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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

A147870

(San Mateo County
Super. Ct. No. 84171)

The juvenile court terminated the parental rights of appellant A.M. (mother) after she failed to participate in reunification services and the court found that her daughter Y.M. was adoptable under Welfare and Institutions Code section 366.26, subdivision (c)(1).¹ Mother argues on appeal that there was insufficient evidence to support the adoptability finding, but we disagree and affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

In late 2014, mother and six-year-old Y.M. were homeless and living in a San Mateo shelter for families. The shelter contacted respondent San Mateo County Human

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

Services Agency (Agency) in November with concerns about mother's mental health and her ability to care for Y.M. Mother was evicted from the shelter in early December because she did not comply with shelter rules, and she and Y.M. slept in a South San Francisco park after leaving the shelter. A social worker visited Y.M. at her school and found Y.M. to be running a fever, to be dirty, to have uncombed hair and soiled clothing, and to be smelling of urine. Y.M. cried when she reported she had not slept well in the park the previous few nights and that she was cold and scared when they slept there, and she also said she had not eaten well the previous two nights. The Agency secured an eight-day emergency motel voucher for mother and Y.M., but mother was not interested in entering another shelter or seeking mental-health services after the voucher expired, and her plan was to "walk to her native country Guatemala."

The Agency filed a juvenile dependency petition on December 16, 2014, under section 300, subdivision (b) (failure to protect). The petition alleged that mother's undiagnosed mental-health condition and poor parenting placed Y.M. at a substantial risk of harm. Y.M. was ordered detained.

Y.M. was placed in a foster home. Her care provider reported that Y.M. was generally doing well but had problems with bed wetting and with inappropriately kissing other children. The provider later requested that Y.M. receive therapeutic services because she was "exhibiting some behavioral issues in that she is hitting, kicking and pinching other children in the home, even when she is not provoked."

The assigned Agency social worker had trouble contacting mother because mother did not have a telephone, did not disclose to the social worker where she was staying, and did not show up for a scheduled appointment. Mother failed to appear for a scheduled jurisdiction/disposition hearing on January 7, 2015, and the juvenile court appointed a guardian ad litem for her based on her statement to a social worker "that she did not understand anything that went on at Court." Mother also failed to appear for a rescheduled hearing on February 25. After hearing testimony from a social worker, the juvenile court sustained the dependency petition, adjudged Y.M. a dependent child, and

ordered reunification services for mother, including a psychological evaluation and supervised visitation.

About a month later, the Agency filed a request to change court order (§ 388) asking the court to approve contact visits between Y.M. and mother in the jail where mother was then incarcerated. The petition alleged that Y.M. had been requesting visits but had had only a few so far because of “mother’s unstable living arrangement and mental health concerns.” The court granted the request.

The Agency explored the possibility of placing Y.M. with a maternal uncle who lives in the state of Washington after he expressed interest, but Y.M.’s foster mother reported receiving abusive telephone calls from the uncle, and the placement apparently was not pursued.

Around two weeks before a scheduled six-month review hearing, the Agency filed another request to change court order (§ 388), this time asking the juvenile court to terminate mother’s reunification services because she had made no progress in her case plan and had failed to maintain contact with Y.M. The petition alleged that mother had been hospitalized repeatedly for mental health issues and that it was in Y.M.’s best interest to move forward with a plan for permanency.

Although mother did not participate in reunification services, Y.M. received therapeutic services. Her foster mother reported concerns over Y.M.’s behavior, such as hitting her foster brother and children in the daycare she operated in her home, and she also reported that Y.M. had “poor frustration tolerance.” The foster mother also reported that Y.M. had “had inappropriate physical interactions” such as trying to kiss children she did not know and “bouncing on the lap of an older male child while ‘moving provocatively.’ ” Y.M. met weekly with a mental-health clinician who diagnosed her with trauma and associated involuntary urination and defecation. The clinician described Y.M. as a sweet girl and characterized her hitting and other inappropriate behavior as a reaction to the trauma she had experienced. Y.M. reported feeling sad twice per week and anxious three times per week, and she also said she experienced ongoing nightmares. According to the clinician, “[Y.M.] really wants to please adults so it’s really important

that she have a stable home. All the therapy in the world will do some good but if she keeps bouncing from home to home there's going to be a problem. She needs a place where she can feel safe and have a caregiver that understands her needs, she's going to need to be with somebody who really has time and attention for her.”

