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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.M., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.J. et al.,

Defendants and Appellants.

E065877

(Super.Ct.No. RIJ103742)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Katherine A. Clark, under appointment by the Court of Appeal, for Defendant and
Appellant (mother).

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant (father).

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman and Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

D.J. (mother) and J.M., Sr. (father) are the parents of J.M., who was two years old on the date of the challenged orders. The parents each filed a separate appeal challenging the Juvenile Court’s orders terminating their parental rights and selecting adoption as J.M.’s permanent plan at the Welfare and Institutions Code section 366.26¹ hearing held on April 20, 2016. Specifically, each parent argues the court erred when it determined that J.M. is adoptable. We affirm.

FACTS² AND PROCEDURE

In April 2014, the Department of Public Social Services (DPSS) received an immediate response referral for general neglect regarding J.M. Mother had recently given birth to J.M. at a hospital in San Bernardino County, but neither parent alerted hospital personnel that mother has an “infectious disease that is highly transferable to a baby during vaginal delivery.” The parent’s two older children³ were already detained out of their home and the parents were receiving reunification services. They had just the previous week told the social worker that they planned to deliver at a hospital in

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The statement of facts is tailored to the only issue on appeal here – whether the juvenile court erred when it determined that J.M. is adoptable.

³ These children are J.M.’s full siblings. Their hearings and those for J.M. were generally held jointly. The court terminated parental rights to the siblings on March 14, 2016. The court set adoption as their permanent plan, with preference to the prospective adoptive family with whom the two had lived since December 8, 2015

Riverside County. However, they went to a hospital in San Bernardino County, hoping to avoid detection so DPSS would not detain the infant.

The parents engaged in domestic violence and both had intellectual deficits. Mother's first child, born in 1995, died at about two months of age from abuse and neglect. The father of that child was convicted and imprisoned, but mother was found incompetent to stand trial. In 2003, mother lost parental rights to her second child, born in 2002.

The juvenile court detained J.M. at the detention hearing held on April 11, 2014. J.M. was placed in a licensed foster home certified for medically fragile children.

At the jurisdiction hearing held on June 2, 2014, the juvenile court found true allegations under section 300, subdivisions (b)(1), (b)(2), and (j)(1). The court continued the disposition to allow each parent to undergo two psychological evaluations. On July 14, 2014, paternal relatives who had requested placement and completed medically fragile training took placement of J.M. and his two siblings in an attempt to keep all three children together. The following day, the relatives told the social worker that they could not meet the needs of J.M. as well as his two siblings, and asked that he be removed and returned to the prior foster home. Two weeks later, the oldest child was also returned to her prior placement, again because the paternal relatives stated they could not meet her needs.

The disposition hearing was held on September 17, 2014. The juvenile court removed J.M. from his parents, denied reunification services under section 361.5, subdivision (b)(2), and set a section 366.26 permanent plan selection hearing for January

15, 2015. In October of 2014, J.M. was diagnosed with microcephaly and severe quadriplegic cerebral palsy. In November of 2014, J.M. was diagnosed with severe infant epilepsy. J.M. was assessed as developmentally delayed. He was unable to rollover, sit up, crawl or stand with assistance. J.M. did not babble and made very limited sounds. J.M. “does not open his eyes often and appears to be struggling with constant seizures and the resulting tensing of his muscles.” “[J.M.] is often difficult to soothe due to the constant tensing of his muscles that can result in him bending backwards, arching his back, and remaining stiff like a board for several minutes.” The muscle tensing affected J.M.’s ability to eat and resulted in the need to monitor his weight.

On June 22, 2015, J.M. was placed in the home of foster parents who were trained to care for medically fragile children. The foster parents indicated they were willing to adopt J.M. They had adopted several other children with special needs.

The section 366.26 hearing was postponed several times: first to July 15, 2015, to allow DPSS to find appropriate placements for the three children, whether together or separately; second to January 13, 2016, to allow J.M. to settle into his new placement and for a preliminary adoption assessment for him; third to March 14, 2016, to accommodate an attorney illness; and finally to April 20, 2016 for completion of the preliminary adoption assessment for J.M.

