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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re A.K. and MICHAEL S., Persons
Coming Under the Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

R. K. et al.,

Defendants and Appellants.

A142587

(Sonoma County
Super. Ct. Nos. 4123-DEP, 4124-DEP)

INTRODUCTION

R. K. (mother) appeals from the juvenile court’s orders denying her Welfare and Institutions Code section 388¹ petition without holding a hearing and terminating her parental rights to her daughter A.K. and her son Michael S. Ken S. (father), who is mother’s husband and the father of Michael, appeals from the juvenile court’s order terminating his parental rights to Michael. In February 2013, four-year-old A.K. and two-year-old Michael were removed from mother and father (the parents) because of domestic violence in the home. The minors were placed in a foster home together and

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

services, including visitation, were offered to mother and father.² Shortly thereafter, father's visitation was suspended due to lack of attendance. Visitation with mother had traumatic effects on the minors; it was also suspended. Ultimately, the juvenile court granted section 388 petitions finding visitation was detrimental and terminating visitation for the parents. At the six-month review hearing, the court terminated reunification services, finding that the children were so traumatized that, even with additional services, there was no possibility that they could be returned to the parents within the time allowed by law. The court set a section 366.26 permanency planning hearing. Mother filed a section 388 petition seeking to reestablish visitation and/or regain custody. Finding that the proposed change of order did not promote the best interests of the minors, the court denied the petition. At the section 366.26 hearing, the court found the children adoptable and terminated mother's and father's parental rights.

On appeal, mother challenges the juvenile court's ruling summarily denying her section 388 petition without holding a hearing on the ground that she established a prima facie case of changed circumstances and benefit to the minors. She also contends the trial court erred in terminating her parental rights because (1) her section 388 petition should have been granted, and even if there was no error in denying the petition, (2) the adoption assessment report was incomplete and insufficient to support the court's order of adoption. Father argues the court lacked sufficient evidence of Michael's adoptability.³

Finding no error, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Section 300 Petition

On February 7, 2013, the Sonoma County Human Services Department (the department) filed a section 300 petition alleging that A.K. and Michael were at risk of suffering serious physical harm as a result of domestic violence between the parents. The

² No services were offered to A.K.'s father, T.S. He was not involved in A.K.'s life, was not interested in services or placement, and, as an alleged father, was not entitled to services. T.S. is not a party to this appeal.

³ Each parent joins the other's arguments. (Cal. Rules of Court, rule 8.200.)

department took the children into protective custody. The petition alleged a December 2012 incident in which mother was completing paperwork for a restraining order against father while the maternal grandmother was outside the building with Michael. Father drove up, took Michael out of his stroller, and drove off with the child. A few days earlier, with both children present, the parents had been in an argument that escalated to a physical altercation that involved father punching mother in the face, strangling her for 20 to 30 seconds, and breaking her phone so she could not call for help. The petition alleged a November 2012 incident in which father verbally berated and physically assaulted mother, including grabbing her arm and slapping her repeatedly on the chest and neck while screaming, "I'm going to kill you." Also in November, in the presence of Michael, father verbally berated and physically assaulted mother including punching her twice in the head and squeezing her throat for at least 30 seconds. The petition alleged three other incidents between the parents in June 2012, September 2011, and November 2010 involving arguing and physical altercations that resulted in injuries to one or both parties. Both parents had been arrested multiple times for domestic violence. The petition further alleged that father had a substance abuse problem (alcohol) and that mother's relationship with A.K.'s father also placed the children at substantial risk of harm because of domestic violence.

An amended section 300 petition added allegations that the parents failed to provide adequate medical and dental care and general maintenance care.

Jurisdiction and Disposition

In its jurisdiction/disposition report, the department recommended that both children be declared dependents of the court and remain in foster care, and that reunification services be provided to mother and father. Four-year-old A.K. was reported to need "complete mouth repair." She also needed evaluation for deficiencies in gross motor and social development and for possible developmental delays due to prenatal drug exposure. The social worker was working with the foster parents to get A.K. into preschool. Two-year-old Michael had complete mouth repair surgery, following which "there was a complete turnaround to his mood and behavior. Previously, he would cry

throughout the day and complain of pain in his mouth. He could not chew his food due to the pain. The morning after the surgery, he was smiling and laughing, his crying decreased significantly, and his mood has been positive and happy all week.” The report also noted developmental concerns for Michael, including gross motor, social, and possible developmental delays due to prenatal drug and alcohol exposure.

