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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

R.S. et al.,

Defendants and Appellants.

D061447

(Super. Ct. No. SJ10344C)

APPEALS from an order of the Superior Court of San Diego County, Ronald F. Frazier, Judge. Affirmed.

R.S. and A.B. appeal an order terminating their parental rights to their son, Chase S., under Welfare and Institutions Code section 366.26.¹ A.B., Chase's father, challenges the finding Chase was likely to be adopted within a reasonable time. Chase's mother,

¹ Unless otherwise indicated, further references are to the Welfare and Institutions Code.

R.S., contends the court erred when it found that the parent/child relationship exception to termination of parental rights did not apply. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 28, 2010, four-month-old Chase S. suffered a closed head injury and intracranial bleeding caused by non-accidental trauma. His older half-siblings, ages 13 and 6 years old, said they saw their mother, R.S., shake Chase "a little" on several occasions. The six-year-old sibling also said she saw her mother shake Chase "really hard" on one occasion, and demonstrated by shaking a teddy bear with force and saying, "Stop crying Chase."

Chase's brain injuries were life-threatening. A portion of his skull was removed to alleviate the swelling caused by subdural hematoma. He had to wear a helmet for protection and required medication to control seizures. Chase's vision was damaged. He displayed notable developmental delays. Two months after his injury, an examining physician said Chase "will have a long road of recovery from these serious injuries to his brain and to his eyes and it will be some months or years before the extent of damage is known."

Chase's parents have significant histories of substance abuse, including methamphetamine use. A.B. had a history of violent assault and domestic violence. R.S. tested positive for methamphetamine during pregnancies in 1997 and 2003. She and Chase tested positive for methamphetamine and Vicodin at his birth in 2010. At that time, the Agency offered R.S. a voluntary services plan which was in place at the time

Chase was injured. A.B. said he and R.S. smoked crystal methamphetamine together the night before Chase was injured.

The social worker referred both parents to a substance abuse treatment program. R.S. did not believe she had a drug problem and did not believe she needed treatment.

The juvenile court adjudicated Chase a dependent of the court under section 300, subdivisions (a), (b) and (e). The court removed Chase from parental custody, ordered a plan of family reunification services for A.B. and denied reunification services to R.S.

The San Diego County Health and Human Services Agency (Agency) placed Chase in a foster home² equipped to handle the needs of medically fragile children. Chase's condition continued to improve. In February 2011, he had surgery to replace the missing piece of his skull. In June, the social worker said 17-month old Chase no longer required a "medically fragile" level of care.

A.B. did not make substantive progress with his case plan. At the six-month review hearing in August 2011, the court terminated family reunification services and set a section 366.26 hearing.

In September 2011, the Agency placed Chase and N.S. in a concurrent planning home. The foster parents had known Chase for more than year. In December the social worker reported that the foster parents wanted to adopt both children and were in the process of obtaining an adoption home study. They were fully aware of Chase's injuries and understood his medical needs and developmental delays. The foster mother was a

² Chase's younger sister, N.S., who was removed from R.S.'s care at birth, was also placed in this home.

special education teacher. After he was placed in the foster home, Chase's development significantly improved.

In reports prepared for the section 366.26 hearing, the social worker said Chase was generally and specifically adoptable. In addition to his current caregivers, there were 62 families in San Diego County willing to adopt a two-year old boy with a controllable or correctable medical condition and development delays. Chase's maternal grandparents also wanted to adopt him.

R.S. consistently visited Chase throughout the dependency proceedings. The social worker said R.S. positively and appropriately interacted with him, fed and comforted him, changed his diaper and played with him. Chase enjoyed their visit and was comfortable with her. He was not adversely affected when R.S. left at the end of the visits.

On January 18, 2012, Chase became very ill and was diagnosed with Kawasaki Disease (KD), which involves an inflammation of the blood vessels and may damage the heart if not immediately treated. Chase was promptly treated and was hospitalized for two days. His heart was not damaged. Chase's doctor commended the foster parents for obtaining prompt treatment and said Chase would not have any lasting effects from having had KD. The social worker said Chase's diagnosis of KD did not affect his adoptability. His caregivers were committed to adopting him and their adoption home study had been approved.

The section 366.26 hearing was held on February 17, 2012. The court admitted the Agency's reports in evidence. The parents did not present any affirmative evidence

and declined to cross-examine the social worker. The court found that Chase was likely to be adopted within a reasonable time if parental rights were terminated and there were no exceptions that would make terminating parental rights detrimental to him. At the request of minor's counsel, the court designated the foster parents as Chase's prospective adoptive parents.

DISCUSSION

A

Legal Framework for Termination of Parental Rights

At a section 366.26 hearing, the court may select one of three alternative permanency plans for the dependent child—adoption, guardianship or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) If the child is adoptable, there is a strong preference for adoption over alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809.)

