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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JACOB V., a Person Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

F.V.,

Defendant and Appellant.

F069189

(Super. Ct. No. 13CEJ300113)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Mary D. Dolas,
Commissioner.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant.

Daniel Cederborg, County Counsel, and Amy K. Cobb, Deputy County Counsel,
for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J., and Franson, J.

Appellant F.V. (mother) appeals from the juvenile court's order terminating her parental rights under Welfare and Institutions Code section 366.26¹ as to her eight-year-old son, Jacob V. Mother contends there was insufficient evidence Jacob is adoptable. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In April 2013, the Fresno County Department of Social Services (department) detained then seven-year-old Jacob and his two-year-old sister and initiated the underlying proceedings after mother was arrested for mayhem. Mother had a violent altercation with a neighbor after Jacob disclosed he was sexually molested by his babysitter and the neighbor knew about the molestation. Mother confronted the neighbor, the altercation ensued, and mother bit a chunk of flesh out of the neighbor's cheek. At the time, Jacob's father was incarcerated in state prison. The children were placed together in foster care.

By the time Jacob was detained, he had endured significant abuse and neglect in mother's care. According to a close relative, mother was diagnosed with bipolar disorder but did not take her prescribed medication. In addition, mother had a long history of methamphetamine use and a propensity for violence. She reportedly cursed at Jacob, often calling him a "mother f*****" and was "drugged up all the time."

Jacob's paternal aunt and uncle, Christina and Ralph L., had witnessed Jacob's struggles through the years and had offered to take custody of him and his sister. They said they had a good relationship with the children as mother and the children lived with them from February to May of 2012. Prior to that and until October 2012, the L.'s also had contact with mother and the children on an almost daily basis.

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

In April 2013, the department moved the children to another foster home because of Jacob's aggressive behavior toward his sister. He was putting her in the closet and punching her for no reason. He was also taking her diaper off and touching himself. Jacob stated he was sad because he was taken from mother. His behavior however did not stabilize and he was involuntarily hospitalized for five days in a psychiatric center. After his discharge, he was placed in a group home.

In May 2013, mother was released from custody. She did not contact the department, inquire about the children, or request visitation. That same month, Jacob was clinically evaluated for his aggressive behavior and diagnosed with bipolar disorder with psychotic features, reactive attachment disorder, intermittent explosive disorder, and opposition defiant disorder and prescribed psychotropic medication.

In August 2013, an investigator with Fresno Child Advocates assessed the L.'s home for placement of the children. The L.'s stated they wanted Jacob and his sister placed with them and were willing to adopt them. Mrs. L. planned to terminate her employment so she could be the children's primary care provider. The L.'s also stated they were aware of Jacob's behavioral problems and had witnessed his behavior when the family lived with them. They said Jacob responded well to their correction and they were willing to participate in any services he needed and to dispense his medication as directed.

In November 2013, mother appeared in custody at a contested dispositional hearing. The juvenile court denied mother and the fathers of the children reunification services and set a section 366.26 hearing to consider a permanent plan for the children. Mother challenged the juvenile court's setting order by filing a writ petition, which we dismissed (F068350).

Also in November 2013, mother was placed on felony probation for three years and entered a nine-month inpatient substance abuse treatment program. In December 2013, she began visiting the children once a month under supervision.

In its report for the section 366.26 hearing, the department recommended the juvenile court terminate mother's reunification services and free Jacob and his sister for adoption by Mr. and Mrs. L. Under a section of the report entitled "Adoptability Assessment," the department opined that Jacob's sister was generally adoptable because of her age but that Jacob was not generally adoptable because of his behavior. Nevertheless, the department described both children as "lovable, friendly children" who appeared to have formed a "strong parent/child relationship" with the L.'s. For their part, the L.'s were committed to and loved the children. They stated, "[We] want the children to stay with us. [We] want to give the children a loving family and a stable home. The children deserve a good life." Jacob called the L.'s "mom, dad, tia and teo." He stated, "I love tia T and teo R. and I want to stay with them."

As for mother, the department reported that she had a relationship with Jacob and his sister and they knew she was their mother. However, they did not have a parent/child relationship with her.

In addition, the department reported that Jacob demonstrated progress and challenges while in the L.'s care. His school attendance and behavior had significantly improved. However, in October 2013, he required crisis intervention for suicidal and self-injurious behavior. He was also found looking at a pornographic website. The L.'s developed a safety plan for Jacob with the assistance of mental health providers and consulted a therapist about the pornography. Jacob was under the care of a psychiatrist and therapist and the family received counseling support on a weekly basis.