Both parents had child welfare histories of abuse and neglect in their families of origin, including domestic violence and substance abuse. There were four prior referrals of mother and father to the department based on allegations of neglect and abuse of A.K. and Michael. Mother and father both had domestic violence criminal histories. The department requested that the court not consider placing the children with any of the grandparents, based on their criminal records and histories of child welfare contacts in raising the parents.

Neither parent acknowledged the level of violence in the home. Since being detained, the children had disclosed violence between the parents and had expressed fear of visiting their parents. Each parent blamed the other, and minimized and denied abuse and neglect of the children. Father reported that mother continued to contact him despite a criminal protective order that forbade contact. Both parents appeared to have substance abuse issues. Neither parent had ever been in treatment for substance abuse or domestic violence.

Father missed three of his five scheduled visits with the children and did not notify the department before failing to show up. The children never asked about him. Father canceled the final scheduled visit, and did not return calls from the department. His visitation was suspended due to lack of attendance in March 2013, pending his making contact with the department.

Mother missed one of her scheduled six visits, calling to cancel only after the visit had begun. The children did not ask about her; they were more concerned about when the foster mother would return. Both children expressed fear on their way to visits with mother, and displayed negative behaviors on visitation days. Despite being toilet-trained, A.K. hid under a table and defecated in her pants after one of the first visits. A.K.

disclosed that mother hit her, and that father hit mother. “Both children wake up in the middle of the night screaming and crying on visit days.” During one visit, mother referred to Michael as “little creepy,” “little lizard,” and “pee pee.”

The department found that A.K. and Michael were “the victims of extensive, and on-going abuse and neglect.” In addition to physical abuse by the parents, the children were also “the victims of horrific domestic violence, lack of appropriate parenting, and alcohol abuse,” as well as extensive neglect. The department recommended removing the children from the parents’ care and offering services to mother and father, including services related to parenting, domestic violence, counseling, substance abuse testing and treatment, and protecting themselves and the children from abuse and violence.

At the jurisdiction and disposition hearing on March 6, 2013, the parents submitted and the court adopted the department’s recommended findings and orders.

Visitation Review

In a visitation review report dated May 9, 2013, the social worker noted that father’s visitation was suspended due to non-attendance and expressed concern about the effects on the children of visitation with mother. The foster mother reported that Michael “struggled with nightmares and uncharacteristic tantrum behavior after visits,” and that he would choke himself and poke his eyes. When the social worker tried to take A.K. into the visiting room at the most recent visit (Michael did not attend the visit because of an illness), A.K. “began to cry hysterically and shared with everyone that she did not want to see her mom anymore.” The social worker decided it was in A.K.’s best interest to cancel the visit. Following suspension of visitation, Michael’s “aggressive and explosive behaviors have decreased;” A.K.’s “nightmares have stopped and her ability to express her feelings has improved.” The social worker re-referred mother to individual therapy and indicated that she would consult with the therapists for mother and the children to determine when reinstating visitation would be appropriate.

The visitation review report included a letter from the children’s therapist, behavioral pediatrician Deborah Madansky, regarding the effect on A.K. of visitation with mother. A.K. had disclosed physical and sexual abuse and neglect, and Madansky

believed visits with mother were traumatic for A.K. On one visit, A.K. asked to leave early because she “wanted to throw up,” although she did not have a physical illness at the time. Staff took her to the restroom where she dry-heaved. A.K. spontaneously told Madansky about the incident, explaining, “I was scared.” A.K. said, “Mommy going to spank me” and pointed to her buttocks and genital area. She said, “I don’t want to see Mommy. I want to stay with Momma Keri,” referring to the foster mother. A.K. also said, “Mommy is mean.” Madansky felt that contact with mother triggered traumatic memories for A.K. and made her feel unsafe. This was significant because A.K. was often dismissive of her abuse, saying repeatedly, “It’s okay,” when Madansky expressed compassion or sympathy for what had happened to her.

The department filed a section 388 petition asking the court to make a detriment finding and terminate visitation for father because he had not been participating in the case plan. The court held a hearing and granted the request to terminate father’s visitation based on a finding of detriment to the children. The department sought agreement that mother’s visits be suspended until therapeutically appropriate. Mother’s counsel opposed the request and asked the court to reinstate mother’s visitation immediately.

