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

In re LEE P, et al., Persons Coming Under the
Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

E.V.,

Defendant and Appellant.

F072780

(Super. Ct. Nos. JJV068235A,
JJV068235B, JJV068235C)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Tulare County. Hugo J. Loza,
Commissioner.

Carol Koenig, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kathleen Bales-Lange, County Counsel, and John A. Rozum and Amy-Marie
Costa, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Peña, J. and Smith, J.

Appellant E.V. (mother) appeals from the juvenile court's order terminating her parental rights under Welfare and Institutions Code section 366.26¹ as to her children, now five-year-old Lee, four-year-old L.P (a son), and 22-month-old Richard. Mother contends there was insufficient evidence the children were adoptable. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In September 2014, mother contacted the Tulare County Health and Human Services Agency (agency) requesting assistance because she was homeless, using methamphetamine, and could not feed her children. She had arranged for two older children to be cared for by relatives but was unable to arrange the same for then four-year-old Lee, two-year-old L.P., and two-month-old Richard.

A social worker for the agency took the children into protective custody and placed them together in foster care. The agency filed a dependency petition on the children's behalf, which the juvenile court sustained. The court ordered the children removed from mother's custody and ordered her to be assessed for mental health and substance abuse services and submit to random drug testing. The court also ordered reunification services for Lee and L.P.'s father (hereafter "father") but not for Richard's alleged father.

Mother did not comply with her services plan and continued to use methamphetamine. The agency recommended the juvenile court terminate her reunification services and proceed to permanency planning for the children who were doing well in foster care and had developed a strong relationship with their foster parents. The agency informed the court that father passed away during the reunification period.

In May 2015, the adoption social worker completed an adoption assessment of the children. She indicated the children had been in foster placement for eight months and

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

were with a prospective adoptive family, a reference to their foster parents. The social worker recommended adoption as the permanent plan for the children. She also indicated that it would be detrimental to remove the children from their foster parents.

In June 2015, the juvenile court conducted the six-month review hearing. Mother did not appear. Her attorney submitted on the agency's recommendation and the juvenile court terminated her reunification services and set a section 366.26 hearing for the following September. Mother did not file a writ petition.

In the intervening months, there were several significant developments. A psychologist diagnosed Lee with borderline intellectual functioning. He was evaluated because his foster mother was concerned about his school performance. The psychologist described Lee as shy but well-behaved, cooperative and eager to please. He did not meet the criteria for intellectual disability and therefore did not warrant regional services. However, the psychologist believed he may need special education and mental health services and play therapy. Also, mother gave birth to a son who was born drug exposed. She was homeless and unable to care for him so the agency took him into protective custody and placed him with a foster family. In addition, the children's prospective adoptive parents decided that they could not adopt the children because they had adopted two children two years earlier. In August 2015, the agency conducted a team decision meeting to decide where to place the children. Mother, one of the prospective adoptive parents and potential adoptive parents attended the meeting. They agreed to transition Lee, L.P. and Richard into the home of the potential adoptive family who already had placement of the children's baby brother. The plan was to begin weekly visits in late August and place the children in their new home in late September.

In September 2015, the agency filed its report for the section 366.26 hearing, recommending the juvenile court select adoption as the permanent plan. The agency reported that the children were medically sound and developmentally on target except for Lee, who was receiving weekly therapy. The agency opined the children were adoptable,

given their age, mental health status and general good health. The agency informed the juvenile court that the potential adoptive parents wanted to adopt the children. The family had been visiting the children weekly for the previous four weeks and demonstrated an awareness of the children's background, the individual needs of each child and an ability to address them successfully. The children expressed great interest in the family and stated that they enjoyed their time with the family and their baby brother. They asked when they could visit their siblings again and sleep over. The agency also stated the children were adoptable because there were other potential adoptive families if the potential adoptive family decided not to adopt.

In October 2015, the juvenile court conducted a contested section 366.26 hearing and mother testified. The issue of whether the children were adoptable was not raised. At the conclusion of the hearing, the juvenile court found the children were likely to be adopted and terminated mother's parental rights.

This appeal ensued.

DISCUSSION

Mother challenges the sufficiency of the evidence to support the juvenile court's finding that the children are adoptable. She asserts the children are not "generally" adoptable because they are a closely bonded sibling group, they are strongly bonded to their former prospective adoptive parents and Lee has mental health and educational needs. She further asserts the children are not adoptable because there is no evidence there are approved families willing to adopt them. We conclude substantial evidence supports the juvenile court's finding that the children are adoptable.