In April 2014, the juvenile court conducted a contested section 366.26 hearing. Mother appeared and testified. She said the children were affectionate with her. Jacob

hugged and kissed her and talked about them getting a new apartment. Mother was enrolled in a parenting class and receiving inpatient substance abuse treatment. She testified that she was learning about substance abuse and gave specific examples.

At the conclusion of the hearing, the juvenile court found that Jacob and his sister were likely to be adopted and that it would not be detrimental to them to terminate parental rights. In so ruling, the juvenile court stated:

“I was surprised by the Department’s statement in the report about [Jacob] being generally not adoptable. I think generally when you look at some of the behaviors, that, in itself, can make a finding that he’s generally not adoptable, but if you read carefully through the entire report ... I think it identifies that there has been marked improvement in Jacob’s behavior based on the services that have been provided as well as the [consistency] and routine that he’s experienced in his current placement. [¶] ... [¶]

“The Court notes that ... since being placed [with the L.’s] ... [Jacob has improved markedly] in his academics including ... his ability to read and write, ... his attendance at school[,] ... his ... social skills and the ability to make friends and play accordingly with friends.... [His] level of aggressiveness and tantrums have been greatly reduced, and although there has been some struggle, he has been shown to adapt to a consistent routine ... which has led to some stability and structure which appears to have contributed to the marked improvement in all those areas that have been identified.”

Consequently, the juvenile court terminated mother’s parental rights as well as those of the children’s fathers. This appeal ensued.

DISCUSSION

Mother contends the juvenile court’s finding that Jacob was likely to be adopted is not supported by substantial evidence. Specifically, mother contends the juvenile court did not have sufficient information to determine Jacob’s adoptability. We disagree.

In order to terminate parental rights, the juvenile court must find by clear and convincing evidence the child is likely to be adopted. (§ 366.26, subd. (c)(1).) We review the factual basis of a termination order to determine whether the record contains

substantial evidence to support it. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

We conclude the L.'s willingness to adopt Jacob provided substantial evidence to support the juvenile court's conclusion that Jacob is likely to be adopted within a reasonable period.

In determining adoptability, the juvenile court's focus is on the child's age, physical condition, and emotional state and how these characteristics affect a prospective parent's willingness to adopt the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) There must be clear and convincing evidence of the likelihood that adoption will take place within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.)

The availability of a prospective adoptive parent is relevant to whether a child is adoptable. Usually, "the fact that a prospective adoptive parent has expressed interest in adopting the [child] is evidence that the [child's] age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the [child]. In other words, a prospective adoptive parent's willingness to adopt generally indicates the [child] is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family.' [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491, italics omitted.)

Mother contends the L.'s willingness to adopt Jacob alone is insufficient to find him adoptable given the severity of his emotional problems. The juvenile court required much more information, she further contends, before making that determination. For example, it required more information about the L.'s understanding of Jacob's emotional and behavioral needs and how to meet them and their commitment to conclude the adoption.

In our view, the juvenile court had ample information on which to determine that the L.'s were committed to adopting Jacob. They were not strangers wanting to adopt a child. They were Jacob's relatives who loved him and had a relationship with him. They

had spent a significant amount of time with him and observed his maladaptive behavior firsthand. They also knew he had several psychiatric diagnoses and had some idea as to the severity. Notably, they were there when Jacob was suicidal and injuring himself and they were the ones who found him accessing pornography. Further, the L.'s had already taken on the responsibility of helping Jacob manage his behavioral and mental health problems. They helped dispense his medication, consulted with his mental health providers, and implemented safety measures to address his aggressive and self-destructive behavior.

In support of her contention the juvenile court lacked sufficient information to determine Jacob's adoptability, mother cites *In re Brian P.* (2002) 99 Cal.App.4th 616 (*Brian P.*), a termination of parental rights case resulting in reversal on the finding of adoptability. We find *Brian P.* wholly distinguishable on a critical fact. The juvenile court in that case did not have the benefit of an adoption assessment report, which the *Brian P.* court stated "would have presented the kind of facts needed to support a finding of adoptability." (*Id.* at p. 624.) In this case, the juvenile court *had* an adoption assessment report and the report provided sufficient evidence for the court to determine Jacob's adoptability. We find no error.

DISPOSITION

The judgment is affirmed.