On June 19, 2013, the department filed a section 388 petition asking the court to find that visits with mother were detrimental and to terminate visitation to prevent the children from experiencing further trauma. The social worker attached a letter from Dr. Madansky supporting the request. Madansky noted the children’s diagnoses of developmental delays, medical neglect, and post-traumatic stress disorder due to abuse; she was also investigating Michael for fetal alcohol effects. Both children disclosed sexual abuse and serious physical abuse. Although Michael could barely talk, he frequently said, “mean mama,” and demonstrated “digging into his eye sockets with his thumbs, slapping his penis and choking himself.” A.K. stated that she witnessed this and other abuse of Michael, including mother holding him under water and locking him in a cabinet and father “peeing in his mouth.” A.K. disclosed that her father hurt her vagina, mother hit her in the genital area, and mother had pushed her down the stairs, making her

head bleed. Madansky stated that both “children are flooded with traumatic memories,” and stated her belief that it would be detrimental to their mental health to have further visits with mother. A.K. stated she would be “very, very scared” to see mother. Since visits were suspended, A.K. was doing very well in therapy, describing what happened to her and expressing her feelings about it. Michael eventually “stopped his inconsolable crying many weeks after placement when he no longer had to see his mother; he has since been able to improve his behavior, language and social skills.” The court scheduled a hearing on the section 388 petition for July 2013.

Mother did not appear at the hearing. The court granted the section 388 petition, finding it was detrimental to the children to visit with mother.

Six-Month Review

In a six-month status review report dated September 12, 2013, the department recommended terminating reunification services and setting the matter for a permanency planning hearing. Mother was living with her parents and working as an in-home caretaker. Father was incarcerated. He was arrested on June 27, 2013, as a result of another domestic dispute with mother, which also involved his violating a restraining order.

In May 2013, the department referred mother again for shelter, counseling, and domestic violence services. Mother self-reported that she was on a waitlist for group domestic violence sessions at the YWCA. After the June 27, 2013, incident, the department held a team meeting to determine the best domestic violence services for mother and to involve her in case planning. Pursuant to the team meeting action plan, mother entered a shelter on July 5, but was asked to leave one month later because she continued to remain in contact with father, and she antagonized other residents at the shelter.

The department referred mother to two different individual therapists. Mother attended one session with the first therapist, but did not keep any other appointments; the therapist discharged her as a client. In May 2013, mother began seeing the second therapist, but her attendance was sporadic and poor. Mother made some progress: she

increased her knowledge of child development and acknowledged some things she could do differently. She did not acknowledge physically abusing the children, but admitted that she was aggressive and emotionally abusive. She claimed she was the aggressor with father. In September 2013, the second therapist terminated the therapeutic relationship with mother due to attendance problems.

Mother was referred for parent education and reportedly was engaged and asked a lot of questions. She completed the parent education program. Mother also participated in substance abuse assessment and drug testing. Random weekly drug tests were all negative. The social worker felt that substance abuse was not one of mother's issues.

The department referred father for services related to anger management, domestic violence, parent education, and drug testing, but father did not follow through with any of the referrals.

On November 12, 2013, the court held a contested six-month review hearing. The court considered the department's report and a letter from Dr. Madansky. Madansky stated that both children were suffering from post-traumatic stress disorder, and she detailed each child's diagnoses and the treatment each was receiving. Now that they were in "a safe and very supportive home environment with maximal professional services, [A.K.] and Michael have begun their long recovery process. Their progress is discernible, but they are still very fragile, and their gains new and tentative." Madansky continued to recommend that the children not have contact with the parents.

Social worker Juana Marquez testified that she referred mother to NOVA for domestic violence services after mother was asked to leave the shelter in August. In response, mother asked if it was part of her case plan, i.e., something she had to do. To Marquez's knowledge, mother had not attended any NOVA groups. As to whether it might be appropriate to resume visitation between the parents and the children, Marquez considered both Madansky's opinion and mother's recent efforts to comply with her case plan. Based on two therapists terminating therapy with mother, Marquez concluded that mother was either not ready or was unwilling to participate in the therapeutic process.

Mother testified that she did not feel comfortable with her first therapist and could not reach her second therapist after the therapist canceled their last scheduled meeting. Mother stated that her relationship with father ended on December 8, 2012, and she had not had any contact with him since the incident on June 27, 2013. Mother denied contacting him while at the shelter. She left the shelter because she felt unsafe; she denied antagonizing other residents. Mother learned about parenting skills, anger management, and tools for staying sober from programs she attended. Michael never exhibited behaviors such as pulling out his eyebrows or choking himself when in her care. Regarding her role in the children's removal, mother stated, "I could have walked away from the relationship at the—at the very beginning, but I chose not to." She said she felt stuck because father provided for the family financially. Mother did not understand the referral to NOVA because that program was for batterers, and she was not a batterer. Mother acknowledged that Michael had seen his father choke her. Mother believed that her children had been neglected and emotionally abused, but not that they had been physically or sexually abused.

