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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re NICHOLAS C., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JACQUELINE C.,

Defendant and Appellant.

D066517

(Super. Ct. No. EJ3247)

APPEAL from a finding and order of the Superior Court of San Diego County, Gary M. Bubis, Judge. Affirmed.

Monica Vogelmann, 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.

Stacey Otmann, under appointment by the Court of Appeal, for the minor.

Jacqueline C. challenges an order terminating her parental rights under Welfare and Institutions Code section 366.26.¹ She contends the court erred when it found that her son, Nicholas, was generally adoptable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jacqueline C. is the mother of Nicholas C., who was born in January 2001. Nicholas was adjudicated a dependent of the juvenile court in August 2010 because of Jacqueline's inability to provide adequate care to him. (§ 300, subd. (b).) Nicholas has a severe form of epilepsy, which has resulted in "significant neurological, cognitive, emotional and behavioral challenges which impact him and those who care for him." He has a history of serious behavioral problems, including aggression, tantrums and running away.

The history of Nicholas's dependency proceedings is detailed in our nonpublished opinions, *In re Nicholas C.* (Jan. 12, 2012, D060189), *Jacqueline C. v. Superior Court* (Aug. 22, 2012, D061394), and *Jacqueline C. v. Superior Court* (May 5, 2014, D064903), and we need not repeat those details here. This appeal concerns whether the juvenile court erred when it determined that Nicholas was generally and specifically adoptable, and terminated parental rights.

The section 366.26 hearing was held on June 27, 2014. The juvenile court received the Agency's reports and the social worker's stipulated testimony in evidence. Jacqueline was represented by counsel but was not present. She asked the court to order a permanent plan of guardianship for Nicholas because he was not generally adoptable and had been difficult to place in foster care.

¹ All further statutory references are to the Welfare and Institutions Code.

The Agency reported that Nicholas was diagnosed with moderate intellectual disability and epilepsy. He was on a complex medication regimen to control his seizures, which required monthly psychiatric appointments. Nicholas was active to the San Diego Regional Center. He would always be eligible for Regional Center services. His communication skills were deficient but he enjoyed talking to other people and was able to speak in short, complete sentences. Nicholas's balance was poor and he often fell. He was able to run but had difficulty sliding, jumping, and hopping. He was independent with most daily living skills and required only occasional assistance, such as help with opening food packages. Academically, Nicholas was able to identify the numbers 1 through 15 with 70 percent accuracy. He could write his first name, "Nick", and knew his birth date. He did not know his address or telephone number.

Nicholas was generally happy and pleasant. He was social and enjoyed helping others. Nicholas would sometimes hit, kick, spit, throw items and use foul language. He tried to stab someone and also tried to run away. Nicholas had difficulty with transitions and became very anxious if anyone discussed his relationship with Jacqueline. He did better in a structured and consistent environment, with adherence to a regular medication schedule. Nicholas continued to work with a behavioral specialist to decrease the frequency of his tantrums and false allegations, and to promote his cooperation and communication skills.

Nicholas had lived with his caregivers since January 2011. They wished to adopt him. Nicholas referred to his caregivers as "mom" and "dad." The caregivers had specialized training in working with special needs children. They had support from family and friends, as well as from professionals. In caring for Nicholas for more than three years,

the caregivers had demonstrated their ability to meet Nicholas's physical, medical, developmental, emotional and social needs. They were strongly bonded to him. There were no legal issues that would impede the caregivers' ability to adopt Nicholas.

Nicholas had not seen Jacqueline in a long time. He did not ask about her and reacted adversely whenever her name was mentioned.

The social worker stated that despite his disability and behavioral issues, Nicholas was adoptable due to his social, inquisitive and affectionate personality. He viewed his caregivers as his parents and they were committed to adopting him. In the event the caregivers were not able to adopt Nicholas, there were four approved families in San Diego County who were willing to adopt a child like Nicholas. The social worker said Nicholas's age, and medical and behavioral needs limited the number of available families willing to adopt him.

The parties stipulated to the social worker's testimony: Nicholas's caregivers continued to be committed to adopting him. They participated in an adoption home study, which was nearing completion. The social worker believed the caregivers' home study would be approved.

The juvenile court found it was likely Nicholas would be adopted if parental rights were terminated. Nicholas's acting out behaviors had improved and his caregivers had shown their commitment to him through some very rough times. They clearly loved Nicholas. The court found that Nicholas was generally and specifically adoptable, noting that there were wonderful people on earth who adopt disabled children. The court found

that adoption was in Nicholas's best interest, terminated parental rights and designated Nicholas's caregivers as his prospective adoptive parents.

DISCUSSION

There Is Substantial Evidence To Support the Juvenile Court's Finding that Nicholas Is Likely To Be Adopted Within a Reasonable Time

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. If the child is adoptable, there is a strong preference for adoption over alternative permanency plans.

(In re Michael G. (2012) 203 Cal.App.4th 580, 588 (Michael G.).)

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, the juvenile court does not examine the suitability of the prospective adoptive home. *(In re Scott M. (1993) 13 Cal.App.4th 839, 844.)* If the juvenile court finds the child is likely to be adopted within a reasonable time, it 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 (c)(1)(B). *(In re Lorenzo C. (1997) 54 Cal.App.4th 1330, 1343-1345.)* *(Michael G., supra, 203 Cal.App.4th at p. 580, 589.)*

On review, we determine whether the record contains substantial evidence from which the juvenile court could find clear and convincing evidence the child was likely to be

adopted within a reasonable time. The appellate court does not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts. (*Michael G.*, *supra*, 203 Cal.App.4th at p. 589.)

Jacqueline argues there is not substantial evidence to support a finding by clear and convincing evidence that Nicholas is generally adoptable. She contends a plan of guardianship is in Nicholass' best interests because it would allow her to be a resource for him in the event he needs assistance during his lifetime. Jacqueline acknowledges that Nicholass' caregivers wish to adopt him and that the court's finding Nicholas is specifically adoptable may be supported by the record.²

We need not address Jacqueline's argument concerning general adoptability. The standard on review is whether there is substantial evidence to support the finding the child is likely to be adopted within a reasonable time. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1651; cf. *Zeth S.*, *supra*, 31 Cal.4th at p. 406; *Michael G.*, *supra*, 203 Cal.App.4th at p. 589.) While the distinction between general and specific adoptability is important to the juvenile court because the elements of proof differ (see *In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1651), a finding of adoptability will be affirmed on review if there is substantial evidence to support a finding under either standard.

The record shows that Nicholas's caregivers were committed to adopting him. They loved him. They had cared for him for more than three years and demonstrated they could

² We deny the Agency's motion to dismiss the appeal as moot.

meet his needs. Nicholas called them "mom" and "dad" and wanted them to adopt him. The caregivers' adoption home study was nearing completion and there were no legal impediments to adoption. (*In re Sarah M., supra*, 22 Cal.App.4th at p. 1650.) At the close of the section 366.26 hearing, the caregivers requested, and were granted, legal status as Nicholas's prospective adoptive parents. According to the social worker, although Nicholas's age and condition limited the number of families that were willing to adopt him, in San Diego County alone there were four other approved families who were willing to adopt an older, disabled child like Nicholas.

We conclude there is substantial evidence in the record to support the finding that Nicholas is likely to be adopted within a reasonable time if parental rights are terminated.

DISPOSITION

The finding of adoptability and the order terminating parental rights are affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.