was admitted into evidence. She testified that since preparation of the report in August, the child has thrived in her current placement and has made “significant changes.” She explained, “When she first came to this home, she had developmental delays, speech and language assessment. The caregivers were very proactive in advocating for her to get the services she needed. They followed through with the referrals in the community.” The social worker did not believe the child’s delays would impede the adoption from going forward. The prospective parents

had been fully informed regarding the child’s developmental delays and they still wanted to proceed with the adoption.

Following argument of counsel, the court found that the agency’s report was “very detailed,” and that the child’s relationship to her foster parents was “quite strong,” and that she was “thriving” and doing “very well” under their care. It found the child was adoptable and terminated parental rights.

Parents both filed timely notices of appeal.

### **Discussion**

1. *Substantial evidence supports the court’s finding of adoptability.*

For a juvenile court to select adoption as the appropriate permanent plan, it must determine by clear and convincing evidence that it is likely that the minor will be adopted. (§ 366.26, subd. (c)(1); *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1351.) “Clear and convincing” evidence requires a finding of high probability. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205.) We review the juvenile court’s finding for substantial evidence. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623-624.)

“The issue of adoptability requires the court to focus on the child, and whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citation.] It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting. [Citations.] However, there must be convincing evidence of the likelihood that adoption will take place within a reasonable time.” (*In re Brian P., supra*, 99 Cal.App.4th at p. 624.)

Appellants contend that there is insufficient evidence to support the finding that their daughter is adoptable. They argue that the agency’s failure to provide “a full and complete assessment of [their daughter’s] physical conditions, her foster parents’ ability to meet her needs, or their motivation(s) for adoption” undermines the court’s factual finding of adoptability. We disagree.

When the court orders a hearing pursuant to section 366.26, the agency is required to prepare an assessment that includes, among other things, “An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status. [¶] [] A preliminary

assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. . . . [¶] [ ] The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, [and] the motivation for seeking adoption or guardianship . . . . [¶] . . . [¶] [ ] An analysis of the likelihood that the child will be adopted if parental rights are terminated. . . ." (§ 366.21, subd. (i)(1); § 366.22, subd. (c)(1).) The agency's report complies with this requirement.

As set forth in full above, the agency's report apprised the court of the nature of the child's developmental delays and what steps had been taken by the agency and the prospective adoptive parents to address those issues. Appellants' argument that the child's verbal delays were never assessed or that the child was "never seen, evaluated and/or treated for the conditions that concerned Dr. Brown" is not supported by the record. The record clearly shows that the child was assessed twice immediately following the appointment with Dr. Brown and that as a result she qualified for services and immediately began physical therapy. Within three months, the prospective parents reported significant improvement in her gross motor skills. Because they still had concerns about her verbal skill, an appointment for an assessment was scheduled. At the hearing, the social worker confirmed that the prospective parents had been very proactive in getting the child the services she needed and had followed through with the referrals in the community. Presumably, that includes completion of the assessment scheduled for late August. Most importantly, the report indicated, and the social worker's testimony confirmed, that the prospective adoptive family was aware of her medical and developmental history and remained committed to the adoption. The fact that the results

of any particular assessment were not made part of the record does not defeat the otherwise substantial evidence that the child's medical or developmental situation would not prevent her from being adopted.

The record does not, as appellants' contend, "strongly suggest[] the child has unmet prognosis and treatment needs that may undermine any determination that foster parents are capable of meeting the child's needs." To the contrary, the record establishes that the prospective parents had a full understanding of the child's needs and remained committed to adoption. They demonstrated their ability to advocate for services for the child and follow through with treatment. According to the social worker, the child had made significant progress in their home. There is no evidence of a hidden developmental delay of such magnitude that these parents would be unable to meet the child's needs.

Finally, appellants' argument that the report contains incomplete information about the prospective parents' motivation for adoption or their understanding of their financial rights and responsibilities is not persuasive. While the report only briefly touches on these two topics, the level of detail is adequate under the circumstances. The prospective parents were motivated to adopt, because they loved her and wanted her to be a permanent part of their family. The prospective parents were both employed and had been advised of their financial rights and responsibilities should they adopt the child. Any suggestion that the prospective parents had an improper motivation or less than complete understanding of their financial responsibilities is pure speculation.

*In re Brian P.*, *supra*, 99 Cal.App.4th 616, relied on by parents, is entirely distinguishable. In that case, the court reversed the juvenile court's finding that a four-and-a-half-year-old child with a history of developmental difficulties was generally adoptable. The court explained that the "juvenile court did not have the benefit of an adoption assessment report, which would have presented the kind of facts needed to support a finding of adoptability" and noted that "[w]hile the section 366.26 report did include a bare statement that the chances of adoption were 'very good,' this hardly amounts to clear and convincing evidence." (*Id.* at p. 624 ["A social workers opinion, by itself, is not sufficient to support a finding of adoptability."].) In contrast, the juvenile

court in this case had the benefit of the social worker's "very detailed" report which contained substantial information about the child's developmental and medical status.