Upon submission, the court adopted the department's proposed findings and orders, terminated services and set the matter for a section 366.26 hearing.

Mother's Section 388 Petition

On March 12, 2014, mother filed a section 388 petition asking the court to vacate its order setting a section 366.26 hearing, reinstate services, and reestablish visitation or return the children to her custody. Mother asserted she had been seeing an individual therapist for about a month. She attended a domestic violence education course and had remained clean and sober. Mother believed changing the court's order was in the best interest of the children because she was confident they would witness no more verbal and physical abuse. The juvenile court summarily denied the petition on the ground that the proposed change did not promote the best interests of the children.

The Permanency Planning Hearing

The department filed its section 366.26 report in February 2014. A.K. had been diagnosed with a seizure disorder and was on medication. Otherwise, she was in good

health. Developmentally, she continued to receive speech services and her communication was considerably improved. She exhibited some extreme behaviors such as clinging to caregivers and anxiety in social situations. She had difficulty regulating her emotions with her peers and would cry or whine, requiring adult intervention. She qualified for speech and language services under her IEP. She also received counseling services at school to address difficulty in transitions. She needed frequent support at school. In therapy, A.K. was initially “ ‘flooded with trauma,’ ” but was gradually getting better, becoming more independent, having fewer nightmares and less anxiety. Her treatment goals focused on regulating her emotions and developing coping strategies.

Michael was diagnosed with developmental delays and, prior to turning three, had been receiving physical therapy, occupational therapy, and speech services from the Early Learning Institute. He did not qualify for services at the regional center. The report noted that despite a severe speech delay and significant behavior challenges, Michael was making progress. In December 2013, a behavior specialist assessed Michael and reported that he was having four to five moderate to severe tantrums per hour, with several more mild tantrums throughout the day. The severe tantrums consisted of crying, screaming, destroying property, and could also include aggression and self-injury. Michael was engaging in “ ‘some sort of aggressive behavior on average 20 times per day.’ ” He would hit, push, choke, throw items at people, and kick. He was engaging in self-injury up to 15 times per day. By the time the department filed its report in February 2014, Michael was having multiple mild to moderate tantrums per day, which required the support of a behavior specialist 10 hours per week. His self-injury had “significantly decreased,” but there was a recent incident in which he attempted to choke another child.

Michael was enrolled in a preschool speech program. He was observed to participate actively, smile, and enjoy the sessions. Michael was no longer in need of occupational therapy. At the IEP meeting, the foster parents requested assessments in all areas of suspected disability. In January, Michael started a preschool program in the community two mornings per week. His teacher reported that he followed directions well, had never been aggressive, and did not have tantrums there.

Michael continued to participate in therapy with Dr. Madansky. Madansky reported that Michael initially did not have a lot of coping strategies, was difficult to understand, and had no sense of attachment. With intensive behavioral services, Michael was now tolerating situations better, becoming a good communicator, and seeking out relationships. Madansky reported that his improvement was noticed after visitation with the parents ended. Madansky assessed Michael to be emotionally 18 months old. She attributed this to his experience of severe neglect, prenatal alcohol exposure, and physical and sexual abuse.

The children appeared to be establishing strong emotional ties with the potential adoptive family. “Both [A.K.] and Michael reciprocate affection with the potential adoptive family. The children enjoy their individual cuddle time with the potential adoptive parents whom they seek out to have their needs met.”

The section 366.26 report also contained a “PRELIMINARY ASSESSMENT OF ELIGIBILITY AND COMMITMENT OF PROSPECTIVE ADOPTIVE PARENTS,” which indicated that the family appeared suitable for adoption and that their application would be given priority. The assessment indicated that the prospective adoptive parents were “warm and nurturing” and were “capable of meeting the children’s needs by providing a safe, nurturing environment with ample opportunities for growth and development.” The report noted their “tireless efforts to advocate for the children’s special needs, as well as their collaboration with the social worker, pediatrician and other service providers for the benefit of the children.” The children appeared “comfortable, safe and secure” in the home, and were treated in a “kind, fair and loving manner.” The prospective adoptive parents were “committed to providing for all of [the children’s] physical, emotional, educational and special needs,” loved them, and were “committed to raising [A.K.] and Michael as their daughter and son.”

At the section 366.26 hearing on May 7, 2014, social worker Patricia Ramano testified that A.K. was now more outgoing and friendly, and her speech had improved. She was in kindergarten with an IEP, played on a T-ball team, and took piano lessons. “And she just appears to be a happy kid.” A.K. was taking medication for a seizure

disorder. Her behavior issues included clinging to caregivers, anxiety in social situations, and hiding under her desk at school. Ramano testified that there were triggers for A.K.'s behaviors, she needed frequent support, and some of the behaviors had not recurred recently.