In the preliminary adoption assessment filed March 28, 2016, DPSS described J.M.’s disabilities and medical issues as set forth, *ante*, in this opinion, with the additional information that J.M. has a gastrointestinal feeding tube, consistently tests negative for

the infectious disease to which Mother exposed him at birth, and is non-ambulatory and non-verbal. The adoption social worker observed J.M. to be “smiling, looking around and making groaning noises.” The prospective adoptive parents have three adult adoptive children and three minor adoptive children living in their seven-bedroom home. Each of the adoptive children has severe disabilities, and the parents have a nursing staff of one nurse for each child to assist in their care. The adult sister-in-law of the prospective adoptive mother lives in a guest house on the family’s property. The family attends church with the children. J.M. appears to recognize the prospective adoptive parents and the nursing staff. The parents wish to adopt J.M. and make him part of their family, and understand that J.M. has medical issues and will require life-long care. J.M.’s seizures have drastically declined, from a reported 120 seizures during an hour-long medical test in November 2014 to only one seizure during the period September to December 2015. Also during that time period J.M. was making progress in his physical development; he had learned to crawl and roll over and was starting to babble. As early as the status review report dated July 15, 2015, DPSS believed regarding J.M. and these prospective adoptive parents that “The likelihood this adoption will occur is very high.” This conclusion remains unchanged in the final addendum report dated April 20, 2016: “The child is doing well in the home and the prospective adoptive parents are fully committed to providing him with a permanent home through adoption.”

At the April 20, 2016 hearing, the juvenile court found it likely that J.M. will be adopted, terminated parental rights to both parents and selected adoption as J.M.’s permanent plan.

Both parents appealed.

DISCUSSION

Mother and Father each argue the juvenile court erred when it found J.M. to be adoptable. DPSS first argues each parent forfeited the right to raise this issue on appeal because they did not argue it to the juvenile court.

We will consider both parents' claims that substantial evidence does not support the juvenile court's adoptability findings. "Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.' [Citations.] Thus, while a parent may waive the objection that an adoption assessment does not comply with the requirements provided in section 366.21, subdivision (i), a claim that there was insufficient evidence of the child's adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.)

"A finding of adoptability requires 'clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.' [Citation.] 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.

"If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home. [Citation.] When the child is deemed adoptable based solely on a particular family's willingness to adopt the child, [i.e., specifically adoptable], the trial court must determine whether there is a legal impediment to adoption.

[Citation.] . . . [¶] On review, we determine 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. [Citations.] . . . We give the court’s adoptability finding the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of the judgment of the trial court.” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1231-1232.)

Here, J.M. is generally adoptable, at least because the prospective adoptive parents are willing to adopt him. For that reason, we focus on whether there is a legal impediment to adoption by these parents and whether J.M. was likely to be adopted within a reasonable time. Both mother and father identify as the sole legal impediment to adoption by the prospective adoptive parents the fact that, at the time of the April 20, 2016, hearing the Live Scan⁴ results of the of these parents, their adult adoptive children and the sister-in-law living at the home were still outstanding.

Here, the home into which J.M. is to be adopted has been a licensed foster family home for the past 20 years. Under Health & Safety Code section 1522, subdivisions (a) and (b), all persons residing in a licensed foster family home must pass a criminal background check. In addition, the parents had most recently adopted a child in 2014, and the social worker noted no problems with the criminal background check and Live

⁴ “Live Scan is an electronic fingerprinting system that provides a vehicle for quickly checking an individual’s criminal background. (See Health & Saf. Code, § 1522.04.)” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2005) 126 Cal.App.4th 144, 149, fn. 2.)

Scan. Finally, an initial check of the sister-in-law for criminal and child welfare history came back negative. As the social worker concluded in the adoption assessment, there does not appear to be any criminal history that would prevent adoption, and thus no legal impediment to adoption.⁵ Substantial evidence supports the court's conclusion that J.M. was likely to be adopted within a reasonable time.

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.

⁵ Father attempts to transform into a legal obstacle to J.M.'s adoption the fact that a seventh special needs child adopted by the prospective adoptive parents was deceased. However, the record contains not the slightest hint that the adoptive child died because of any action or inaction by the prospective adoptive parents. Father also points to a general neglect referral regarding the home from December 30, 2015, alleging discrepancies between the medication administered at the home and the medicine logs. However, the referral was closed as unfounded on February 23, 2016, after the prospective adoptive mother and the nursing staff were able to show the medicine was administered according to doctor's orders. Neither point dissuades us from concluding the juvenile court's orders are supported by substantial evidence.