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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.H., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.L. et al.,

Defendants and Appellants.

G048236

(Super. Ct. Nos. DP020774 &
DP020775)

OPINION

Appeal from a postjudgment order of the Superior Court of Orange County,
Deborah C. Servino, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for
Defendant and Appellant S.L.

Daniel G. Rooney, under appointment by the Court of Appeal, for
Defendant and Appellant P.H.

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

* * *

S.L. (father) and P.H. (mother) challenge the court's finding made at the
Welfare and Institutions Code section 366.26 hearing that A.H. was likely to be adopted.¹
We affirm.

FACTS

The facts and court proceedings in this case leading up to the section
366.26 hearing are discussed in detail in an unpublished opinion by this court, of which
we take judicial notice. (*Shane L. v. Superior Court of Orange County* (Mar. 13, 2013,
G047759).) In that opinion, we denied the parents' petition for extraordinary relief from
the court's order terminating their reunification services and setting a section 366.26
hearing. We also denied the parents' request to stay the section 366.26 hearing.

On appeal, the parents challenge only the court's finding that A.H. was
adoptable.² Therefore, our factual recitation focuses on the facts relevant to A.H.'s
adoptability.

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

² The parents do not challenge the court's order as to A.H.'s brother, who
was also the subject of the dependency proceeding.

“In January 2011, mother gave birth to [A.H.] in a convenience store parking lot. Both parents claimed not to know mother was pregnant and admitted to daily marijuana use. [A.H.] tested positive for marijuana and had trouble breathing and poor coloring. He suffered brain damage and an infection requiring antibiotic treatment.”
(*Shane L. v. Superior Court of Orange County, supra*, G047759.)

A.H. was diagnosed with Periventricular Leukomalacia characterized by acute ischemia in the periatlial white matter of his brain. Then, at two months old, he was diagnosed with Auditory Neuropathy Spectrum Disorder that had probably occurred from a lack of oxygen and caused him to hear only static-like sound. In its six-month status review report, the Orange County Social Services Agency (SSA) reported A.H. was being closely monitored due to his hypoxic episode at birth, which could lead to some neurological deficits.

At two years old, A.H. was developmentally on track with the exception of possible hearing loss. He smiled, liked to be held and played with, and was attempting to talk, using many monosyllabic words. He was likely to have developmental issues in the future, which would be addressed by school district services. He had been approved by the Ear, Nose and Throat Department of the University of California, Irvine (UCI), to start a cochlear implant evaluation. Once approved for the surgical procedure, he would undergo an intensive therapy program for one year. He had a good prognosis for hearing and speech by age four if the post surgical program was strictly adhered to. The child was a cute two-year-old, whose mental and emotional status had not been assessed.

In March 2013, when the child was a little over two years old, he was placed in the home of his prospective adoptive parents. The prospective adoptive mother was familiar with A.H. and his needs, as she had been in touch with him since birth. She understood his special needs, especially regarding his auditory neuropathy and his need to have the corrective cochlear implants. The homestudy for the prospective adoptive parents had not yet begun. Mother and father had attended a Team Decision Meeting in

February 2013 and had agreed that the prospective adoptive parents would be a good family for A.H. if mother and father were unable to reunite with him.

SSA found A.H. was adoptable and recommended that mother's and father's parental rights be terminated and that A.H. be referred for adoption.

At the section 366.26 hearing, SSA's counsel and minor's counsel argued A.H. was adoptable. Neither father nor mother argued A.H. was not adoptable. The court found A.H. was likely to be adopted and that he was generally and specifically adoptable. The court found inapplicable the section 366.26, subdivision (c)(1) exceptions to termination of parental rights. The court ordered mother's and father's parental rights to be terminated and A.H. to be placed for adoption. The court ordered adoption as A.H.'s permanent plan.