Michael was shy but affectionate. He was successfully attending preschool three half-days a week. He presented originally with severe behavioral challenges, but no longer had 20 tantrums per day or engaged in self-injury. He had a behavior specialist for about five hours per week, which was a reduction from 10 hours per week. Michael still displayed aggression and threw tantrums, but he was three years old, and it could be hard to differentiate age-appropriate behavior from more extreme behavior.

Ramano believed both children had the capacity to attach. Both children were affectionate and were in a warm and loving home. Neither child had asked to see their parents. Testifying as an expert in permanency planning, Ramano opined that both children were generally adoptable. If the concurrent placement fell through, there were other families who would want to adopt the children. Ramano explained that persons interested in adopting submit a home study which includes information regarding "the challenges that they would accept. And from the number of home studies I've seen, the challenges these two children have are definitely within numerous home studies that I've . . . seen."

The court found the children both generally and specifically adoptable, identified adoption as the permanent plan, and terminated the parental rights of mother and father. The court adopted the recommended findings and orders in the section 366.26 report.

Both parents filed timely notices of appeal.

DISCUSSION

Whether Mother Was Entitled to a Hearing on Her Section 388 Petition

Mother contends the juvenile court erred in summarily denying her section 388 petition without holding a hearing. She argues that she was entitled to a hearing because she established a prima facie case of changed circumstances and that reinstatement of services and visitation was in the best interests of the children.

Section 388 provides, in pertinent part: “(a)(1) 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 [¶] (d) If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held”

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent’s request. [Citation.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

“However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.]” (*In re Zachary G., supra*, 77 Cal.App.4th at p. 806.) “In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case.” (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.) “We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

In her petition, mother alleged as changed circumstances that she had “followed through with various parts of the case plan.” She had been seeing a therapist, Marilyn Talmadge, for about a month and was working on “issues of anger management, being a victim of domestic violence, self esteem, etc.” Mother attended a domestic violence education course at the YWCA for about a month, remained clean and sober, and finished parenting classes and a drug program. She had a stable residence for the children. She

was confident that she would not relapse and would involve herself only in healthy relationships. As for why the requested change promoted the children's best interests, mother stated, "I recognize that the verbal and physical abuse that they witnessed was damaging. However, I am confident that this will never happen again. While I was taking care of the children, they never showed the behavior that came up later: my son never tried to strangle himself, or pluck his eyebrows or eyelashes; my daughter never showed fear of me. I believe that within a short time visits would be expanded and they would be able to spend longer periods of time with me."

Mother failed to make the showing necessary to require a hearing. A number of the circumstances mother alleged as changed already existed at the time of the six-month review in November 2013 when the court terminated reunification services. At that time, mother was already clean and sober, had completed the drug program and the parenting classes, and had participated in a domestic violence course at the YWCA for a month. The only changing circumstance mother alleged in her petition was her attendance at therapy for about a month with Marilyn Talmadge. However, mother provided no statement from Talmadge confirming her attendance, participation or progress.

Mother relies on *In re Hashem H.* (1996) 45 Cal.App.4th 1791 in support of her contention that she made a prima facie showing of changed circumstances, as well as for the proposition that a section 388 petition must be liberally construed. The reliance is misplaced. In *Hashem H.*, in which the dependency was based on the mother's mental health problems, the mother alleged in her section 388 petition continuous participation in individual therapy, regular and consistent visitation including overnights, and participation in conjoint counseling with the minor. (*Id.* at p. 1797.) She supported her petition with a letter from her therapist detailing her progress and recommending that the minor be returned to her custody. (*Id.* at p. 1798.) In reversing the juvenile court's summary denial without a hearing, the appellate court observed that the therapist's letter demonstrated the availability of admissible evidence of changed circumstances and that "[a] fair reading of the petition indicates that [the mother]'s mental and emotional problems which led to the removal of Hashem from her home had been successfully

resolved through therapy.” (*Id.* at p. 1799.) Here, by contrast, mother’s petition, liberally construed, was conclusory and unsupported by any professional opinion or other documentation supporting her allegations. (See *In re Anthony W.*, *supra*, 87 Cal.App.4th at pp. 250-251 [“Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence.”].) She provided no statements from counselors or therapists asserting they believed mother had addressed key issues such as anger management, domestic violence and physical abuse or opining that she could safely parent or visit with A.K. and Michael.

