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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Yuba)

In re F.G., a Person Coming Under the Juvenile
Court Law.

YUBA COUNTY HEALTH AND HUMAN
SERVICES,

Plaintiff and Respondent,

v.

R.K.,

Defendant and Appellant.

C075515

(Super. Ct. No. JVSQ110000160)

R.K., mother of minor F.G., appeals from the juvenile court's orders terminating her parental rights and freeing the minor for adoption. (Welf. & Inst. Code, § 366.26, 395.)¹ She contends the juvenile court erred in not considering additional evidence regarding the minor's grandmother's health and caregiving capabilities prior to finding

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

the minor adoptable and terminating her parental rights. We conclude the juvenile court did not err because evidence of the grandmother's health and caregiving capabilities was not relevant to the finding of general adoptability. We affirm the juvenile court's orders.

BACKGROUND

On May 11, 2011, the minor's maternal grandmother commenced proceedings in the probate court to obtain guardianship of the then three-year-old minor. Her petition stated grandmother had taken on a significant role in raising the minor since her birth, the minor had spent nearly half her life in grandmother's home, and grandmother hoped that, with the guardianship in place, mother would receive the services she needed in order to provide a safe and nurturing environment for the minor.

The probate court entered an order granting grandmother temporary guardianship and, pursuant to Probate Code section 1513, subdivision (c), referred the matter to Nevada County Department of Social Services/Child Protective Services (Nevada CPS) for investigation.

Nevada CPS's investigation uncovered a lengthy child welfare referral history as a result of mother's drug abuse, mental issues, and volatile and abusive behavior. On August 29, 2011, Nevada CPS filed a section 300 petition on behalf of the minor. The matter was subsequently transferred to Yuba County Superior Court, which ordered reunification services for mother.

Mother failed to reunify and services were terminated on March 4, 2013. Yuba County Health and Human Services (the Department) filed a section 366.26 report containing an update on the minor's current status and adoption assessment. The minor was described as a happy and friendly child with no developmental delays. The social worker observed the child to be intelligent and seemingly advanced beyond her age. She

has no physical health, mental health, or emotional issues and completed all her therapy goals in January 2012.

The adoption assessment report stated the minor was likely to be adopted if parental rights were terminated. A preliminary evaluation showed the grandmother to be a suitable caretaker and committed to adoption.

The juvenile court conducted three hearings over a period of four months, in connection with the section 366.26 hearing. At the September 12, 2013 hearing, the social worker testified that she believed termination of parental rights was in the minor's best interest. During this hearing, mother's counsel acknowledged the issues at the section 366.26 hearing were limited to parental bond, sibling bond, and adoptability and she was not arguing the minor is not adoptable. Mother's counsel subsequently began questioning the social worker about the suitability of the grandmother for adopting the minor. The following exchange ensued:

“[The Court]: I'm not ordering that grandmother adopt this child. I'm saying the child is adoptable. The [D]epartment wants me to find the mother's rights are terminated.

“[Mother's Counsel]: Understand that. Absolutely. But in the adoption assessment is that she is adopted by [grandmother].

“[The Court]: It's a throw-away item.”

At the October 15, 2013 hearing, grandmother testified that the minor was doing very well and she is very well liked. When mother's counsel sought to ask about grandmother's parenting skills, the juvenile court ended the inquiry, stating: “You can't go there. The fact remains the child is adoptable. The suitability of the prospective adoptive [parent] is not an issue. It's an issue for the adoption proceeding itself.” Later, when mother began to testify, the juvenile court stated that “[t]he issue today is we have a child who is deemed adoptable, and adoption is the preferred permanent plan unless the

mother can demonstrate that severing the parental relationship would be a detriment to the child.”

At the December 10, 2013 hearing, the juvenile court inquired about grandmother’s status because it had received information grandmother had undergone an elective health procedure. Grandmother’s counsel indicated grandmother had back surgery, was in short-term rehabilitation, and would be home in a couple of weeks. Mother contended grandmother had had a stroke, was paralyzed, and “at death’s door.” The juvenile court expressed some concern grandmother may not ever be able to care for the minor and grandmother’s counsel refuted the concern by stating she had walked and talked with the grandmother the night before and she had no dysfunction. The juvenile court indicated it might have a call placed to grandmother to allow her to respond in person, but no such call was ever ordered. There was also a suggestion made that the juvenile court speak with the grandmother’s physician, but the court did not do so.