"Once [the juvenile court] sets a hearing pursuant to section 366.26 to select and implement a permanent plan for a dependent child, the [agency] must prepare an assessment [citations], frequently referred to as an adoption assessment. Such an adoption assessment provides the information necessary for the juvenile court to determine whether it is likely the child will be adopted [citations]..." (*In re G.M.* (2010))

181 Cal.App.4th 552, 559 (*G.M.*.) The assessment must include “[a] preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent.” (§ 366.21, subd. (i)(1)(D).) The court may designate a current caregiver as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. (§ 366.26, subd. (n)(1).)

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).) The statute 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.)

In determining adoptability, the juvenile court assesses 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 (*Sarah M.*.) “To be considered adoptable, a [child] need not be in a prospective adoptive home and there need not be a prospective adoptive parent “waiting in the wings.” [Citation.] Nevertheless, ‘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.’” (*In re R.C.* (2008) 169 Cal.App.4th 486, 491 (*R.C.*), italics omitted.)

Though appellate courts have discussed adoptability in terms of whether children are “generally” or “specifically” adoptable,² the juvenile court is not required to make

² A child is “generally” adoptable if the child’s traits, e.g., age, physical condition, mental state and other relevant factors do not make it difficult to find an adoptive parent.

that distinction. Section 366.26 merely requires the juvenile court to determine if the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1).) Further, “[c]ase law does not require evidence of additional approved families who are available and willing to adopt the children. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.)

On appeal, we review the juvenile court’s finding that a child is adoptable for substantial evidence. (*R.C., supra*, 169 Cal.App.4th at pp. 486, 491.) “[O]ur task is to determine whether there is substantial evidence from which a reasonable trier of fact could find, by clear and convincing evidence, that the [child] is adoptable. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*Id.* at p. 491.)

Mother contends the children may be difficult to place for adoption because they are a sibling group. She does not, however, specify why that is so. Instead, she cites section 366.26, subdivision (c)(3), which does not apply. The subdivision allows the juvenile court to identify adoption as the permanent plan without terminating parental rights when there is no identified or available prospective adoptive placement for the child because the child is a member of a sibling group. In this case, however, there was an identified prospective adoptive family willing to adopt all of the children. Further, the prior prospective adoptive parents had custody of the children for eight months and would have adopted them but for the fact they already had two adopted children. Thus, there is every reason to believe the children would be adopted as a sibling group within a reasonable time.

Mother further contends the children are not adoptable because of Lee’s borderline intellectual functioning. She acknowledges the adoption social worker deemed the children adoptable but points out that she did so based on the prior prospective adoptive

A child is “specifically” adoptable if the child is adoptable only because of a specific caregiver’s willingness to adopt. (*R.C., supra*, 169 Cal.App.4th at pp. 492-494.)

parents' willingness to adopt and before Lee was diagnosed. She also acknowledges that the agency opined the children were adoptable in its report for the section 366.26 hearing but points out the agency never stated the children were "generally" adoptable. Mother also contends the potential adoptive family was unaware of Lee's diagnosis and had not spent sufficient time with him to discern it. The record does not support mother's contentions. The agency maintained its opinion that the children were adoptable at all times and, as we clarified above, there is no need to qualify the children's adoptability as "general." Further, according to the agency, the potential adoptive parents were aware of the children's background and their individual needs. Presumably, that included information about Lee and his developmental condition.

Mother also contends the children are not adoptable because they were going to be emotionally traumatized when removed from their prospective adoptive parents and it was too soon to know how that would impact their adoptability. Whether the children would react adversely and to what extent is purely speculative and does not detract from the evidence that the children were likely to be adopted. Further, a fair reading of the evidence indicates that the children would transition smoothly into the potential adoptive family's home. The children enjoyed spending time with their new family and baby brother and asked to spend more time there.

We conclude substantial evidence supports the juvenile court's finding that the children are adoptable. They were physically healthy and Lee's borderline cognitive ability was not so severe as to render him difficult to place. In fact, his placement history proved otherwise. In addition, he was participating in therapeutic services and was presumably cooperative. Moreover, the children were bonded to each other and were bonding with their baby brother during visits and were asking to spend more time with the potential adoptive parents. Finally, the potential adoptive parents were well aware of the children's needs and the responsibility of adoption and were committed to adopting them.

DISPOSITION

The order terminating mother's parental rights is affirmed.