

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.M., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

G052118

(Super. Ct. No. DP019595)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

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

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

## **INTRODUCTION**

Mark G., the father of the minor C.M., appeals from an order terminating his parental rights. He maintains on appeal that the juvenile court terminated his rights prematurely, because it did not have sufficient evidence that C.M. was either generally or specifically adoptable.

We affirm the order. The record amply supports the juvenile court's finding of C.M.'s adoptability. Mark did not carry his burden to present sufficient evidence to warrant the application of any exceptions to the statutory preference for adoption. Absent this evidence, the relevant statute required the juvenile court to terminate his parental rights.

## **FACTS**

C.M. first entered the dependency system in 2010 – when she was a year old – after her mother, Nicole M., was arrested. Nicole turned up at Hoag Hospital, high on drugs with C.M. in tow. Eventually C.M. and Nicole were reunited, after Nicole apparently cleaned up and completed the programs specified in her case plan. Mark, with whom Nicole no longer lived, refused to participate in his case plan until the very last minute and never underwent drug testing, despite an arrest record for drug possession and dealing.

C.M. was re-detained in 2012, at age three, after Nicole began using drugs again. This time C.M. was placed with Nicole's mother, Susan K., who lives in Illinois. At first, Susan hoped her daughter and C.M. could reunite once again, and therefore Susan agreed to be C.M.'s legal guardian. After C.M.'s second detention, however, Nicole basically disappeared. As of the time of the permanent plan hearing in 2015, she had not been present in court for a year and a half, and her attorney had not spoken to her in the interim. In the meantime, Susan expressed a desire to adopt C.M.

The permanent plan hearing took place on June 11, 2015. C.M. was then six years old. She had been living with Susan since September 2013; she was doing well

in school and engaging in extra activities such as swimming and dance. Susan's home study had not yet been completed. Mark testified at the hearing; Nicole was not present.

As of June 11, Susan was planning to move to Indiana in the near future. A move to Indiana would entail a new relative placement home study and a new adoption home study.

The juvenile court ruled that C.M. was both generally and specifically adoptable. Neither parent had presented sufficient evidence to invoke the parental bond exception to adoption as a permanent plan.<sup>1</sup> Both Nicole's and Mark's parental rights were terminated. Only Mark has appealed.

### **DISCUSSION**

Mark does not maintain he has a sufficiently strong bond with C.M. to overcome the statutory preference for adoption. Instead, he focuses on C.M.'s adoptability. He claims C.M. was neither generally nor specifically adoptable, and therefore his parental rights should not have been terminated.

We review the juvenile court's findings of adoptability for sufficient evidence. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) We afford the findings the benefit of every reasonable inference and resolve evidentiary conflicts in the judgment's favor. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.)

Welfare and Institutions Code section 366.26,<sup>2</sup> subdivision (c)(1), provides in pertinent 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." "The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it

---

<sup>1</sup> Mark's cause was probably not advanced by evidence that he had offered Susan \$10,000 to have C.M. live with him, give up the adoption plan, and tell the court she approved of returning C.M. to him.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

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.] [¶] Usually, 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.]” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

Mark’s main argument with respect to C.M.’s general adoptability is, in essence, that her attachment to Susan makes her not generally adoptable. He asserts that removing her from Susan’s care would be detrimental to C.M.; therefore, no other family would take her. And since Susan planned to move to Indiana – requiring a new round of studies before adoption could be approved – her ability to adopt C.M. was still up in the air, so his parental rights should not have been terminated.<sup>3</sup> Taking this argument to its logical conclusion, if Susan’s Indiana studies were completed successfully, C.M. would become generally adoptable again.

C.M.’s general adoptability does not depend on whether Susan stays in Illinois or moves to Indiana. It does not depend on whether Susan can pass an adoptive home study. It depends on C.M.’s personal characteristics and whether they would appeal to a potential adoptive family. The juvenile court, referring to C.M. as “an adorable, well adjusted, healthy and athletic six-year-old girl,” found that they would. Substantial evidence supports this finding. Even Mark’s trial counsel agreed that C.M. was generally adoptable.