However, even if mother adequately alleged changed circumstances, which she did not, her petition failed to make the necessary showing that a change of the court’s order would promote the best interests of the children. Mother failed to address Dr. Madansky’s determination that the children’s issues and problems were directly related to the abuse they had witnessed and endured themselves. Both children were suffering from post-traumatic stress disorder and developmental delays as a result of child abuse and neglect as well as exposure to domestic violence. Both children disclosed sexual abuse and serious physical abuse, which mother failed to acknowledge. Madansky reported that both children started to improve after visits were suspended and opined that further visits with mother would be detrimental to the children’s mental health. Mother’s section 388 petition did not address the children’s fear of her and made no showing that she could overcome the detriment finding by the court in July 2013 that resulted in the termination of visitation. The juvenile court did not abuse its discretion in summarily denying the petition.

Adequacy of the Adoption Assessment Report

Mother also argues that the juvenile court erred in terminating her parental rights and ordering a permanent plan of adoption without a proper and complete adoption assessment report. Specifically, she contends the assessment’s social history on the prospective adoptive parents did not include the required screening for criminal records and prior referrals for child abuse and neglect, but instead merely contained the

prospective adoptive parents' representation that they had no criminal or child abuse records. She contends that this information was critical because the children's behavioral issues "called into question their adoptability should the prospective adoptive parents not be approved to adopt."

As an initial matter, County Counsel claims mother has forfeited any argument regarding the adequacy of the assessment by failing to raise the issue at the section 366.26 hearing. Mother contends she preserved the issue, pointing out that her trial counsel attempted to question the social worker regarding the foster parents' statements that they had no criminal or child abuse history. Counsel for the department objected on relevancy grounds. Mother's counsel responded: "I guess the relevance I see in this is getting to the report, which I think one of the requirements is to set out whether there is an issue as to criminal or child-abuse records. And I guess I have an issue with this being a self-reported issue by someone, who then apparently lied to the social worker or a social worker. So I guess I have a concern about the accuracy and the reliability of the court report. I think it goes beyond just the narrow issue of the adoptability question." We find mother sufficiently raised the issue and did not forfeit the argument.

Whenever a juvenile court refers a dependency case for a section 366.26 hearing, the court is required to direct the social services department to prepare an assessment as part of its report to the court. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 11 (*Valerie W.*)) "The assessment report is 'a cornerstone of the evidentiary structure' upon which the court, the parents and the child are entitled to rely. [Citations.] The [department] is required to address seven specific subjects in the assessment report, including the child's medical, developmental, scholastic, mental, and emotional status. [Citation.] In addition, the assessment report must include an analysis of the likelihood that the child will be adopted if parental rights are terminated. [Citations.]" (*Id.* at p. 12.) As pertinent here, the assessment report must also contain: " 'A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal

records and prior referrals for child abuse or neglect’ [§ 366.21, subd. (i)(1)(D).]” (*Ibid.*)

Here, the department’s preliminary assessment of eligibility and commitment, submitted to the court as part of its section 366.26 report, stated that the potential adoptive parents “have reported no criminal or child abuse record.” They had been caregivers to A.K. and Michael since the children were detained on February 7, 2013. The caregivers had expressed the desire to adopt A.K. and Michael, and the family had been “referred to Lilliput Children’s Services for an update to their Adoption Home Study.”

Mother contends the prospective adoptive parents’ representation that they had no criminal or child abuse records was inadequate, and that a formal screening was required. Mother also contends the juvenile court erred in sustaining the department’s objection when her counsel attempted to question the social worker about the prospective adoptive parents’ statement that they had no criminal or child abuse records. Mother contends the line of questioning was not only relevant, but it was also “critical to the decision to terminate parental rights.” We disagree with both points.

First, we conclude the assessment contained sufficient information pertaining to the prospective adoptive parents’ criminal and child abuse history and was, therefore, “in substantial compliance with the statutory requirements.” (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1481 (*Diana G.*)) As here, in *Diana G.*, the mother argued that the assessment was inadequate. In rejecting the argument, the *Diana G.* court explained that “the three prospective adoptive families were all licensed as foster homes,” and thus each family had already been required to submit social history information including criminal record clearances. (*Id.* at p. 1481.) Moreover, “the proceeding being appealed here was merely the preliminary step to adoption, in which parental rights were terminated and a permanent plan established. Only after this section 366.26 hearing are the children referred to the appropriate adoption agency for entertaining a petition for adoption. [Citation.] Under the ensuing adoption process, the prospective families must undergo additional evaluations, which would cure any potential error in the preliminary

assessments at issue here. Thus, any possible error was harmless.” (*Id.* at pp. 1481-1482.)

