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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B252756

(Los Angeles County
Super. Ct. No. CK84957)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VICTOR G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Jacqueline Lewis, Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant Victor G.

Kate M. Chandler, under appointment by the Court of Appeal, for Respondent Minor, S.C.

INTRODUCTION

Father appeals the termination of his parental rights to his son, S.C., arguing that the juvenile court improperly found that S. was adoptable. Father asserts that because S.'s current legal guardian is unable to adopt him due to her living situation, there is a legal impediment to his adoption rendering S. no longer adoptable. S.'s counsel opposes Father's appeal, asserting that S. is adoptable based on his age, physical condition, and emotional state. We affirm because S. is generally adoptable and any potential legal impediments to his adoption by particular family members are irrelevant to assessing his adoptability.

FACTS AND PROCEDURAL BACKGROUND

In 2010, the Department of Children and Family Services (DCFS) detained then-two-year-old S. from his parents' care due to his parents' drug abuse. The juvenile court found jurisdiction over S. under Welfare and Institutions Code section¹ 300, subdivision (b), ordered him to be removed from his parents' care. The court also ordered DCFS to place S. with his maternal grandparents, and awarded reunification services and visitation to the parents. Ultimately, reunification was unsuccessful and the court set a section 366.26 selection and implementation hearing to terminate parental rights and establish a permanent plan for S.

In the more than two years that passed between the section 300 hearing and the section 366.26 hearing, S. lived in his maternal grandparents' home with his grandparents and maternal aunts Josefina, Maria, and Irma. All five family members have participated in caring for him. Aunt Josefina, in particular, became a parental figure for S. and expressed interest to adopt him. Yet, DCFS would not approve Josefina's home study, a threshold requirement for adoption, unless she moved out of the maternal grandparents' home due to DCFS's concerns regarding S.'s maternal grandfather. Sometime after placing S. in the maternal grandparents' home, DCFS reviewed a police report from 1985, within which aunt Maria accused the maternal grandfather of molesting and raping her

when she was 13 years old. The maternal grandfather was never convicted of the rape, molestation, or any other crime. In association with S.'s dependency case, Maria provided DCFS an affidavit that indicated the rape accusations she made as a minor regarding the sexual abuse might be untrue.

DCFS found maternal grandfather's possible sexual abuse of his daughter to be sufficient grounds to deny Josefina adoption of S. as long as Josefina remained in the same home as maternal grandfather. DCFS explained that Maria's "detailed description of the sexual abuse is concerning and indicative of an act of sexual abuse that more than likely did occur." DCFS also believed the report to be true because Maria indicated that there were multiple incidents of sexual abuse to police officers and the police interviews with each of the family members corroborated Maria's statement that she was alone in the house with her father during the alleged rape.

Josefina did not believe maternal grandfather molested her sister, and told DCFS that she would not move out of her parents' home due to financial constraints, her values, and her culture. When the section 366.26 selection and implementation hearing commenced in March of 2013, Josefina sought guardianship of S. because her living situation was a barrier to her home study approval that was necessary for adoption. In May 2013, the court granted Josefina legal guardianship of S. The court stated that "[t]he permanent plan of legal guardianship with the goal of . . . adoption is appropriate and is ordered as the permanent plan." In the interim, DCFS identified one maternal relative and one paternal relative who did not live with the maternal grandparents and were willing and able to pursue adoption of S. Yet, the two relatives withdrew their adoption applications when the juvenile court granted Josefina legal guardianship of S.

¹ All subsequent statutory references are to the Welfare and Institutions Code, unless indicated otherwise.

At the final section 366.26 selection and implementation hearing, DCFS contested the adoptability of S. because DCFS would not approve Josefina for S.'s adoptive parent. DCFS admitted that it lacked any evidence to show that S. was not likely to be adopted besides the fact that DCFS would not approve Josefina's home study. Father objected to the termination of parental rights as being premature in that there were legal impediments to S.'s adoption by Josefina.

The court disagreed with these contentions regarding S.'s adoptability, indicating that the issues raised by the parties were unrelated to the termination of parental rights, and found that S. was "universally adoptable." The court stated that "[t]here is no evidence . . . that [S. is] anything other than an adorable child who multiple people have stepped forward and want to adopt. The question of who is going to adopt him remains a question at least in the Department's mind, but that he will be adopted is not a question." The juvenile court accordingly terminated Mother's and Father's parental rights to S., finding that it would be detrimental to S. to return him to their custody, and ordered DCFS to pursue adoptive planning and placement.

DISCUSSION

"At the selection and implementation hearing under section 366.26, the trial court determines whether the child is adoptable on the basis of clear and convincing evidence. [Citations.] On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) All conflicts are resolved in favor of the prevailing party and all legitimate inferences are drawn to uphold the lower court's ruling. (*Ibid.*; *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378–1379.) We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 774.)

An adoptability finding requires “clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, citing *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223; § 366.26, subd. (c)(1).) In resolving whether a child is adoptable, “the court focuses on *the child*—whether his age, physical condition and emotional state make it difficult to find a person willing to adopt him.” (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) There is no requirement “that the minor already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’ [Citations.]” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.)

Under section 366.26, subject to certain exceptions, the court must select adoption as the permanent plan and terminate parental rights after reunification efforts have ceased, if the court finds that the child is likely to be adopted. (§ 366.26, subd. (c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 49; *In re Jamie R.*, *supra*, 90 Cal.App.4th at p. 773.) Adoption, when possible, is the permanent plan preferred by the Legislature. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826; *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1368.)