As Y.M. spent more time in her foster placement, her behavior improved, she had fewer toilet-related accidents, and she helped her foster mother with the children at the daycare. At one point Y.M.'s foster mother said she wanted Y.M. removed from her care because of ongoing challenges with Y.M. soiling her bedding, but she later rescinded the request and said she was willing to continue caring for the girl.

Mother failed to maintain contact with the Agency, and as of late July 2015 it had been at least six months since mother had visited with Y.M. She reported to a social worker that she had become “severely ill with diabetes, anemia, and an ulcer and that as a result of her medical conditions she ‘[w]ent a little crazy’ ” but wanted to visit again with Y.M. When a social worker told Y.M. a visit had been scheduled with mother in August, Y.M. “jumped up and down” and smiled, and she told the social worker, “I’m happy.” The visit went well, and afterward Y.M. told a social worker, “This is the best day ever!” Subsequent supervised visits did not go as well, however, and Y.M. acknowledged feeling sad that she struggled to get mother’s attention during their time together. After mother missed a scheduled visit in early September, Y.M. had several toilet-related accidents.

At a brief hearing in late September 2015 that mother did not attend, the juvenile court terminated mother’s reunification services and scheduled a selection-and-implementation hearing (§ 366.26) for January 2016.

The report summarizing what happened next to Y.M. is somewhat unclear, but apparently Y.M. experienced some emotional turmoil as she transitioned to the next steps in achieving permanence. The foster family with whom Y.M. had been living for about a year was not intended to be her permanent placement, though Y.M. continued to live there for a few months. Y.M. also apparently spent time in “respite care,” and she had an “emotional weekend” around the Thanksgiving holiday with a respite-care provider. The

foster mother said that Y.M. could remain in her home through the Christmas holiday, but Y.M. was asked to stay in her room when the home daycare was open because she had started hitting children again. In late December 2015, Y.M. moved into the home of a respite-care provider, apparently on a more permanent basis. Also in December, Y.M. asked a social worker if she would be adopted and then said, “I don’t want that. I would miss my mom.” Visitation with mother around this time was “highly inconsistent,” and the social worker explained to Y.M. that her mother “still required daily care for her illness and needs to stay in her facility where children are not allowed.”

An adoption social worker reported that Y.M. was “a sweet, friendly, intelligent, and charming seven-year-old girl” who “loves playing with her toys, playing games with other children, and decorating items with her stickers.” She was a good student and enjoyed school, and she got along well with her classmates and other children. There were continued concerns over her bed wetting and defecation, accidents that occurred “during times of change or stress.” After receiving therapy and having the benefit of a stable one-year placement, Y.M. was better at managing the issue. The adoption worker concluded that Y.M. was an adoptable child based on her “overall good health and development, her young age, her amicable personality, and her ability to attach to her primary caregiver.” The adoption worker acknowledged that it had been challenging to find a permanent home because of Y.M.’s “variable behavioral concerns,” but the worker had found a family who understood Y.M.’s background and was willing to pursue an adoption. At the time that a report was prepared in advance of the selection-and-implementation hearing, the family had not yet met Y.M.²

At the selection-and-implementation hearing, the adoption worker reiterated her view that Y.M. was adoptable based on her “ability to attach to a caregiver, her young

² Respondent filed a motion to augment the record with a document indicating that Y.M. was placed with prospective adoptive parents in February 2016, after mother’s parental rights were terminated. The court denied the motion to augment on August 11, 2016. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405-406 [no exceptional circumstances to justify deviating from general rule that appeal reviews the correctness of judgment as of the time of its rendition].)

age, and her pleasant demeanor and personality.” The worker and other service providers had discussed adoption with Y.M., and she appeared to understand what the process entailed but also indicated that she missed mother. When asked whether Y.M. was adoptable despite some of her past difficult behaviors, the adoption worker responded that Y.M. “absolutely” was still adoptable because her “behaviors [we]re something she can manage with certain behavioral techniques and therapeutic support.”

The juvenile court found that Y.M. was adoptable, terminated mother’s parental rights, and ordered adoption as Y.M.’s permanent plan.

II. DISCUSSION

Mother’s sole argument on appeal is that there was insufficient evidence to support the finding that Y.M. was adoptable. We are not persuaded.

“Before terminating parental rights, the court must find by clear and convincing evidence that it is likely that the child will be adopted within a reasonable amount of time. (§ 366.26, subd. (c)(1); [citation].) The finding of adoptability is reviewed under the substantial evidence test.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1290.)

“Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is ‘likely’ that the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); [citations].) We review that finding only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion. It is irrelevant that there may be evidence which would support a contrary conclusion.” (*Id.* at p. 1292.) Also irrelevant is whether the child has been placed in a family that is ready to adopt the child, because this factor “shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.” (§ 366.26, subd. (c)(1).) “However, there must be convincing evidence of the likelihood that adoption will take place within a reasonable time.” (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.)

There was no serious dispute below that Y.M. was adoptable, and in disputing the finding on appeal, mother puts the most negative possible spin on the evidence presented.

True, as mother now emphasizes, Y.M. suffered behavioral issues during her year-long foster placement that were tied to the trauma she experienced living in an unstable environment with mother. But it is also true that Y.M.'s issues improved as she experienced the stability of her foster placement and received therapeutic services, and she was otherwise reported to be a friendly, intelligent girl who did well in school and who was capable of bonding with her caregivers. This case stands in stark contrast with the cases upon which mother relies, because they involved children whose problems were far more severe or situations where the appellate court wholly lacked relevant information about the minors' adoptability. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 10, 13-15 [one child "was emotionally fragile and her behaviors were deteriorating," while other child "had unresolved neurological and genetic issues," and assessment report's failure to comply with all the requirements of § 366.21, former subd. (i) also undermined adoptability finding]; *In re Asia L.* (2003) 107 Cal.App.4th 498, 510-512 [emotional and psychological development of three siblings posed obstacle to adoption where one child suffered from asthma and early exposure to lead, lacked appropriate socialization skills, was often out-of-control in his classroom, needed medication for hyperactivity, and was one of the most hyperactive children his therapist had ever seen; therapist of second child reported the sibling was "hyperactive, steals, lies, hoards material items not food, aggravates other children, and pulls her braids out of her head when upset"; specialized placements recommended for both children; third sibling likewise a weak candidate for adoption]; *In re Brian P., supra*, 99 Cal.App.4th at pp. 624-625 [juvenile court did not have benefit of adoption assessment report, and "fragmentary and ambiguous" evidence in record did not provide assurances that minor was adoptable]; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204 [finding of adoptability based only on conclusory statements and did not discuss minor's specific medical needs].)

Mother complains that as of the time of the selection-and-implementation hearing, Y.M. had yet to meet the prospective adoptive parents selected for her, and mother's attorney was unable to ask the adoption social worker about efforts to find a specific

family. These complaints are misplaced, however, because “[t]he issue of adoptability posed in a section 366.26 hearing 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.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’ ” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, original italics; see also *In re I.I.* (2008) 168 Cal.App.4th 857, 870 [unnecessary that a specific adoptive home be identified before a child may be found to be adoptable].)

Also misplaced is mother’s argument that terminating her parental rights leaves Y.M. at risk of becoming a “legal orphan” if an adoption is unsuccessful. In advancing this argument, she relies on cases “decided under a former version of section 366.26. In 2005, the statute was amended to add subdivision (i)(3), 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. (Stats. 2005, ch. 640, § 6.5.) Thus, under the current statute, there is no danger of [Y.M.] becoming [a] legal orphan[.]” (*In re I.I., supra*, 168 Cal.App.4th at p. 871.) We likewise reject mother’s related argument that section 366.26, subdivision (i)(3) is not a “viable remedy” for an erroneous termination of parental rights, because we find no error in the decision to terminate mother’s parental rights here.

Once a juvenile court determines that a child is adoptable, it *shall* terminate parental rights and order the child placed for adoption (unless exceptions to adoption exist that are not present here). (§ 366.26, subd. (c)(1).) We thus summarily reject mother’s contention that the order terminating her parental rights should be reversed because the Agency did not explore the possibility of a legal guardianship.

Mother repeatedly stresses that she and Y.M. love each other and that Y.M. has said she misses mother. We have no reason to doubt these claims. Mother testified at the selection-and-implementation hearing about her love for Y.M., and the juvenile court acknowledged that “[a]ll of us know you love your daughter very, very much.” But we can find no abuse of discretion by the juvenile court in terminating mother’s parental

rights since mother's reunification services were previously terminated and substantial evidence supports the court's subsequent finding that Y.M. is adoptable.

III.
DISPOSITION

The order terminating mother's parental rights is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Banke, J.

In re Y.M. (A147870)