At one point during the hearing, the juvenile court indicated it would get to the issue of grandmother’s condition with respect to caring for the minor because it would “not go much beyond today without knowing the condition of the prospective adoptive parent because it does impact adoptability and the future.” Later, the juvenile court stated that “[t]he child is deemed adoptable even if there is no prospect in mind, no specific person has been chosen. So that would not change. This child is adoptable. And that’s prong one of where we’re at today. [¶] . . . [¶] . . . I don’t think that’s in dispute. The child is adoptable.” After more discussion about grandmother’s health, the juvenile court clarified that the issue was not relevant at the instant hearing “because the issue is not whether [grandmother] is the appropriate adoptive placement. The issue today is whether the child is adoptable.”

After hearing argument from counsel, the juvenile court found the minor adoptable, referred the minor to the Department for adoptive placement, and terminated parental rights.

DISCUSSION

Mother contends the juvenile court erred in not considering additional evidence regarding the grandmother's health and caregiving capabilities prior to finding the minor adoptable and terminating her parental rights. She further argues that, by not obtaining and considering such additional evidence, the juvenile court denied her due process right to a fair hearing. She is wrong. Evidence of the grandmother's health and caregiving capabilities was not relevant to the juvenile court's determination of the minor's general adoptability.

The sole purpose of a section 366.26 hearing is to select a permanent plan for the minor. (§ 366.26.) The plan preferred by the Legislature is adoption. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

Prior to terminating parental rights and freeing a child for adoption, the juvenile court must determine, based upon clear and convincing evidence, "that it is likely the child will be adopted." (§ 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.) Although the fact a prospective adoptive family is some 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), the existence or suitability of the prospective adoptive family, if any, is otherwise not relevant to this issue. (*In re Sarah M.*, at p. 1649; *In re Scott M.* (1993) 13 Cal.App.4th 839, 844.)

The only question is whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942,

956.) Questions regarding the suitability of a prospective adoptive parent are not relevant to the issue of the minor's adoptability and are " 'reserved for the subsequent adoption proceeding,' not the section 366.26 hearing whether to terminate parental rights. [Citation.]" (*In re T.S.* (2003) 113 Cal.App.4th 1323, 1328-1329; cf. *In re Scott M.*, *supra*, 13 Cal.App.4th at p. 844.) Whether there is a *legal impediment* to adoption by a prospective adoptive parent is relevant at the section 366.26 hearing only in limited circumstances not present here. Such circumstances exist when the characteristics of the child make it so difficult to find a family willing to adopt the child that the child is likely to be adopted only if the prospective adoptive parent is willing to do so. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650; *In re Scott M.*, at p. 844.)

As the juvenile court repeatedly emphasized, the minor was found "generally adoptable," i.e., adoptable, without reliance on the existence of any prospective adoptive parent. Substantial evidence supports this finding. The minor was described as a happy and friendly child with no developmental delays. She is intelligent, already reading and writing at age six, and seemed advanced for her age. She does well in math, is creative, and is very well liked. She has no physical health, mental health, or emotional issues and had completed all her therapy goals back in January 2012.

In sum, the juvenile court did not err in finding the minor is likely to be adopted. In making this finding, it was not necessary for the minor to already be in a prospective adoptive home or that there even be a prospective adoptive parent. (*In re T.S.*, *supra*, 113 Cal.App.4th at p. 1329.) Thus, the grandmother's suitability was unnecessary to the juvenile court's finding of adoptability.²

² For this reason, we deny the Department's motion to take additional evidence regarding grandmother's medical status, filed July 24, 2014. (Code Civ. Proc., § 909; Cal. Rules of Court, rule 8.252.)

DISPOSITION

The orders of the juvenile court are affirmed.

HOCH, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.