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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ABBEY R., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MICHELLE D.,

Defendant and Appellant.

D063598

(Super. Ct. No. EJ1572B)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M.

Bubis, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Lisa M. Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

Michelle D. appeals a judgment terminating parental rights to her daughter, Abbey R., under Welfare and Institutions Code section 366.26.¹ She contends there is not substantial evidence to support the finding Abbey was likely to be adopted within a reasonable time. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Abbey R. is the daughter of Michelle D. and Bradley R.² In October 2000, when Abbey was two weeks old, she was removed from her parents' care due to their substance abuse and because her one-year-old half sister had suffered unexplained bruises and contusions to her face. Abbey's sister was adopted by their maternal grandmother. Abbey reunified with her father after he successfully completed substance abuse treatment. Michelle did not maintain contact with Abbey.

The San Diego County Health and Human Services Agency (Agency) received referrals concerning Abbey's welfare in 2003, 2004, 2005, 2006, 2007, 2008 and 2009, alleging Bradley was drinking heavily and providing inadequate care. In March 2010, Abbey was hospitalized with severe diabetic ketoacidosis, a life-threatening condition. She was diagnosed with type 1 diabetes. In January 2011, a school nurse reported that Abbey had a severe case of ringworm and was always hungry, tired and dirty. In February, the Agency received a referral alleging that Abbey and her father did not attend

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

² Abbey's father, Bradley, does not appeal. He is mentioned in this opinion only when relevant to the issues raised on appeal.

a diabetes education visit and an appointment with an endocrinologist, and her health was being seriously compromised. Abbey saw a doctor after the Agency became involved. Abbey's diabetes was not well controlled. Bradley acknowledged that they were not routinely checking Abbey's blood sugar levels.

In April 2011, the Agency received a referral that a man named "Brad" and a young girl were living in a motel room and that "Brad" had offered to have the girl perform "full sex" for \$20 and oral sex for \$10, and he had a glass with a white powdery substance in it. Law enforcement investigated the allegations and discovered methamphetamine in Bradley's motel room. Bradley acknowledged recent methamphetamine use. The motel room was filthy. Officers found Abbey asleep on the bed under a pile of pillows and trash. She had not received adequate treatment for her diabetes. Her blood sugar level was more than twice the level considered high. Abbey's hygiene was very poor. Her food was being gnawed on by her pet rat and cockroaches, maggots and flies. Bradley was arrested and jailed on charges of child cruelty and being under the influence of a controlled substance. The Agency detained Abbey in protective custody. Abbey denied any sexual abuse.

Abbey was adjudicated a dependent of the juvenile court under section 300, subdivision (b). The court removed Abbey from her father's custody. Michelle, who had last seen Abbey when she was 14 months old, appeared in the proceedings and asked the court to place Abbey with her. The court denied Michelle's request and ordered the Agency to provide reunification services to both parents. Michelle visited Abbey several times at Polinsky Children's Center.

The Agency placed Abbey in foster care and arranged for therapeutic services. A physician at the Chadwick Center for Children and Families said Abbey's health, personal safety and basic needs clearly had been neglected. Although Abbey denied sexual abuse and would not submit to a physical examination, the physician was highly concerned that Abbey was a victim of sexual exploitation. Abbey was diagnosed with depression and adjustment disorder with anxiety. Abbey had tantrums in public in which she cried, stomped her feet and lay on the ground.

After she was placed in foster care, Abbey refused any contact with Michelle except for a Christmas visit in December 2012. Michelle continued to telephone the foster parent every week to leave messages for Abbey. Abbey did not want to visit or speak with her father. After Bradley made progress in substance abuse treatment and obtained employment, he tried to obtain a modification of a criminal court restraining order. His request was denied.

Abbey experienced many deficits as a result of long-term neglect. She lacked basic social skills and was at times paralyzed by depression and anxiety. By the time of the 12-month review hearing, Abbey made some progress in therapy and did not appear to struggle emotionally with her daily life. She did not want to see or speak to her mother or father. If her current foster family could not adopt her, Abbey was willing to be adopted by another family as long as they lived in the country and had horses.