Here, Father asserts that “[t]here is no substantial evidence reflecting that [S.] is likely to be adopted within a reasonable time.” Father does not contest that S.’s age, physical condition, and emotional state render him unadoptable. Rather, Father argues that there are two issues creating a legal impediment to S.’s adoption by Josefina or any other person. First, Father asserts that, “[o]nce the juvenile court ordered Josefina to be [S.]’s legal guardian on May 6, [2013,] he was no longer universally adoptable [because a] permanent plan had already been determined and for all intents and purposes, Josefina was legally identified as [S.]’s parent until he reaches the age of 18 years.” Without providing any authority for his assertion, Father states that in order for a person other than Josefina to adopt S., “a challenge would have to first be made to the legal guardianship so that it could be rescinded or terminated.” Father explains that the court ordered this legal guardianship in order to keep S. in the maternal grandparents’ home because he was “unequivocally bonded to Josefina and the maternal grandparents, as well as Maria and Irma, who also live in the home.” Father asserts that “[S.] is now so bonded to this family that he is no longer ‘universally adoptable.’ ” Second, Father argues that because DCFS will not approve

Josefina's home study, Josefina cannot adopt Sire. In sum, Father argues that Sire is not adoptable because only Josefina can adopt Sire as she has bonded with him and is his legal guardian, and that this adoption can never take place because DCFS will not approve Josefina's home study.

These issues are of no consequence to assessing Sire's adoptability. As stated above, "[t]he issue of adoptability . . . focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor." (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.) It is well established that, "For a minor . . . who is adoptable based on factors in addition to a caregiver's willingness to adopt, the suitability or availability of the caregiver to adopt is not a relevant inquiry." (*In re R.C.* (2008) 169 Cal.App.4th 486, 493.) It is only "[w]hen a child is deemed adoptable *only* because a particular caretaker is willing to adopt, the analysis shifts 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, italics added.)

The latter is not the case here. Sire is generally adoptable as the evidence shows he is a healthy, very intelligent, developmentally on target, happy, and adorable four year old, without medical or other challenges. There is no evidence whatsoever indicating that Sire's age, physical condition, and emotional state render him unadoptable. Furthermore, Josefina's and other family members' willingness to adopt Sire supports the court's finding of his adoptability: "a caregiver's willingness to adopt serves as further evidence the minor is likely to be adopted within a reasonable time either by the caregiver 'or by some other family.'" (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 494 citing *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650; *In re Helen W.*, *supra*, 150 Cal.App.4th at p. 80 ["[A] prospective adoptive parent serves as evidence a child is likely to be adopted within a reasonable time either by the prospective adoptive parent or some other home."].)

Father's legal impediment argument entirely centers on S.'s prospective adoptive home, which is irrelevant to his adoptability. As S. is generally adoptable, we do not analyze the prospective adoptive home at this juncture: “ [T]he question of a family's suitability to adopt is an issue which is reserved for the subsequent adoption proceeding.’ ” (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 494 citing *In re Scott M.* (1993) 13 Cal.App.4th 839, 844; *In re Marina S.* (2005) 132 Cal.App.4th 158, 166 [“[T]here is no requirement that an adoptive home study be completed before a court can terminate parental rights.”].) The question before the juvenile court is whether S. is likely to be adopted within a reasonable time, not whether any particular adoptive parents are suitable. The court properly addressed this inquiry, and its finding that S. is adoptable is well supported by evidence.

As to Father's unsupported assertion that for a person other than Josefina to adopt S., “a challenge would have to first be made to the legal guardianship so that it could be rescinded or terminated,” we disagree. For court to select and implement adoption as permanent plan for child for whom legal guardianship has previously been established, it must find, by clear and convincing evidence, that minor will likely be adopted if parental rights are terminated. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) At the September 5, 2013 final section 366.26 selection and implementation hearing, the juvenile court did just that. The juvenile court explicitly found that S. will likely be adopted if parental rights were terminated. It then explicitly terminated Mother's and Father's parental rights to S. and ordered DCFS to pursue adoptive planning and placement. As an adoption plan has already been ordered, Josefina's guardianship is not a legal barrier to S.'s adoption by another person and is a non-issue to his adoptability determination.

To the extent that Father argues that S. was not adoptable because S. had bonded with a possibly ineligible prospective adoptive parent, this too is not relevant to the section 366.26 hearing. In *In re Josue G.*, the juvenile court chose a permanent plan of legal guardianship for the child based on its finding that the child was not likely to be adopted. The Court of Appeal reversed, holding that the evidence was insufficient to support the juvenile court's finding that the child was not likely to be adopted. The only reason given by the juvenile court in support of its finding was "that [the child] was closely bonded with his foster parents, who, in the court's view, would be too old by the time [the child] becomes a teenager to be considered qualified adoptive parents." (*In re Josue G., supra*, 106 Cal.App.4th at p. 733.) The Court of Appeal explained that "the inquiry as to whether a child is likely to be adopted does not focus on the adoptive parents, but rather, on the child. [Citation.]" (*Ibid.*) Like *In re Josue G.*, S.'s bonding with Josefina, a possibly ineligible prospective adoptive parent, is immaterial to his adoptability.

We conclude that the juvenile court properly determined that that S. was generally adoptable based on his age, physical condition, and emotional state. We affirm the juvenile court's termination of parental rights on that basis.

DISPOSITION

For the above reasons, judgment terminating Father's parental rights is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.