DISCUSSION

Substantial Evidence Supports the Court's Finding A.H. was Likely to Be Adopted

Father and mother challenge the court's finding A.H. was likely to be adopted. They argue SSA failed to provide the court with sufficient information about the prospective adoptive parents (including their knowledge of A.H.'s conditions and their training and ability to meet his special needs), particularly because A.H. had been placed in the prospective adoptive home for less than a month when the court made the adoptability finding. The only issue on appeal is whether substantial evidence supports the court's finding A.H. was likely to be adopted.³

³ Here, father and mother have waived any objection to the sufficiency of SSA's adoption assessment by failing to object below. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 622.)

“The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time.”⁴ (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060.) “‘Clear and convincing’ evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.” (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) “The question of adoptability posed at a section 366.26 hearing usually focuses on whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt that child.” (*In re Carl R.*, at p. 1061.)

“[I]t 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.’” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Indeed, under section 366.26, subdivision (c)(1), “[t]he fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.” “Conversely, the existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child’s age, physical condition, mental state, and other relevant factors 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 A.A.* (2008) 167 Cal.App.4th 1292, 1312.) “[T]here is no requirement that an adoptive home study be completed before a court can terminate parental rights. The question before the juvenile court [is] whether the child [is] likely to be adopted within a reasonable time, not whether any particular adoptive parents [are]

⁴ Section 366.26, subdivision (c)(1) provides in part: “If the court determines . . . by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.”

suitable. [Citation.] “[T]he question of a family’s suitability to adopt is an issue which is reserved for the subsequent adoption proceeding.” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.)

“Review of a determination of adoptability is limited to whether those findings are supported by substantial evidence.” (*In re Carl R., supra*, 128 Cal.App.4th at p. 1061.) “In reviewing the juvenile court’s order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence.” (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) The appellant bears the burden of demonstrating “that there is no evidence of a sufficiently substantial character to support the verdict.” (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Here, substantial evidence underlies the court’s finding A.H. was likely to be adopted. A.H.’s prospective adoptive mother had known him since birth and was familiar with his needs, and it appeared she would continue to advocate for his needs through UCI and Providence Speech and Hearing Center. The prospective adoptive mother had known A.H. for over two years and had been involved in his life. In a March 20, 2013 letter, the prospective adoptive mother stated that her entire family had “been very involved in the care of [A.H.] since he was placed in foster care at 2 weeks old.” While A.H. was likely to have developmental problems in the future, there was a good chance his hearing problem could be corrected with a cochlear implant. Furthermore,

“[n]owhere in the statutes or case law is certainty of a child’s future medical condition required before a court can find adoptability.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79.) A.H. had appealing characteristics. He participated in developmentally appropriate extracurricular and social activities. At two years old, he was developmentally on track, except for the possible hearing loss, and was using monosyllabic words. He was cute and liked to be held and played with.

The parents cite several cases where appellate courts reversed orders terminating parental rights, but those cases are distinguishable. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1203-1205 [finding of adoptability was based on the mother’s former boyfriend’s willingness to adopt; the former boyfriend had suffered domestic violence convictions and was listed as a perpetrator with Child Protective Services; the agency’s assessment did not consider the eight-year-old child’s close relationship with the mother, or his prosthetic eye, which required care and treatment]; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065 [evidence that “a few foster parents were *considering* adoption” was insufficient]; *In re Brian P.* (2002) 99 Cal.App.4th 616, 619, 624 [“juvenile court did not have the benefit of an adoption assessment report” regarding four-and-one-half-year-old “almost able to dress himself, and . . . now toilet trained” who had “begun to speak and [whose] gait ha[d] improved”]; *In re Asia L.* (2003) 107 Cal.App.4th 498, 511, 512 [“specialized placements” were required for seven-year-old who was “extremely hyperactive and in need of medication,” four-and-one-half-year-old who was “hyperactive, steals, lies, hoards material items not food, aggravates other children, and pulls her braids out of her head when upset”; “evidence regarding . . . adoptability [of two-and-one-half-year-old was] similarly weak”].) In any event, here, the issue is not whether there are similarities or dissimilarities with other cases. The only issue before us is whether the court’s finding of adoptability is supported by substantial evidence. It is.

DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.