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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re N.H. et al., Persons Coming Under the
Juvenile Court Law.

SHASTA COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DEBBIE B.,

Defendant and Appellant.

C071106

(Super. Ct. Nos. 10JVSQ2702902,
10JVSQ2703002, 10JVSQ2747202,
10JVSQ2846401, 11JVSQ2892001)

Debbie B., mother of the minors, appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.¹) Mother contends the finding that C.G. and K.G. were likely to be adopted within a reasonable time was not supported by substantial evidence because C.G. had exhibited aggressive behavior directed at K.G. in the past and K.G. required a high level of supervision. We conclude

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

substantial evidence supports the trial court's finding of adoptability. Accordingly, we affirm the juvenile court's orders.²

FACTS

Because the issue on appeal is limited, the recitation of facts is limited to events that concern three of the minors who are currently placed together in the same prospective adoptive family: C.G., E.G., and K.G.

The minors, C.G., age 6, E.G., age 5, and K.G., age 22 months, were detained in April 2010 due to domestic violence between the parents that led to both mother and father being arrested.³ The juvenile court ordered services in September 2010 but the parents failed to reunify and services were terminated in May 2011. In December 2010, K.G. was placed with C.G. C.G. had been in the placement since April 2010 and had ongoing behavioral problems often expressed by hitting peers and adults. After K.G. was placed in the same home as C.G., C.G. would intentionally hurt K.G. and wake K.G. when the family was asleep. C.G. also became increasingly destructive, i.e., slamming a bedroom door so hard that plaster fell from the walls. C.G. was in counseling to address his behaviors and, after a medication evaluation, the court authorized administration of methylphenidate in the form of Ritalin to treat his Attention Deficit Hyperactivity Disorder (ADHD) symptoms. C.G. initially had a positive reaction to the medication but over time his assaultive behavior resumed. C.G. also had a serious lack of impulse

² Mother filed notices of appeal for each of the five minors. However, the sole argument raised in this appeal is adoptability of C.G and K.G. Respondent requests that we dismiss the appeals as to the remaining three minors and issue remittiturs. Mother acknowledges that the termination orders for N.H., N.B., and E.G. should be affirmed. Thus, we affirm the orders as to these three minors.

³ C.G. and E.G. were removed in a prior dependency in 2007 due to neglect. They were successfully reunified with mother in August 2009.

control during sibling visits that made safety at visits a significant concern. A few weeks after K.G.'s placement, the foster parents asked that both minors be moved.

The report for the section 366.26 hearing scheduled for September 2011 addressed C.G., E.G., and K.G. and recommended a continuance for home finding. At the time of the report, the three minors were placed in separate homes and had weekly visits with each other. C.G. continued to be a high energy child but was showing significant improvement after a medication change to the Concerta form of methylphenidate in May 2011. The social worker described his progress as “ ‘amazing’ ” although his impulsivity still affected his school performance. K.G. continued to need a high degree of supervision and was referred to Far Northern Regional Center (FNRC) for evaluation of his unusual behavior such as eating nonfood items, destructive behaviors such as damaging walls and cabinets, and walking on tiptoes. FNRC denied eligibility, and a new referral for therapeutic services was made. Currently, K.G. was in counseling. The report stated there were many homes available and, while C.G. and K.G. had some behavioral challenges, “these should not be a barrier in identifying a family.” The report further stated the three minors possessed characteristics that made them adoptable and there were families with the skills and desire to parent them.

The court adopted the recommendation and continued the case for home finding.

The report for the continued section 366.26 hearing recommended termination of parental rights as to C.G., E.G., and K.G. The three minors, who each had multiple placements over the course of the two dependency proceedings, were moved to a prospective adoptive home together in December 2011. The three minors had been in the placement about two months. C.G. was described as a high energy child who enjoyed outdoor sports and activities. C.G. was continuing on the medication Concerta to treat his ADHD and his caregivers reported he was doing well. C.G. was demonstrating appropriate social skills, followed directions, and was kind to the family pets and

livestock. C.G. continued to have some distractibility in school and some sleep issues that were being addressed by his doctor. C.G. occasionally used inappropriate language but responded to redirection. K.G. continued to require a high level of supervision but had no behavioral problems at school. K.G. still showed some tiptoe walking and putting items in his mouth but stopped with a gentle reminder. The caregivers reported K.G. was an active, loving, inquisitive, and friendly child. The report stated the behavioral challenges were evident but improved, and C.G., E.G., and K.G. were adjusting to living as siblings in a new environment. The three minors were in generally good health and doing reasonably well in school.

The report further stated that the prospective adoptive parents were in their 50s and retired. They had an approved adoption home study and had two adopted children in the home in addition to the three minors. The report said the three minors were healthy, attractive, and delightful children with engaging personalities. Their behavioral challenges were not so severe as to impede adoption. All three minors were developing a relationship with the prospective adoptive parents and wished to be adopted. The prospective adoptive parents wanted to adopt the minors and were committed to them. The report further stated that, even if not adopted by this family, there were 25 potential families with approved home studies who were interested in children with similar characteristics. The three minors were experiencing stability and predictability in their current placement and their behavioral and developmental issues continued to improve.

At the section 366.26 hearing in March 2012, the parents submitted on the report. The court terminated parental rights and selected adoption as the permanent plan for C.G., E.G., and K.G.

DISCUSSION

Mother contends the evidence does not support the juvenile court's finding that C.G. and K.G. are likely to be adopted within a reasonable time. Specifically, she asserts

that the decision to terminate is premature based on C.G.'s history of behavioral problems including aggression against K.G., the multiple placements of the minors, the history of trauma at the hands of the parents, and K.G.'s behavioral and developmental issues. Mother argues the decision should be delayed until C.G. and K.G. demonstrate greater stability in the current placement. We disagree.

“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. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.” (§ 366.26, subd. (c).)

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.) The existence or suitability of the prospective adoptive family, if any, is not relevant to this issue. (*Ibid.*; *In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) “[T]here 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 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.)

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 that 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.)

The characteristics of both C.G. and K.G. show they are likely to be adopted in a reasonable time. Both minors are generally healthy and were doing reasonably well in school. C.G. was on medication to treat his ADHD and had responded well once the appropriate form was prescribed. He had shown great progress on the medication although some distractibility in school remained. His aggressive tendencies had diminished as shown by his appropriate treatment of the family pets and livestock and the lack of any incidents of attempting to harm K.G. after the three siblings were placed together. K.G. was also showing improvement in behavioral and developmental issues, needing only gentle reminding to stop inappropriate behavior. He had no behavioral problems in school and his caregivers considered him to be a loving, inquisitive, and friendly child. As a three-year-old, he would necessarily require close supervision. All the minors were benefitting from the predictable and stable placement. While C.G.'s age and the size of the sibling group could have made the minors less adoptable, the current caretakers expressed a strong desire to adopt all three minors. Further, the social worker's preliminary search found another 25 families who were interested in children with similar characteristics. Ample evidence supported the juvenile court's finding that C.G. and K.G. were likely to be adopted by this family or some other family within a reasonable time. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 924; *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214.)

DISPOSITION

The orders of the juvenile court terminating parental rights of the five minors are affirmed.

HOCH, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.