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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re TYRONE A. et al., Persons Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JOEL A. et al.,

Defendants and Appellants.

G046013

(Super. Ct. Nos. DP013385
& DP013386)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheryl
L. Leininger, Judge. Affirmed.

Michael D. Randall, under appointment by the Court of Appeal, for
Defendant and Appellant Joel A.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant
and Appellant Jennifer A.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio
Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

Jennifer A. (Mother) and Joel A. (Father) appeal from a judgment terminating their parental rights over their children Tyrone and Cheyenne. They contend there is insufficient evidence to support the juvenile court's finding the children are adoptable, but we disagree and affirm the judgment.

FACTS

Mother and Father have a history of drug abuse, criminal behavior and domestic violence. They also have had extensive involvement with the Orange County Social Services Agency (SSA) over the years. In fact, they both have had children removed from their care during previous relationships.

The present case arose in May 2006, after father hit Tyrone, then age six, and Cheyenne, then age three, with a belt. After allegations of physical abuse, failure to protect, substance abuse, domestic violence, and past abuse of siblings were sustained, the children were declared dependents of the court and placed with their maternal grandmother. Mother was granted reunification services and allowed to visit the children, but father was denied services and subsequently imprisoned for auto theft and assault.

During the first 12 months of this case, Tyrone displayed aggressive and oppositional behavior. He was diagnosed with attention deficit hyperactivity disorder (ADHD) and bipolar disorder and was found to have a learning disability which necessitated an individualized education program (IEP). Like Tyrone, Cheyenne required an IEP, to treat her delayed speech and language problems; she could be difficult and defiant at times. Both children were physically healthy, but they also showed signs of developmental delay in terms of maturity and cognition.

In May 2007, the maternal grandmother moved to a new apartment with the children, and Mother was allowed to join them there. Throughout the year, the children actively participated in therapeutic counseling and made progress on their behavioral and educational issues. However, Tyrone often appeared depressed and angry and had

difficulty with his self-esteem. He also struggled with his communication skills and was diagnosed with oppositional defiant disorder (ODD). Cheyenne made good progress in her speech therapy and was on track to attend regular kindergarten, but she had trouble with her small motor coordination, which hampered her writing.

In mid-2007, Mother regained custody of the children and family maintenance services were ordered. In addition, Father was released from jail and granted weekly visitation. Over the next nine months, the children developed at age-appropriate levels. Cheyenne made strides in counseling and her speech continued to improve, but she was increasingly defiant toward Mother. Tyrone struggled with impulse control and anger management, yet was generally well behaved at school and cooperative in counseling.

In early 2008, Father's visitation was increased from two to four hours per week. Around the same time, Mother left a voicemail for Father's attorney in which she appeared to threaten to kill the children. When police and social services responded to her house, she was erratic and aggressive. The children were taken into protective custody, and the court sustained a supplemental jurisdictional petition against the parents. However, the children were later returned to Mother's care under a conditional release agreement, and family maintenance services were resumed.

In 2009, Tyrone began showing signs of academic progress. He continued to receive counseling services and remained developmentally on target. During summer camp, he displayed few behavioral issues and was recognized as a "star camper." Cheyenne was also doing better in school. However, her increased oppositional behavior necessitated further counseling. Father, meanwhile, was jailed for battering Mother and possessing drugs and was not released until the spring of 2010.

Around the time Father was getting out of jail, Tyrone and Cheyenne, then ages ten and seven respectively, were detained because of ongoing concerns that Mother was using drugs and physically abusing them. After a brief stay in a foster care facility,

the children were placed in the foster home of Ruth Carter. In the wake of this placement, the case plan was changed from family reunification to long-term foster care. However, Mother and Father were still allowed to visit the children every other week.

While in Carter's care, Cheyenne was diagnosed with ADHD and prescribed medication. Although she struggled during the 2009-2010 school year, she made improvements in reading, writing and arithmetic. She still displayed oppositional behavior at times, but overall, she was doing very well in Carter's care.

During the course of the 2010-2011 school year, the children remained with Carter. Tyrone's school performance improved and he generally appeared happier and less burdened. However, he was still rather moody and prone to angry outbursts, especially after visitation sessions with his parents. His therapist reported, "Tyrone's irritability, depressed mood, and feelings of hopelessness result in arguing with [Carter] about directions and rules, which hinder and interrupt [his] daily activities." To help alleviate these issues, Tyrone attended a weekly social skills group and met with a therapeutic behavioral services coach.

Cheyenne, who had become obese, developed better eating habits in Carter's home and lost 10 pounds. Her grades were still below average, but her teachers reported she was trying very hard and making sound improvements scholastically. She was also less irritable and able to concentrate better, due to her ADHD medication. Despite their behavioral and educational problems, the children were reported to be "thriving" in Carter's care.