## 2. ICWA

The record establishes that a Notice of Child Custody Proceeding for Indian Child (ICWA-030) form (the notice) was completed in June 2012 and filed with the court on July 6, 2012. The form indicates that mother was Sioux or Yaqui through her father (whose name and birth date were provided), and that father was Cherokee through his grandmother (whose name was provided). The agency sent the notice to the 20 federally recognized tribes in which the child was possibly eligible for membership. Delivery of the notice was confirmed for all tribes. All but two of the tribes provided a written response to the notice. None of the tribes asked for further information. No tribe said the child is an Indian child.

After receipt of the written responses from the tribes, the agency informed the court that ICWA did not apply. In its order terminating parental rights, the court checked the box indicating that "Notice has been given as required by law" and did not check the box indicating that "[t]his case involves an Indian Child . . . ."

On appeal, appellants contend that the order terminating their parental rights must be conditionally reversed because the court failed to ensure compliance with ICWA. They fault the court for failing to make an express finding that ICWA did not apply and they argue that the notice was missing biographical information about the child's extended family that could have been discovered by the agency with reasonable investigation.<sup>2</sup> We disagree.

While the juvenile court must determine whether ICWA applies, its finding "may be either express or implied." (*In re Asia L.* (2003) 107 Cal.App.4th 498, 506.) "[A]n

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<sup>2</sup> In their opening brief, appellants also argued that the agency failed to submit proper evidence of the service of notice on all appropriate tribes and receipt of notice or a response by the tribes. They acknowledged in their reply brief, however, that the record establishes that the agency did in fact serve all appropriate tribes and had received either a receipt of the notice or a response from each tribe. Accordingly, we do not address this issue further.

implicit ruling suffices, at least as long as the reviewing court can be confident that the juvenile court considered the issue and there is no question but that an explicit ruling would conform to the implicit one.” (*In re E.W.* (2009) 170 Cal.App.4th 396, 404 [“Here the social worker’s reports specifically discussed the ICWA issue and included documentation of the notices sent and the negative responses received from the tribes. Given the several reports . . . specifically discussing the ICWA issue and repeatedly noting that ICWA ‘does not apply,’ the record reflects an implicit finding concerning the applicability of the ICWA”].) Based on the information included with agency’s reports and filed with the court, we are confident the court considered the issue and made an implicit finding ICWA does not apply.

Substantial evidence supports the court’s implicit finding. Contrary to appellant’s argument, the notice was adequate and the agency complied with its continuing duty to investigate. Generally, the notice required by ICWA must contain enough information to provide meaningful notice. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 175.) The federal regulations require the ICWA notice to “include, *if known*, (1) the name, birthplace, and birth date of the Indian child; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child’s parents, grandparents, great-grandparents and other identifying information; and (4) a copy of the dependency petition.” (*Ibid.*) “A social worker has ‘an affirmative and continuing duty to inquire whether a child [in a section 300 proceeding] is or may be an Indian child . . . .’ [Citation.] If the social worker ‘has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information’ required to be provided in the ICWA notice. [Citation.] However, neither the court nor [the agency] is required to conduct a comprehensive investigation into the minor’s Indian status.” (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39.)

Appellants argue that the notice was insufficient because it did not “show the birthdates of grandparents, the names of any great-grandparents and in father’s case, did

not even show which relative through which he claimed heritage.” Appellants are simply mistaken. The notice clearly indicates that the child’s potential tribal heritage was through her maternal grandfather, whose birth date was included, and her paternal great-grandmother, whose name and potential tribal affiliation was provided. Additional information about other grandparents or great-grandparents, for whom no tribal affiliation was suggested, was largely irrelevant to the notice. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576 [“Information concerning the child’s non-Indian ancestors is . . . typically less relevant to the tribe’s determination of the child’s eligibility for membership than information concerning the child’s Indian ancestors.”].) While the paternal great-grandmother’s birth date may have been relevant, the record does not establish that that information was known to the agency. Appellants’ assumption that the agency did not interview extended family members or that other relatives might have supplied this or other relevant information is purely speculative. (*In re Gerardo A.* (2004) 119 Cal.App.4th 988, 995 [“The fact that the record is silent regarding whether the department spoke with anyone other than the children’s mother and maternal aunt does not necessarily mean the department failed to make an adequate inquiry for Indian heritage information.”].) More importantly, given that the relevant names were included in the notice and no tribe requested supplemental information, there is no reason to believe the failure to include the missing birth date was prejudicial. (*In re E.W.*, *supra*, 170 Cal.App.4th at pp. 402–403 [“[W]here notice has been received by the tribe, as it was in this case, errors and omissions in the notice are reviewed under the harmless error standard.”].)

**Disposition**

The order terminating parental rights is affirmed.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.