At the 12-month review hearing in July 2012, the court found that Bradley and Michelle had made some progress with their case plans but there was not a substantial probability Abbey would be returned to their custody by the 18-month review date. The

court terminated reunification services, set a section 366.26 hearing and ordered the Agency to prepare an assessment report under section 366.21, subdivision (i). At the Agency's request, the court ordered Abbey to undergo a psychological evaluation as soon as possible and noted the results of the evaluation could affect the selection of her permanent plan.³

The Agency assessed Abbey as a generally adoptable child with a medical condition and special needs. In November 2012, the Agency asked the court to continue the section 366.26 hearing for 60 days to allow the social worker to identify an adoptive family for Abbey. The Agency identified several possible matches for her in San Diego County. In addition, an out-of-county maternal aunt was interested in adopting Abbey if she was not placed in San Diego County. Abbey's relationship with her current foster care family was deteriorating and there was an urgent need to find a permanent placement for Abbey. Although she had made therapeutic progress, Abbey's social skills were at the level of a six year old and her hygiene was at the level of a four year old. Her tantrums decreased in frequency, intensity and duration and she was sleeping better. Abbey was having headaches and seeing "orbits of lights." Her doctor recommended follow-up evaluations by a neurologist and ophthalmologist.

In mid-November the Agency introduced Abbey to a prospective adoptive family (caregivers) who lived in a rural area and had a horse, goats, dogs, cats and other animals.

³ The record on appeal contains no further reference to the court-ordered evaluation. In its briefing, the Agency acknowledges that Abbey did not receive a psychological evaluation.

After several weekend visits and other outings, the Agency placed Abbey with the caregivers. The social worker asked Abbey what was going well with the new placement. Abbey said, "Everything."

The section 366.26 hearing was held on February 14, 2013. The social worker said Abbey was generally and specifically adoptable. Abbey said everything was "going great" in her new home. She refused to discuss her past and did not want to have any contact with her parents. The social worker said it would be important for Abbey in the future to gain clarity on her life and circumstances, but she did not seem ready to address those issues at the time.

Bradley told the social worker he loved his daughter and understood her need for a home. He decided not to contest termination of parental rights and expressed support for the caregivers. The social worker said Bradley's decision had a positive effect on Abbey, freeing her to move forward with her new life.

At the hearing, the social worker acknowledged that Abbey and her caregivers were in "the honeymoon period" where "everybody is pretty happy with everything." Abbey had an Individualized Education Plan (IEP) for emotional disturbance. Her former school was able to accommodate her needs by placing her in smaller classes. Abbey's new school did not include those types of accommodations and finding the appropriate educational situation for Abbey was going to take a lot of work.

Michelle opposed adoption because she believed she could restore her relationship with Abbey, and she knew that deep down Abbey wanted to build a relationship with her. Michelle acknowledged that Abbey was not bonded to her.

After finding that Abbey was likely to be adopted within a reasonable time and the benefits of adoption outweighed any benefit she would receive from maintaining the parent/child relationships, the juvenile court terminated parental rights.

DISCUSSION

A

Contentions on Appeal

Michelle argues there is not substantial evidence to support the juvenile court's finding that Abbey was likely to be adopted within a reasonable time if parental rights were terminated. (§ 366.26, subd. (c)(1).) She contends the juvenile court did not adequately consider Abbey's chronic medical condition, her needs for special education and therapeutic treatment, the failure of Abbey's first placement and the lack of any therapeutic resolution of her past issues. Relying on this court's opinion in *In re Valerie W.* (2008) 162 Cal.App.4th 1 (*Valerie W.*), Michelle argues the Agency's assessment does not constitute substantial evidence of adoptability because the social worker did not fully assess Abbey's physical and mental health issues. She points out the assessment report did not mention the results of Abbey's court-ordered psychological evaluation or the referrals to specialists for treatment of Abbey's ocular migraines.

B

Statement of the Law and Standard of Review

When the juvenile court refers a case to a section 366.26 hearing, it is statutorily required to direct the Agency to prepare an assessment report of the child as part of its report to the court. (*Valerie W.*, *supra*, 162 Cal.App.4th at p. 11.) The assessment report

must address the child's medical, developmental, scholastic, mental and emotional status; analyze the likelihood the child will be adopted if parental rights are terminated; describe the efforts made to identify a prospective adoptive parent or legal guardian for the child; and provide a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian. (§ 366.21, subd. (i)(1); *Valerie W.*, at pp. 11-12.) "The assessment report is 'a cornerstone of the evidentiary structure' upon which the court, the parents and the child are entitled to rely." (*Valerie W.*, at p. 11, quoting *In re Crystal J.* (1993) 12 Cal.App.4th 407, 413.)