Of course, removing C.M. from Susan’s care would be in all ways undesirable, considering the strength of their attachment. But this is not the criterion of

---

<sup>3</sup> Mark does *not* argue that Susan would fail a home study or relative placement study in Indiana, only that they have not happened yet.

general adoptability. The question before the juvenile court is whether a child's characteristics would make it difficult for SSA to find someone to adopt him or her. C.M.'s attachment to Susan does not create this kind of difficulty. Certainly it would be better if Susan and C.M. could remain together, but there are no guarantees in life. Susan could become disabled in such a way that she could no longer care for C.M. before the adoption process was completed. If that happened, would potential adoptive parents be interested in C.M.? If they would be, she is generally adoptable. (See *In re R.C.* (2008) 169 Cal.App.4th 486, 492 [possibility of future problems does not preclude finding of adoptability].)

With respect to general adoptability, Susan's presence in C.M.'s life is relevant only as evidence that C.M.'s age and characteristics are not likely to dissuade individuals from adopting her. (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 493-494; *In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.) A completed home study is not a prerequisite to a finding of adoptability. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.) The focus is on C.M. and on her appeal to families looking to adopt. The social worker testified at the permanent plan hearing that C.M. met the criteria for general adoptability, and the juvenile court so found. Mark has not cited any evidence to support the notion a family seeking a child to adopt would reject C.M.

As to specific adoptability, this issue usually arises only after a child is found to be not generally adoptable. (See *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061; *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650.) That is, although the child's age, physical condition, or mental state would discourage most potential adoptive parents, there is a specific person willing to adopt despite these handicaps.

In this case, the court found C.M. to be generally adoptable, so it would not be necessary to assess her specific adoptability. Nevertheless, the evidence showed C.M. to be specifically adoptable. Susan wanted to adopt her. The social worker who testified

at the permanency plan hearing agreed that no legal obstacle stood in the way of C.M.'s adoption by Susan, and Mark presented no contrary evidence.

Mark also argues that the juvenile court could not find C.M. adoptable because the adoption assessment mandated by sections 361.5, subdivision (g)(1), 366.21, subdivision (i)(1), and 366.22, subdivision (c)(1), upon the setting of a hearing under 366.26 no longer applied, given Susan's plan to move to Indiana. This argument is incorrect.<sup>4</sup> The move did not change the information required and provided in the adoption assessment, and it did not render the responses to the categories obsolete. For example, C.M.'s physical and developmental status did not change, and Susan was just as committed to providing for C.M.'s care in both places.

After a rocky start in life, C.M. seems to have reached a safe haven with Susan. The juvenile court summed up the situation in the strongest possible terms at a hearing occurring over a year and a half before the permanency plan hearing, when C.M. was four: "Let's just state for the record, the court has read numerous reports where [Nicole] is constantly under the influence, physically grabbing at [C.M.] and trying to pull [C.M.] away from the paternal grandmother. [¶] Paternal grandmother has stated that if [C.M.] comes back to the State of California she wants no responsibility for her."<sup>5</sup> She does not want to be temporary or permanent caretaker. [¶] [Mark] has never been the caretaker for this child. So basically, if we drag this child back to California nobody wants this child. [¶] [Susan], on the other hand, would like to keep [C.M.], would raise [C.M.], and has a very long and strong bond with this child. [¶] It makes no sense whatsoever to drag [C.M.] back to have her sit in foster care while we wait to go through

---

<sup>4</sup> The contents of an adoption assessment under section 366.21, subdivision (i)(1), are (a) search efforts for parents; (b) amount and nature of contact between child and parents; (c) evaluation of child's status; (d) eligibility and commitment of adoptive parent, including social history, criminal and child services screenings, and understanding of financial and legal responsibilities of adoption; (e) relationship of child to adopting parent and motivation of parent for seeking adoption; (f) description of efforts to locate adoptive parents; and (g) likelihood child will be adopted if parental rights are terminated.

<sup>5</sup> Mark's mother took care of C.M. for part of the period after she was detained for the second time and before she went to Illinois.

an ICPC when [Susan] has already got her in what appears to be a wonderful day care center and is treating her with love and care that this child has always basically ever wanted but never received. ¶ . . . ¶ So there is no fact that's been presented to this court that would cause this court to believe it would be in the best interest of this child to wait [*sic*: wade] through ICPC red paperwork, red tape and hold her here with any of those people who don't want her and are mistreating her." In the months that passed between this summary and the permanency planning hearing, the trenchancy of these observations became even more acute.

The hearing on Susan's petition to adopt C.M. (see § 366.26, subd. (e)) is the place to raise issues regarding Susan's move to Indiana. They have no bearing on C.M.'s adoptability.

#### **DISPOSITION**

The order terminating Mark's parental rights is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.