In early 2011, Carter told SSA she wanted to adopt the children. On the heels of that announcement, SSA changed the case plan from long-term foster care to adoption, and the court scheduled a hearing to decide on a permanent placement plan for the children. (Welf. & Inst. Code, § 366.26.) Tyrone's behavioral problems persisted in Carter's care, though. One time, he wrapped Carter's dog in clothing and stuffed it into a drawer. And on another occasion, he was found alone near the dog after it was heard

yelping and found bleeding from its anus. He also told his social worker that he heard voices telling him to do bad things.

In light of these developments, Tyrone's adoption prospects were downgraded slightly. However, his court-appointed special advocate (CASA), Kathie Colbert, expressed interest in adopting him. Colbert had worked with Tyrone extensively throughout the case and was very familiar with his background and his psychological and behavioral issues. In June 2011, she resigned as his CASA so she could take him in, and the following month, he was placed in her care. Tyrone's therapist recommended that he undergo psychological testing, but due to a backlog, he was put on a waiting list.

Meanwhile, Cheyenne remained in Carter's home. Although school continued to pose challenges for her, her teacher reported it had "been a pleasure watching [her] transform into a motivated and determined student." During the summer of 2011, she attended several camps and continued to grow closer to Carter's family. She said she had no interest in seeing or talking to her parents, and Tyrone said he only wanted to visit with them once a month, at the most. Both children indicated they were comfortable living apart and being adopted by different parents.

In July 2011, SSA initiated a home study to assess Carter's suitability to adopt Cheyenne. It discovered that Carter had previously adopted four children with special needs, but she also was the subject of several child abuse reports. For example, in 2001, it was reported she had exposed her children to a substantial risk by allowing them to spend time alone with her stepfather, who was a registered sex offender. The situation was investigated and it was determined Carter was not aware her stepfather was a sex offender. She agreed not to allow him to have any further contact with her children, and the report was classified as unfounded for substantial risk.

In addition, in 2007, it was reported Carter's employer had exposed himself to one of her children on several occasions while she was cleaning his house. When Carter learned of this, she stopped working for the man. Also in 2007, Carter let one of

her older daughters move into her house with her boyfriend. Carter did not know it at the time, but the boyfriend had committed an act of sexual abuse when he was younger. Two years later, in 2009, Carter's 16-year-old daughter was raped by a 19-year-old. The incident was investigated by SSA but eventually turned over to the police.

Carter was not determined to have knowingly placed her children at substantial risk of harm in connection with any of the aforementioned incidents, but SSA was concerned about her ability to protect Cheyenne. When interviewed by SSA, Carter was very receptive to that concern. She gladly accepted a referral for in-home counseling and said she would cooperate fully with any recommendations that were made to her, because she loved Cheyenne and wanted to adopt her very much.

In fall 2011, Tyrone's IEP team determined he should retake sixth grade, in order to allow him to mature emotionally. He was also taken off his medication for bipolar disorder and ODD and placed on a new medication for his ADHD. Although he was generally doing well in Colbert's care, one time after Colbert's husband asked him to do some chores, he became defiant and broke down in tears when he was told to go to his room. This incident occurred following a visit between Tyrone and his parents. Tyrone made it clear he was opposed to continued visitation and told his social worker he wanted to "stay with [Colbert] forever."

The children's permanent placement hearing began on October 19, 2011. Testifying in chambers, Cheyenne told the judge she liked living with Carter, whom she called mom, and wanted to continue living with her. She said it would be fine if Carter adopted her, and she would be sad if she had to move out of her house.

Also testifying in chambers, Tyrone said he liked living with Colbert, and it would be perfect if Colbert and her husband adopted him. He also said that he would be happy if he never saw his parents again, because they had let him down.

The children's social worker Cynthia Enriquez testified she originally thought Tyrone might be difficult to place for adoption because of his age and behavioral

issues. However, given Colbert's desire to adopt him and the fact he was doing well in her care, Enriquez believed it was probable he would be adopted. Enriquez acknowledged SSA could not formally classify Tyrone as being adoptable, because he had only been in Colbert's home for three and one-half months. Nevertheless, Enriquez was encouraged by the fact Colbert had demonstrated a strong commitment to Tyrone, and Colbert had informed her that her husband was willing to adopt Tyrone. Enriquez did not know if Tyrone had undergone the psychological testing that was recommended for him, but she said such testing was for the purposes of full disclosure to the prospective adoptive parents and was not determinative of the child's adoptability.

Speaking to Cheyenne's situation, Enriquez opined she was generally adoptable based on her age, disposition and demonstrated coping skills. Enriquez also believed that Carter would be able to safely care for Cheyenne and that her home study would eventually be approved.

In rendering its decision, the juvenile court described the children as responsive, honest and "frankly adorable." While acknowledging they had some emotional, behavioral and educational issues, the court recognized they had many positive attributes and had made significant progress over the course of the case. The court also found Colbert and Carter were suitable adoptive parents, and the children were doing well in their care. In light of all the circumstances, the court found the children were specifically adoptable, and Cheyenne was generally adoptable. Finding no exception to termination applicable, the court terminated Mother and Father's parental rights and freed the children for adoption.¹

DISCUSSION

Mother and Father contend there is insufficient evidence to support the juvenile court's finding Tyrone and Cheyenne are adoptable. We disagree.

