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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re R.G., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

G049160

(Super. Ct. No. DP021584)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

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

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

No appearance for the Minor.

* * *

Mother D.S. appeals from an order terminating her parental rights to now six-year-old R.G. She raises only one ground: the court’s finding of adoptability was “premature.” We disagree and affirm.

FACTS AND PROCEDURAL HISTORY

In August 2011 the three-and-a-half-year-old child was taken into protective custody. The petition alleged mother had a long history of drug abuse, including methamphetamine use, to which the child was exposed. The child had also been physically abused and had witnessed domestic violence. The original evaluation of the child reported he displayed aggressive behavior, including use of profanity and kicking, hitting, and throwing things at people. He was also described as “articulate and bright,” and “cooperative,” and he spoke comfortably with the social worker. He described substantial and recurring physical abuse to himself and between mother and her boyfriend.

His foster mother acknowledged the child’s aggressive actions but also pointed out he could be redirected. His therapist reiterated his compliance with redirection and noted his good verbal ability and motivation to please others. She also concurred he behaved aggressively.

Despite services being ordered, by the time of the six-month review hearing mother had made no progress. The child, on the other hand, had made some progress. Although his therapist reported “a pattern of oppositional, defiant, and hostile behaviors,” “primarily” in the child’s “efforts to control others’ behavior,” the child had begun

responding to the foster mother and her directions. He was working on several aspects of behavior, including “his attention span, patience, self-calming and willingness to accept responsibility for his actions.” She believed that with more direction and care he would behave more appropriately. He was also developmentally in his age bracket with no learning disabilities. Despite the recommendation by the Orange County Social Services Agency (SSA) that services be terminated the court ordered them to continue.

The report for the 12-month review hearing stated mother had made little progress on her case plan. The child’s aggressive behavior at school had increased, including threats to his teacher, because of changes at his foster home. He displayed oppositional defiance disorder and reactive attachment disorder. Relations with his mother were difficult, but he had a “solid” relationship with his foster mother, responding well to “structured boundaries, [with] appropriate consequences” and when he clearly understood what was expected of him. The child began taking psychotropic medication to treat his aggression and stabilize his mood. At about the same time he became the only child living in the foster home, and the caregiver reported he was faring better. He also was less agitated and calmer at school. By the next month, as stated in the 18-month review report, his therapist reported the child was making “slow but uneven progress.”

In the adoptability report the child was described as “precocious . . . with an affinity for learning,” thriving when “intellectually stimulated.” As a result he enjoyed the library, zoo, and museums. He has a photographic memory and at school was above his grade level. He was healthy without any medical problems. His motor, language, and speech skills were “developmentally on target,” as manifested, in part, by his enjoyment of outdoor activities. Despite these qualities, he still “exhibit[ed] difficult and challenging behaviors.”

SSA recommended his adoptive family be experienced with the needs of the child and have two parents, one a stay at home to take care of his needs when returning from school. Before the hearing SSA found two potential placements.

At the 18-month review hearing in March 2013 the court terminated services and set the permanency hearing under Welfare and Institutions Code section 366.26.

Subsequently, SSA paired the child with a prospective adoptive father. SSA reported the prospective adoptive father had advised the transition had gone smoothly. The child's problematic behavior had decreased both at home and at school. The prospective father believed he and the child had bonded; the child called him "dad." The child was seeing a new therapist and attending a new school. The social worker reported the child appeared happy.

At the permanency hearing, the social worker testified the child was adoptable, "an amazing little boy." He is "smart," "sweet," "charismatic," with "an adorable smile," and "lights up a room." When he is himself, "he's an absolute pleasure to have around."

The child has a variety of services available to help with his "selfcontrol and impulse control and ability to handle anger." The child's conduct had "slightly" improved since placement although he had had a "rougher week or two" lately. But the prospective adoptive father, who had no "concerns" with the placement, is aware of the child's needs. He has taken classes on the child's behavioral diagnoses and had advised SSA he would do whatever it took to have the relationship and the adoption succeed.

Although SSA's initial recommendation was a two-parent home with a stay-at-home parent, the prospective father's schedule was such that he could accomplish being with the child when necessary.

Both SSA and the child's lawyer argued parental rights should be terminated. After the hearing and consideration of the SSA reports, the court found by clear and convincing evidence termination of parental rights was in the child's best interest, and the child was both adoptable and likely to be adopted.

DISCUSSION

Mother argues the finding of adoptability was premature, essentially a sufficiency of the evidence argument. In reviewing a finding of adoptability under the substantial evidence test (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562), we must look at the complete record in the light most favorable to the findings and draw all inferences to support the ruling (*In re R.C.* (2008) 169 Cal.App.4th 486, 491). We “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.]” (*Ibid.*) “Although 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.’ [Citation.]” (*In re D.M.* (2012) 205 Cal.App.4th 283, 294, fn. 3.)

“The issue of adoptability . . . focuses on the [child], e.g., whether the [child’s] age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.]’ [Citation.]” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) Where a prospective adoptive parent is willing to adopt a child with physical, mental, and/or emotional limitations, the court has a legitimate basis for finding such limitations “are not likely to dissuade individuals from adopting the [child].” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) “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.]” (*Id.* at p. 1650, italics omitted.)

Mother challenges the court’s finding of adoptability, at least at this stage of the proceedings, due to the child’s “severe emotional and behavioral problems.” In her argument she chronicles the child’s history from the time he was taken into protective custody until the date of the hearing.

While acknowledging that the child's transition from his foster mother to his prospective adoptive father was smooth with improvement in behavior at both home and school, mother then points out the child reverted to some of his old behaviors about a week later.

Mother also highlights that the prospective father has a psychologist, adoption worker and social worker "at his 'beck and call'" in addition to a therapist and psychiatrist at the school. But she notes the foster mother had essentially those same services and professionals available with little effect. She argues that while the child may have improved to some extent, his behavior was "far from corrected."

There are several problems with these arguments. The fact there are prospective adoptive parents alone is evidence of the likelihood of adoption. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.) Here, in addition to the prospective father with whom the child has been placed, there is another interested family.

In addition, the SSA reports and the social worker's testimony demonstrate the child has many good qualities. This is an important factor showing adoptability. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80.)

There is no question the child continues to have behavioral problems. But his conduct has improved, albeit slowly. Mother cites no case law to support her claim the child's behavior had to have been "corrected" as a condition to a finding of adoptability.

Moreover, there are ample resources available to assist both the prospective father and the child. That the services produced little improvement when the child was with the foster mother is not evidence they will not be helpful or effective going forward.

The social worker specifically relied on the availability of these services as support for the recommendation of a finding of adoptability. And, contrary to mother's argument on appeal, the social worker testified it would not be "more prudent" to delay placement to allow the child to "stabilize [in the] placement." "The possibility [the child]

may have future problems does not preclude a finding he is likely to be adopted.
[Citations.]” (*In re R.C., supra*, 169 Cal.App.4th at p. 492.)

Further, the prospective adoptive father is well aware of the challenges ahead, has educated himself, and is committed to the child and the success of the adoption.

Mother cites no authority to support her argument parental rights should not have been severed because the finding of adoptability was premature. Rather, at the permanency hearing the court must terminate parental rights and order the child placed for adoption if the required assessment and other evidence show “it is likely the child will be adopted” (Welf. & Inst. Code, § 366.26, subd. (c)(1).)

The record fully supports a finding it is likely the child will be adopted.

DISPOSITION

The order is affirmed.

THOMPSON, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.