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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re W.B., a Person Coming Under the Juvenile Court Law. | |
| SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>J.Z.,<br><br>Defendant and Appellant. | D060386<br><br>(Super. Ct. No. SJ11561) |

APPEAL from an order of the Superior Court of San Diego County, Carol Isackson, Judge. Affirmed.

J.Z. appeals a juvenile court order terminating her parental rights to her minor son, W.B., under Welfare and Institutions Code section 366.26.[1] J.Z. challenges the sufficiency of the evidence to support the court's finding W.B. was likely to be adopted

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1 Statutory references are to the Welfare and Institutions Code.

within a reasonable time. She also contends the court erred by denying her request for a continuance of the selection and implementation hearing to obtain further information about W.B.'s adoptability and identify a prospective adoptive home for him. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2010, the juvenile court declared one-year-old W.B. a dependent based on findings J.Z. left him in some bushes during an argument with W.B.'s father,[2] and the parents' home was extremely unsanitary and unsafe. (§ 300, subd. (b).) J.Z.'s parental rights to another child, D.C., had been terminated in 2007 as a result of J.Z.'s drug abuse, repeated incarcerations, unsanitary living conditions and neglect of D.C. The court removed W.B. from parental custody, placed him in foster care and ordered reunification services for J.Z.

At the time W.B. entered foster care in August 2010, he was engaging in head-banging behavior and self-induced vomiting, for which he had not received any intervention services. According to a developmental evaluation performed that month, W.B. was "an adorable, engaging little boy" who had a good appetite and above-average gross motor skills. The evaluator gave W.B. a diagnosis of unspecified adjustment reaction. W.B.'s foster mother reported he had difficulty being separated from her and was fearful of the dark. The evaluator concluded that overall, W.B. was average in language and cognitive development. W.B. and his foster mother were participating in

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2 W.B.'s father is not a party to this appeal.

therapy, and by January 2011, the clinical psychologist reported there had been a "clear reduction in [W.B.'s] behavioral and emotional symptoms."

A second developmental evaluation conducted in January 2011 by Sheila Gahagan, M.D., showed W.B. was developing normally. Dr. Gahagan assessed W.B. as having excessive tantrums, including head-banging, which were exacerbated by his language delays and inability to express himself. She also noted W.B. had "probable attachment disorder," and although he was attached to his foster mother, his tantrums were likely a symptom of "an insecure attachment." Dr. Gahagan reported the behavioral intervention services W.B. was receiving were helping to address his negative behaviors.

A speech and language evaluation showed W.B. had moderate receptive and expressive speech and language impairment. The speech pathologist was unable to assess W.B.'s speech production because he had been very quiet during the evaluation. She noted, however, W.B. was an "adorable boy" who engaged in appropriate eye contact and social play during the session. She said W.B.'s prognosis was good, provided he receives appropriate intervention. Weekly individual and group speech therapy was recommended, as well as an audiological assessment.

J.Z. had enrolled in residential drug treatment on two occasions, but was discharged from both programs because she continued to use drugs and alcohol. She failed to complete the services required by her case plan, including participating in a psychological evaluation. In January 2011, J.Z. was arrested for battery and possessing drug paraphernalia. She admitted using methamphetamine. At a six-month review

hearing, the court terminated reunification services and set a hearing under section 366.26 to select and implement a permanent plan for W.B.

In a July 2011 report, the social worker assessed W.B. as adoptable. She recommended the court terminate parental rights and order adoption as W.B.'s permanent plan. W.B. was in good health and was beginning to make progress with his developmental deficits. His head-banging behavior had diminished as a result of receiving services during the past several months. The maternal great-aunt, with whom W.B. was having significant contact, wanted to adopt him. In the event she could not adopt him, there were 21 approved families in San Diego County and 63 approved families outside San Diego County who were interested in adopting a child with W.B.'s characteristics.

According to an August 2011 addendum report, W.B. continued to receive weekly therapy and had made progress with addressing his negative behaviors. He was comfortable with his foster mother and his maternal great-aunt. The foster mother was exploring the options of adoption and legal guardianship in the event the maternal great-aunt, who was having health problems, was unable to adopt W.B. As of August 2, 2011, the social worker had identified 31 families in San Diego County and 72 families outside San Diego County who were approved to adopt a two-year-old Hispanic/Caucasian boy with attachment difficulties, behavior problems, and a parent with a history of mental illness.

By the end of August, the maternal great-aunt was no longer able to adopt W.B. because of her poor health, but she wanted to remain active in his life. The foster mother

said she and her husband would agree to guardianship, but were not considering adopting W.B. because they were concerned about their ability to handle his behavior in the future. Although W.B. was having tantrums and had some aggressive behaviors, he had become more secure in his attachment to the foster mother, was able to play independently, and transitioned well to his maternal great-aunt's home for visits. W.B.'s permanent plan remained adoption.