A finding of adoptability 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 (*Zeth S.*); § 366.26, subd. (c)(1).) The question of adoptability usually focuses on whether the child's age, physical condition and emotional health make it difficult to find a person willing to adopt that child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) If the child is considered generally adoptable, there is no need to examine the suitability of a prospective adoptive home. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) When the child is deemed adoptable based solely on a particular family's

willingness to adopt the child, the trial court must determine whether there is a legal impediment to adoption. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

If the court determines that the child is likely to be adopted within a reasonable time, the court is required to terminate parental rights unless the parent shows that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivisions (c)(1)(A) and (c)(1)(B). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." This court has interpreted the phrase "benefit from continuing the relationship" to mean "the [parent-child] relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*) Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Ibid.*)

The reviewing court determines whether the record contains substantial evidence from which the court could find clear and convincing evidence that the child was likely to be adopted within a reasonable time, and for substantial evidence to support the juvenile court's finding the child will not be greatly harmed by termination of parental rights. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562; *Zeth S.*, *supra*, 31 Cal.4th at p. 406.) If the findings are supported by substantial evidence, the reviewing court must affirm the juvenile court's rejection of the exceptions to termination of parental rights. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

B

There Is Substantial Evidence to Support the Court's Finding that Chase Was Likely To Be Adopted Within a Reasonable Time

A.B. contends the finding that Chase was likely to be adopted within a reasonable time is not supported by substantial evidence. He argues the scope of Chase's injuries and long-term needs have not been resolved, and Chase had not been in the care of the foster parents long enough to allow them to realize the magnitude of raising a child with special needs, and they were not qualified to care for him. R.S. joins with A.B.'s argument.

The record clearly shows that Chase was generally and specifically adoptable. In a preliminary screening, the social worker identified 62 families in San Diego County alone who were willing to care for a child with health concerns and developmental delays. Chase's grandparents also wanted to adopt him. Chase's current foster parents were committed to adopting him, and had obtained an approved adoption home study.

To the extent Chase is only specifically adoptable, we are not persuaded by A.B.'s argument Chase had not been in the care of the foster parents for a sufficient period of time to allow them to understand his condition. The record shows by the time of the section 366.26 hearing, the foster parents had cared for Chase on a daily basis for approximately five months and were committed to adopting him. Although the long-term developmental consequences of his injury were unknown, the record shows that Chase's condition had continually improved since his life-threatening brain injury. In December 2011, approximately a month before his second birthday, Chase was walking with confidence and close to running. He could walk backwards and was learning to climb. His gross motor skills were improving. Chase was saying more words and could sign others. He had a very sweet disposition and did not have any emotional or mental health concerns. The record permits the reasonable inference the foster parents were very conversant with Chase's needs and abilities.

We reject A.B.'s argument the foster parents were not qualified to care for Chase. The foster mother was an experienced special education teacher. Chase's development significantly improved after he was placed in their home. The foster parents more than adequately demonstrated their ability to respond to Chase's health needs when he was diagnosed with Kawasaki Disease. Chase's physician wrote, "I can say without a doubt that if it were not for Chase's loving and insistent foster parents, he would not have been properly diagnosed with KD and may have suffered lifelong consequences."

We conclude there is substantial evidence to support the court's finding that Chase was likely to be adopted within a reasonable time if parental rights were terminated. (§ 366.26, subd. (c)(1).)

C

There Is Substantial Evidence to Support the Court's Finding the Beneficial Parent/Child Relationship Exception Did Not Apply

R.S. contends there is not substantial evidence to support the juvenile court's finding the beneficial parent/child relationship exception to termination of parental rights did not apply. She argues she consistently visited Chase throughout the dependency proceedings and despite the Agency's concerns, the record shows their relationship was positive and should be allowed to continue.

The court found that R.S. consistently visited Chase and their visits were positive in nature. However, in balancing the benefits of adoption against the strength and quality of the parent/child relationship, the court determined the benefits of adoption outweighed any detriment to him caused by terminating parental rights. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The court noted that Chase had been out of R.S.'s care for a long time, and he was young and needed the stability of a permanent home.

The record supports the court's findings. Chase is a young child with special needs. R.S. displayed significant deficiencies as a parent, resulting in lifelong consequences for Chase. She was a longstanding methamphetamine user who was not amenable to treatment or aware of the effect of its use, during and after her pregnancies, on her children. R.S. used methamphetamine on her way to visit Chase in the hospital,

and used it again after the visit. Despite the positive reports of R.S.'s and Chase's visits, Chase's primary needs were for structure, consistency, highly competent parenting and a safe and permanent home. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229-231 (*Dakota H.*)) The record permits the reasonable conclusion it is not in Chase's best interests to maintain a relationship with a formerly abusive parent and drug addict at the cost of not having a permanent home.

We conclude there is substantial evidence to support the juvenile court's finding that termination of parental rights would not be detrimental to Chase. (*Dakota H., supra*, 132 Cal.App.4th at pp. 229-231; § 366.26, subd. (c)(1)(B).) The record supports the finding that Chase's interests in a continued relationship with his parents did not outweigh his interests in the security of an adoptive placement with a safe, stable, and loving family that could meet his special needs for vigilant, consistent and nurturing care. (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.