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.) 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 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.) 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, subdivision (c)(1)(A) and (B). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

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. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) Deficiencies in an assessment report go to the weight of the evidence and if sufficiently egregious, may impair the adoptability finding and the court's decision to terminate parental rights. (*In re Crystal J., supra*, 12 Cal.App.4th at p. 413.) When a parent challenges an assessment report as inadequate, the reviewing court evaluates any deficiencies in the report in view of the totality of the evidence in the appellate record. (*Valerie W., supra*, 162 Cal.App.4th at pp. 14-15.)

C

The Adoptability Finding Is Supported By Substantial Evidence

Although we are concerned about the lack of compliance with the juvenile court's order to obtain a psychological evaluation for Abbey as part of the permanent plan assessment, in view of the strength of the other evidence in the record, we conclude that the omission of the psychological evaluation from the assessment report does not impair the court's adoptability finding. This case is not commensurate with *Valerie W.* In that case, not only did the assessment report lack information about test results for a child's serious possible genetic or neurological disorder, it failed in most respects to comply with

other statutory requirements. (§ 361.21, subd. (i).) For example, the record contained conflicting and unclear information regarding the identity of the prospective adoptive parent or parents. The assessment report did not discuss the motivation for what appeared to be a joint adoption by a mother and daughter, or her (or their) capability to meet the children's needs. It also lacked a social history, character evidence, criminal record clearance, employment history and financial status for one of the applicants. (*Valerie W.*, *supra*, 162 Cal.App.4th at pp. 13-15.)

In contrast to the deficient record in *Valerie W.*, the record in this case contains evidence that is "reasonable in nature, credible, and of solid value" to support the court's adoptability finding. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 591.) According to the social worker, Abbey's caregivers were bright, warm adults who were anxious to provide a stable, loving home to Abbey. They were seasoned foster parents and experienced parents, and had an approved adoptive home study. They successfully completed training in diabetes management. The caregivers believed that Abbey could "find a place of belonging and safety" in their home. Once she was stabilized in their home, the caregivers were open to continuing contact between Abbey and her maternal and paternal grandparents, and her half sister.

The record shows that Abbey's health, personal safety and basic physical and emotional needs had been severely neglected during her childhood. She had type 1 diabetes. When placed in protective custody, Abbey was diagnosed with depression and adjustment disorder with anxiety. Her socialization, behavior and hygiene were deficient for a child her age. Her first foster care placement failed after more than a year. Abbey

was experiencing severe headaches, possibly triggered by stress or florescent lighting, which resolved with Tylenol. She needed to see an ophthalmologist for evaluation of her ocular migraines. Abbey refused to discuss her past history of neglect and abandonment, and said she wanted to start anew. The court could reasonably conclude that none of those issues made it unlikely Abbey would be adopted within a reasonable time if parental rights were terminated.

The social worker assessed Abbey as generally and specifically adoptable. Abbey was an unusually creative young woman with advanced verbal skills. Abbey read quickly, wrote short fantasy novels, had artistic capabilities and was willing to work with professionals to achieve a more positive well-being. She described herself as "intelligent and curious." There were 15 families in San Diego County who were interested in a child like Abbey. Out of that pool, the social worker identified several families that could be a good match for Abbey, including her caregivers. Abbey's caregivers were experienced parents who wanted to adopt her. A maternal aunt expressed interest in adopting Abbey. With respect to Abbey's mental and physical health, the caregivers completed training to manage Abbey's diabetes before she was placed with them. She had been in therapy since she was placed in foster care. With support and therapy, Abbey's behaviors and hygiene improved. When she moved to the caregivers' home, Abbey began seeing a therapist who focused on attachment and trauma, and would assist Abbey and the caregivers in working through any difficulties. At the time of the section 366.26 hearing, Abbey had been placed with the caregivers for two months. Abbey was happy and comfortable with her new family. She liked her new home, the animals and pets and her

caregivers. There were no reports of significant problems with the placement, and the caregivers expressed their desire to adopt Abbey.

We conclude there is substantial evidence to support the court's finding that Abbey was likely to be adopted within a reasonable time if parental rights were terminated.

(§ 366.26, subd. (c)(1).)

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.