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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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

SAN JOAQUIN COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

A.W.,

Defendant and Appellant.

C070269

(Super. Ct. No.  
J04783)

A.W. (mother), mother of minors Rudolph D., Kayla D., and L.D. (minors), appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code,<sup>1</sup> §§ 366.26, 395.) Mother contends the court erred in terminating

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

her parental rights, thus freeing Kayla D. and L.D.<sup>2</sup> for adoption, because there was insufficient evidence that they were likely to be adopted in a reasonable time. Disagreeing, we shall affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

The San Joaquin County Human Services Agency (Agency) filed a petition in December 2007 to detain Rudolph D., then age eight; Kayla D., then age two; and newborn L.D., who tested positive for methamphetamine at birth. Both parents had a history of substance abuse and were ordered into drug court and treatment plans on December 27, 2007. The juvenile court ordered additional reunification services for the parents on April 1, 2008. The court terminated their services on August 24, 2009.

The report prepared by the Agency for the section 366.26 hearing revealed minors were in a nonadoptive foster home and detailed each minor's current functioning and needs. The report concluded minors were able to form attachments, were healthy and had attractive qualities. The Agency requested a continuance to find an adoptive placement since the foster family was unwilling

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<sup>2</sup> Pursuant to a motion, we have made appropriate findings and concluded it is legitimate to accept the parties' stipulation for reversal of the order terminating parental rights as to Rudolph D. based on events occurring after the section 366.26 hearing. He is no longer a subject of this appeal. We denied mother's request for judicial notice of those events on May 25, 2012.

to adopt and no relatives had come forward to complete an assessment.

The Agency's report from May 2010 informed that Rudolph D. was doing well in placement; Kayla D., though her behavior had improved, continued to lie and have tantrums; and L.D. was very delayed and receiving extensive services. L.D. also required a supplemented diet to increase his weight. Rudolph D.'s parental visits were decreased at his request. The Agency had no success in finding an adoptive placement, and opined that the high number of family visits and L.D.'s delays and unknown prognosis were reasons for prospective adoptive families not pursuing placement.

The supplemental section 366.26 report filed in August 2010 again requested a continuance for home-finding. Minors remained healthy and both Rudolph D. and Kayla D. were developing appropriately. L.D. was making some progress in language and interaction due to intensive services and was to be assessed to rule out autism. Rudolph D. was having some behavioral issues at school and was in therapy to address his anger against his parents. Minors were all considered to have special needs either because of behavior or delays. The Agency continued to assess relatives for potential placement of minors, but had not yet found an adoptive home for minors. However, the Agency was optimistic and continued to present minors at adoption exchange meetings and fairs.

The review report for November 2010 revealed that a paternal cousin (cousin) was being assessed for placement.

The section 366.26 report prepared in May 2011 informed the court that cousin had been approved for placement and minors, who had never met cousin, were going to begin visits with her. The Agency was uncertain as to whether adoption would be the recommended permanent plan; Rudolph D. had stated he did not want to be adopted. A neurologist examined L.D. and diagnosed him with global delays and cerebral palsy. The neurologist opined that, with continued services, L.D. would continue to progress and "'likely' catch up with his peers in some areas within the next years." Testing showed L.D.'s hearing and sight were normal. He was receiving services from the school district.

A review report in June 2011 noted minors had been assessed as adoptable in 2009.

The November 2011 report for the section 366.26 hearing revealed that minors had been placed in the home of cousin since August 2011. Cousin had "demonstrated thus far that she is very capable of meeting [minors'] needs on a daily basis." Cousin reported being in good health and having been employed in the past as a licensed vocational nurse (LVN).

Minors were then 12, 6, and 3 years old, and all were in good health. L.D. was receiving special education services from the school district. He showed weakness on his left side due to cerebral palsy, but his gross motor skills functioning was near his age level. He was in early intervention preschool, focusing on language and social skills and making consistent progress. Rudolph D. was having behavioral issues at home and school and

his academic progress was faltering; he was in therapy again to deal with his refusal to follow rules and lying. Kayla D. was doing well with no behavioral issues at school, but had to be closely watched at home because she continued to be aggressive toward L.D, have tantrums, and lie.

The report concluded that minors should remain placed with cousin, who wanted to adopt them. Kayla D. and L.D. had adjusted to the placement. Rudolph D. was initially unwilling to be adopted but had recently changed his mind. The social worker had some concerns because both cousin and Rudolph D. had made inconsistent statements about commitment to adoption. Further, the social worker stated that if the adoption did not occur, "the agency would be guarded about the likelihood of adoption for these children due to Rudolph's age and the needs of minors." According to the report, cousin had no criminal or child welfare record, had a large home, and had demonstrated she was capable of meeting minors' daily needs despite some challenges. Cousin felt minors were settling in with her and wanted to provide permanence for them. The Agency recommended termination of parental rights given the recommendation of adoption by cousin.