This analysis applies equally here. Upon removal, the children were initially placed and continued to reside in a “Sonoma County Emergency Foster Home.” Although the record does not expressly state that the prospective adoptive parents were in compliance with licensing requirements for foster homes (see Health & Saf. Code, § 1500 et seq.), and thus had already submitted evidence of social history including criminal and child abuse referral clearances, it is an entirely reasonable inference to draw. And as in *Diana G.*, the prospective adoptive parents here must undergo additional evaluation under the adoption process, which would cure any potential errors in the preliminary assessment.

As for mother’s second point, that her counsel should have been permitted to question the social worker regarding the prospective adoptive parents’ criminal and child abuse records, we find no abuse of discretion by the court in excluding the evidence. A juvenile court’s finding of general adoptability at a section 366.26 hearing does not depend on the suitability of a potential adoptive family. “ ‘[I]t is not necessary pursuant to section 366.26, subdivision (c)(1) that the child, at the time of the termination hearing, already be in a potential adoptive home. Rather, what *is* required is clear and convincing evidence of the *likelihood* that adoption will be realized within a reasonable time.’ [Citation.]” (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) In any event, any error was harmless in light of the facts that the caregivers were licensed foster parents and the preliminary assessment was just that, i.e., preliminary.

Mother argues that the court violated her due process right to present evidence when the court denied her the opportunity to cross-examine the social worker on this “critical issue.” We disagree. Due process in dependency cases “is not synonymous with full-fledged cross-examination rights. [Citation.] Due Process is a flexible concept which depends upon the circumstances and a balancing of various factors. [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court. [Citations.]” (*In re Jeanette V.* (1998) 68

Cal.App.4th 811, 817.) Here, the issue was whether the children were adoptable. The court's ruling disallowing cross-examination of the social worker on the issue of the prospective adoptive parents' criminal and child abuse history had no bearing on its finding that the children were adoptable and thus did not deny mother her due process right to present evidence. Moreover, any error was harmless in light of the strength of the juvenile court's findings that the children were adoptable, as we set forth in the next section.

Finally, without citation to any authority, mother argues that the children were at risk of becoming legal orphans if not adopted. However, section 366.26 was amended in 2005 "to add subdivision (i)(2), which provides that if a child has not been adopted after three years following the termination of parental rights, the child may petition the juvenile court to reinstate parental rights. [Citation.]" (*In re I.I.* (2008) 168 Cal.App.4th 857, 871.) Thus, mother's legal orphan status argument is without merit.

Sufficiency of the Evidence of the Children's Adoptability

Father argues there was no substantial evidence that the children were adoptable.⁴ Father cites the children's, and particularly Michael's, significant behavioral issues and developmental challenges, and contends that the court glossed over these serious problems in finding that the children were likely to be adopted within a reasonable time.

A finding of adoptability requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; § 366.26, subd. (c)(1).) "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. [Citations.]" [Citation.]" (*In re Zeth S.*, *supra*, 31 Cal.4th at p. 406.)

⁴ Father's arguments mostly pertain to Michael, but he also argues there was no substantial evidence that A.K. was adoptable. County Counsel notes that father lacks standing to argue A.K.'s adoptability. In her reply brief, mother purports to join father's arguments. For present purposes, we will assume, without deciding or expressing any opinion on the matter, that the sufficiency of the evidence of A.K.'s adoptability is properly before us.

In reviewing the juvenile court's finding of adoptability, we must determine "whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) We give the lower court's finding of adoptability 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.)

Father argues that the adoptability finding was based on a deficient adoption assessment which failed to adequately consider the needs of the children. Father describes at length the developmental, behavioral and emotional issues both children struggled with over the course of the dependency, including observations of social workers and reports from service providers. He notes that, although some issues and behaviors had improved since the children were detained, others "had not yet resolved."

Father likens the instant case to *Valerie W.*, *supra*, 162 Cal.App.4th 1 in arguing that the assessment report failed to provide the juvenile court with sufficient information on which to base its adoptability findings. In *Valerie W.*, a licensed foster parent and her adult daughter sought to adopt minor siblings. (162 Cal.App.4th at pp. 5-7.) The appellate court concluded the juvenile court's specific adoptability finding was not supported by substantial evidence. (*Id.* at pp. 15-16.) The assessment report was deficient, *inter alia*, in failing to identify the needs of one of the siblings, a child who had been referred for testing for a serious genetic or neurological disorder. (*Id.* at pp. 13-14.) The incomplete assessment undermined the court's adoptability finding because the court had no basis for determining whether the prospective adoptive parents had the capability to meet the medically fragile child's needs. (*Id.* at p. 15.)