¹ In conjunction with this ruling, the court denied Father's request for custody of the children.

Termination of parental rights is authorized only if the court finds the children are adoptable. (Welf. & Inst. Code, § 366.26, subd. (c)(1).) However, “[a]lthough a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is ‘likely’ that the child will be adopted within a reasonable time. [Citations.] We review that finding only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion. It is irrelevant that there may be evidence which would support a contrary conclusion. [Citations.]” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292; see also *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562 [“We give the court’s finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming.”].)

The issue of adoptability turns on whether the child’s age, physical condition, and emotional state make it difficult to find the child an adoptive home. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) “Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’ [Citations.]” (*Ibid.*) Nonetheless, “[u]sually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.* [Citation.]” (*Id.* at pp. 1649-1650.)

Even when a child is not considered to be generally adoptable, he or she may be found to be “specifically” adoptable, if a person has been identified who is willing to adopt the child. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408.) In that situation, “the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent’s adoption and

whether he or she is able to meet the needs of the child.’ [Citation.]” (*In re Jose C.* (2010) 188 Cal.App.4th 147, 158.)

In challenging the juvenile court’s finding Tyrone is specifically adoptable, Mother and Father argue there is insufficient evidence Colbert and her husband were committed to adopting him, aware of his special needs, or capable of handling those needs. However, Colbert had spent about five years working as Tyrone’s CASA, and she was involved in nearly every aspect of the case. As the juvenile court observed in making its ruling, this exposed her to the full range of Tyrone’s emotional, behavioral and educational issues. Indeed, as the court found, “There is probably no one who knows [Tyrone] better than she does.”

In addition to being Tyrone’s CASA for nearly five years, Colbert was also Tyrone’s caretaker for three and one-half months before the permanent placement hearing took place. She has demonstrated a deep commitment to his care and well-being, and she also reported her husband is onboard with adopting Tyrone. Given the Colberts’ experience with Tyrone and their stated intentions, there is substantial evidence to support the juvenile court’s finding they are committed to adopting Tyrone and aware of his special needs.

There is also substantial evidence the Colberts are capable of meeting Tyrone’s special needs. Because Tyrone had been in their home for less than six months when the permanent placement hearing took place, a formal home study had not been conducted to formally assess their ability to care and provide for Tyrone. However, “where there is no evidence of any specific legal impediments to completing the adoptions process, parental rights may be terminated to a specifically adoptable child regardless of whether a home study has been completed.” (*In re Brandon T., supra*, 164 Cal.App.4th at p. 1410.)

Here, Mother and Father have not identified any specific legal impediment that would prevent the Colberts from adopting Tyrone. They correctly point out that, at

the time of the permanent placement hearing, Tyrone had yet to undergo the psychological testing that had been recommended for him. As the juvenile court recognized, the results of such testing would be helpful as far as understanding his behavior and assessing his future needs. (See generally *In re Michael G.* (2012) 203 Cal.App.4th 580, 590.) However, the record is replete with information regarding Tyrone's emotional state and his amenability to counseling and psychological treatment. Throughout the case he has been receptive to therapy, and he has shown progress in terms of improving and controlling his disruptive behavior. Although he has been identified as a candidate for psychological testing, there is nothing in the record to suggest the results of such testing would constitute a legal obstacle to the Colberts adopting him or dissuade them from doing so. After all, Colbert resigned from her position as Tyrone's CASA just so she could adopt him. After nearly five years on the case, it is reasonable to infer she knew what she was getting into when she made this decision. Considering as well that Tyrone very much wanted to be adopted by the Colberts, we have no occasion to disturb the juvenile court's finding he was specifically adoptable.

As for Cheyenne, Mother and Father argue that in light of her behavioral and educational issues, and given that she was already nine years old at the time of the permanent placement hearing, there is not substantial evidence to support the juvenile court's finding she is generally adoptable. However, the fact Carter has cared for Cheyenne for over a year and wants to adopt her is itself strong evidence of Cheyenne's adoptability. (*In re Sarah M., supra*, 22 Cal.App.4th at pp. 1649-1650.)

Moreover, the record shows Cheyenne has worked hard in school to overcome her learning disability, she has generally responded well to therapy and medication, and she has made a good adjustment into Carter's home. Her behavior and progress haven't been perfect throughout the case, but by all accounts, she has flourished in Carter's care and made great strides in terms of overcoming the obstacles in her life. Her ambition and record of improvement fully support the juvenile court's finding she is

generally adoptable. Because there is substantial evidence to support this finding, we need not consider whether she is specifically adoptable. (*In re R.C.* (2008) 169 Cal.App.4th 486, 494; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.