A concurrent review report opined that minors were adoptable because they were placed with cousin, who was interested in adopting them. However, if minors were not placed with cousin, "their adoptability would be uncertain" due, in part, to Rudolph D.'s age and mixed feelings about adoption. The report further noted that if the placement were to fail,

minors' adoptability might need to be reassessed because the Agency had been unable to find a home for them for years before cousin came forward.

In December 2011, the juvenile court found minors likely to be adopted by clear and convincing evidence and terminated parental rights, selecting a permanent plan of adoption. At the time of the hearing, the court queried Rudolph D. as to whether he wanted to be adopted, and he said that he did, and understood that his parents would no longer have parental rights to him and he might not see them again. He agreed that he would be "getting a new parent," cousin. Cousin was present at the hearing.

#### **DISCUSSION**

Mother contends the juvenile court erred in finding that minors were likely to be adopted within a reasonable time.

##### *A. The Law*

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L., supra,*

222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

"If the court determines, based on the assessment . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).)

Determination of whether a child is likely to be adopted focuses first upon the characteristics of the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) "There must be convincing evidence of the likelihood that the adoption will take place within a reasonable time." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 625.) The fact that a prospective adoptive family is willing to adopt the minor is evidence that the minor is likely to be adopted by that family or some other family in a reasonable time. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

"Where the social worker opines that the minor is likely to be adopted based solely on the existence of a prospective adoptive parent who is willing to adopt the minor, an inquiry may be made into whether there is any legal impediment to adoption by that parent[.]" (*In re Sarah M., supra*, 22 Cal.App.4th at p. 1650; Fam. Code § 8600 et seq.) General suitability to adopt is not relevant to the issue of adoptability and "does not constitute a legal impediment to

adoption." (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844; *In re Sarah M.*, *supra*, at p. 1649.)

*B. Analysis*

At the time of the juvenile court's ruling,<sup>3</sup> minors were a sibling group of three, including a 12 year old. The Agency had not been able to find a permanent placement for minors in the two years since the court terminated the parents' services. Kayla D. continued to have serious behavioral challenges at home. Rudolph D. was exhibiting increasing behavioral and emotional problems at home and in school and had returned to therapy. He was uncertain about whether he wanted to be adopted. L.D. had cerebral palsy and developmental delays and was receiving special education services. He had made progress but needed continued monitoring. Thus each minor presented separate challenges and, as a group, could not be properly found to be *generally* adoptable at the time of the ruling, despite

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<sup>3</sup> We review the juvenile court's orders for error given the facts before it *at the time it made the orders*. Although the parties made a motion to accept their stipulated reversal of the order terminating parental rights as to Rudolph D., and we have done so, we have declined to take judicial notice of any events occurring since the time of the juvenile court's ruling. We disregard the extensive description of these post-ruling events contained in the parties' briefing. Should these events result in a change of circumstances for Kayla D. and L.D., we note that section 366.26, subdivision (i)(3) permits them to petition for reinstatement of parental rights if they are not adopted within three years of the order terminating parental rights. Subdivision (i)(3) also states that the petition can be brought earlier if the Agency and minors stipulate that minors are no longer likely to be adopted. The juvenile court may then grant the petition if reinstatement is in minors' best interests.

county counsel's argument to the contrary. Our observation is further supported by the Agency's inability for two years to find minors a permanent home and its acknowledgement that, if cousin's plan to adopt minors failed, the permanent plan of adoption would have to be reconsidered. Further, as we have described *ante*, it was clear at the time of the hearing that all present contemplated that cousin would be adopting minors.

We next turn to the question of whether substantial evidence supported a finding that minors were *specifically* adoptable by cousin, at the time the juvenile court's finding was made. This inquiry becomes necessary because it is clear that the Agency's recommendation and the trial court's finding that minors were adoptable, and the termination of parental rights, was "based solely on the existence of a prospective adoptive parent who is willing to adopt" minors. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650.)

At the time of the trial court's ruling, minors had been living with cousin for several months and visiting cousin for months before that. The Agency had reported to the court that cousin, a trained LVN, had demonstrated that she was very capable of meeting minors' needs on a daily basis and had no criminal record or current child welfare allegations. She wanted to adopt minors. Minors, including Rudolph D. despite his earlier uncertainty, wanted to be adopted. Nothing in the record *at the time of the ruling* suggested any legal impediment to adoption, a question that needed to be answered due to minors' status as specifically, rather than generally,

adoptable. (See Fam. Code, § 8600 et seq.; *In re Sarah M.*,  
*supra*, 22 Cal.App.4th at p. 1650.)

At the time of its ruling, substantial evidence supported  
the juvenile court's finding that minors were likely to be  
adopted by cousin within a reasonable time. (See *In re Brandon*  
*T.* (2008) 164 Cal.App.4th 1400, 1409-1411.)

**DISPOSITION**

The orders of the juvenile court are affirmed.

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DUARTE, J.

We concur:

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NICHOLSON, Acting P. J.

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MAURO, J.