At a contested selection and implementation hearing, J.Z. appeared with her guardian ad litem, who had been appointed for her earlier that month. J.Z.'s counsel requested a continuance based on the information in the addendum report that the maternal great-aunt was no longer able to adopt W.B. Counsel explained it would be in W.B.'s best interests to explore guardianship as the appropriate permanent plan, and J.Z. wanted to argue the issue of adoptability in light of the new information about the maternal great-aunt. The juvenile court denied the continuance request.[3]

Social worker Colleen Murray testified the potential adoptive families for W.B. had been informed about J.Z.'s mental health issues and W.B.'s history of behavior problems. Although W.B. had some serious separation anxiety and behavior problems at the time he was taken into protective custody, he had improved with treatment. He no longer banged his head on a regular basis, and was able to be redirected when having a tantrum. Murray planned to transition W.B. into an adoptive home by having the

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[3] The court also summarily denied J.Z.'s section 388 petition for modification, which sought to reinstate reunification services for J.Z.

prospective adoptive parents attend therapy session with him, and then gradually increasing visits.

Murray further testified W.B. was bonded with his current caregiver, who was willing to assume legal guardianship. However, Agency believed adoption was the appropriate permanent plan for W.B. The maternal great-aunt could no longer adopt W.B. because of her own health issues.

After considering the evidence and arguments of counsel, the court found W.B. was likely to be adopted if parental rights were terminated and none of the statutory exceptions to adoption applied. The court terminated parental rights and referred W.B. for adoptive placement.

During the pendency of this appeal, Agency filed a motion to augment the record with additional evidence consisting of a report filed in the juvenile court on November 17, 2011. The updated information contained in this report shows there are now two identified families who have offered to adopt W.B.: the adoptive parents of W.B.'s half-sibling, and W.B.'s current caregivers. Agency claims this information is relevant to the issues on appeal as to whether W.B. is likely to be adopted within a reasonable time. J.Z. filed an opposition to the motion to augment, arguing it is untimely, contains post-judgment evidence for the purpose of improperly influencing the outcome of the appeal, and does not render the appeal moot as Agency claims it does. We agree with J.Z. that the post-judgment evidence does not make the issues on appeal moot. Nevertheless, the evidence "would have been admissible and relevant if known to the court" and Agency's purpose in requesting it is "to promote the finality of the juvenile court's judgment." (*In*

*re B.D.* (2008) 159 Cal.App.4th 1218, 1240.) Accordingly, we grant Agency's request to augment the record on appeal with the November 17, 2011 report.

DISCUSSION

I

J.Z. challenges the sufficiency of the evidence to support the court's finding W.B. was likely to be adopted within a reasonable time. She asserts: (1) W.B. had speech and language delays, adjustment and attachment disorders and behavior problems; (2) Agency did not disclose J.Z.'s mental health issues, precluding any potential adoptive families from making an informed decision about adopting W.B.; and (3) the two families who had cared for W.B. during the dependency proceedings were not interested in adopting him.

A

The court can terminate parental rights only if it determines by clear and convincing evidence the minor is adoptable. (§ 366.26, subd. (c)(1).) An adoptability finding requires "a low threshold:" the court need only determine it is " 'likely' " the child will be adopted within a reasonable time. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292; accord *In re Zeth S.* (2003) 31 Cal.4th 396, 406; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1231.) A determination of adoptability focuses on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. (§ 366.22, subd. (b); *In re David H.* (1995) 33 Cal.App.4th 368, 378.) The possibility a child may have future problems does not mean the child is not likely to be adopted. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223-225.)

The likelihood of adoptability may be satisfied by a showing the minor is generally adoptable, that is, independent of whether the minor is in a prospective adoptive home (§ 366.26, subd. (c)(1)), or has a prospective adoptive parent " 'waiting in the wings.' " (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649; *In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) Nevertheless, "the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*." (*In re Sarah M., supra*, 22 Cal.App.4th at pp. 1649-1650.)