This case is easily distinguishable from *Valerie W.* At the time of the section 366.26 hearing, A.K. and Michael had been living with the prospective adoptive family for over a year. Their developmental, emotional, and behavioral challenges were well-known to the family, and the prospective adoptive parents had demonstrated their willingness and ability to assist the children with those issues.

Moreover, the court had ample evidence upon which to base its adoptability finding. The assessment report prepared in this case contained information regarding the adoptability of each child, including the medical, developmental, educational, and mental and emotional status of each child. The children were progressing, as detailed in the assessment report and updated by Ramano at the hearing. Ramano opined that both children were adoptable, citing their young ages, having come into the system at two and four years old, and their minimal health problems. “They’re happy kids. They’re cute kids. Like I’ve said, they’re affectionate. They’re the type of child that is adoptable.” Their success in school was also a positive factor. Ramano noted that “many families are open to children with a lot of challenges. I think their young age really gives them that ability to heal from trauma.” A.K. and Michael were “very affectionate child[ren]” with the capacity to attach. “[T]hey’re in a prospective adoptive home that’s very warm and loving, and they just seem to have taken those characteristics upon themselves.”

Father also relies on *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062 (*Carl R.*), which addressed the adoptability finding of a profoundly disabled child who would require intensive care for life. The child was found to be specifically adoptable by a family with decades of experience in raising children with serious health issues, and the appellate court rejected a challenge to that finding. (*Id* at pp. 1062-1063.)

To the extent father suggests the juvenile court failed to consider whether the prospective adoptive parents could meet Michael’s special needs, the argument is inapposite. The minor in *Carl R.* was *specifically* adoptable, based on the qualifications and willingness of the family that wished to adopt him. Here, the court found the children were specifically and generally adoptable, meaning it was likely they would be adopted even if the prospective adoptive placement being considered were to fall through.⁵ Moreover, the uncontroverted evidence before the court established that the

⁵ A child is “generally adoptable” if the child’s characteristics, including age, physical health, mental and emotional condition, and other relevant factors, do not make it difficult to find an adoptive parent. A child is “specifically adoptable” if the child is

prospective adoptive parents provided a loving and stable home, worked diligently to ensure that both children received services to address their needs, and that the children were progressing well. Although the availability of a prospective adoptive parent was not required for finding the children were likely to be adopted within a reasonable time, the current caregivers' willingness to adopt was further evidence the children were likely to be adopted within a reasonable time, either by the current caregivers or by some other family. (*In re Zeth S.*, *supra*, 31 Cal.4th at p. 406; *In re R.C.*, *supra*, 169 Cal.App.4th at p. 494.)

Father attempts to contrast the well-qualified and experienced adoptive parents in *Carl R.* with the prospective adoptive parents here, who "said the right things about making sure to get Michael the help that he needed." However, according to father, despite being placed with them for over a year, Michael's "issues have not resolved. He continues to present with ongoing and severe emotional and behavioral problems, in addition to his developmental and health challenges. The record does not contain information demonstrating that the caregivers have a plan for resolving Michael's problems going forward, or clear and convincing evidence that Michael will be adopted if the current efforts to have him adopted by the foster parents prove fruitless."

Setting aside the jaw-dropping assertions that Michael's developmental, emotional and behavioral issues should have already resolved under the care of the prospective adoptive parents or that they should have "a plan" for resolving them, by which father presumably means something above and beyond what the record established they are already doing, it appears that father misapprehends the scope of our review of the juvenile court's ruling. We review the juvenile court's finding that the children were adoptable for substantial evidence. The assessment report addressed the factors required by statute to be considered in determining adoptability. Social worker Ramano testified that the children were generally adoptable, meaning it was likely the children would be

adoptable because of a specific caregiver's willingness to adopt. (See *In re R.C.* (2008) 169 Cal.App.4th 486, 492-494.)

adopted within a reasonable time even if the prospective adoptive placement fell through. She explained the bases for her opinion, and updated the court regarding the children's emotional, behavioral, and developmental issues. The challenges facing these children were not downplayed or glossed over. The record contains extensive discussions and documentation of these issues. Indeed, father recounts much of this evidence himself in his briefs to this court. We conclude substantial evidence supported the juvenile court's finding that A.K. and Michael were adoptable.

DISPOSITION

The orders appealed from are affirmed.

Miller, J.

We concur:

Richman, Acting P.J.

Stewart, J.

*A142587, Sonoma County Human Services Dept. v. Rheanna K./
In re A.K. and Michael S.*