We review a court's adoptability finding for substantial evidence. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or reweigh the evidence. Instead, we view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re A.A., supra*, 167 Cal.App.4th at p. 1313.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the evidence showed W.B. was a healthy, engaging, adorable two-year-old boy who had appropriate social skills and was developing normally. He tested in the average range for cognitive development and was receiving weekly services for his moderate speech and language delays. Although W.B.'s early psychosocial history caused him to have behavior problems, attachment disorder and adjustment disorder, he had been receiving intervention services which were ameliorating these problems. By the time of the selection and implementation hearing, W.B. had bonded with his foster mother and his behavior had improved significantly. In the social worker's opinion, it would not be difficult to transition W.B. into an adoptive home. Any ongoing negative behaviors did not create an impediment to adoption. (See *In re I.I.* (2008) 168 Cal.App.4th 857, 871; *In re Erik P.* (2002) 104 Cal.App.4th 395, 400; cf. *In re Asia L.* (2003) 107 Cal.App.4th 498, 512 [sibling set of three was not adoptable because the children had emotional and psychological problems and there were no approved families willing to adopt children with similar characteristics]; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1058, 1061 [eight-year-old boy with cerebral palsy, seizure disorders and other disabilities requiring intensive care for life was not generally adoptable].)

C

W.B.'s adoptability is also supported by evidence there are 31 families in San Diego County and 72 families outside San Diego County who were approved to adopt a two-year-old Hispanic/Caucasian boy with attachment difficulties, behavior problems, and a parent with a history of mental illness. Nevertheless, J.Z. contends the

court could not make its adoptability finding until these potential adoptive families made an informed decision about adopting W.B. after a "full disclosure" of J.Z.'s mental health issues.

"The issue of adoptability requires the court to focus on the child" (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624) and thus, consideration of J.Z.'s psychiatric records was not necessary. The court properly focused on W.B.'s characteristics, not J.Z.'s mental health issues, when it found W.B.'s age, physical condition and emotional state would not create difficulty in locating a family willing to adopt him. (§ 366.22, subd. (b); *In re David H., supra,* 33 Cal.App.4th at p. 378.) Moreover, the families that had been identified as potential adoptive placements for W.B. had been told he had a mother with mental health issues. Nothing more was required.

D

J.Z. asserts the court's adoptability finding was not supported by substantial evidence because the two families with whom W.B. lived during the dependency proceedings -- the maternal great-aunt and W.B.'s current caregivers -- were not interested in adopting him. However, the record shows the maternal great-aunt was unable to adopt W.B. because of her own health issues, not because of any of W.B.'s characteristics.

Moreover, according to the augmented record on appeal, two additional prospective adoptive homes have been identified for W.B. The adoptive parents of W.B.'s half-sibling want to adopt W.B. This family lives in Utah, and after having a successful visit with W.B. in San Diego, have begun the adoptive home study process

through the Interstate Compact on the Placement of Children (ICPC). Should this placement fail, W.B.'s current caregivers, with whom W.B. has lived since August 2010, are willing to adopt him. Thus, substantial evidence supports the court's finding W.B. was likely to be adopted within a reasonable time.

II

J.Z. contends the court abused its discretion by denying her request to continue the selection and implementation hearing to further explore W.B.'s developmental, behavioral and emotional problems. She also contends the court should have continued the hearing under section 366.26, subdivision (c)(3) because W.B. was difficult to place for adoption.

A

Under section 352, the juvenile court may grant a continuance of any hearing only on a showing of good cause and only if the continuance is not contrary to a minor's best interests. In considering the minor's interests, "the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a); *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810.) Because "time is of the essence" for dependent children, continuances in juvenile cases are disfavored. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674; *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) We reverse an order denying a continuance only on a showing the court abused its discretion. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

B

As we previously discussed, there was no need to further explore W.B.'s developmental, behavioral or emotional status with respect to the likelihood of his adoption. At the time of the selection and implementation hearing, W.B. was a generally healthy, adorable two-year-old whose speech and language delays were being successfully addressed with services. His behavior problems had decreased significantly, and he was able to bond to his foster mother. More than 100 families were interested in adopting a child with W.B.'s characteristics, even after learning he had attachment difficulties, behavior problems, and a parent with a history of mental illness. Further, Agency is now pursuing adoptive placement for W.B. with the adoptive parents of his half-sibling. Should this placement fail, W.B.'s current caregivers want to adopt him. Thus, J.Z. did not make a showing of good cause to continue the selection and implementation hearing in order to find a prospective adoptive home for W.B.

C

J.Z. relies on section 366, subdivision (c)(3) to support her argument a continuance was required until an adoptive home was found for W.B. However, that statute applies to minors, unlike W.B., who are "difficult to place for adoption." (§ 366.26, subd. (c)(3); see *In re B.D., supra*, 159 Cal.App.4th at p. 1239 [sibling group of five, who had special needs and challenging behaviors, were difficult to place for adoption].) Because the evidence supported a finding W.B. was likely to be adopted within a reasonable time based on his personal characteristics and the availability of

numerous adoptive homes, a continuance under section 366.26, subdivision (c)(3) was neither required nor in W.B.'s best interests.

DISPOSITION

The order is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.