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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

S.J.,

Defendant and Appellant.

G052782

(Super. Ct. Nos. DP022446,  
DP022447, DP022448 &  
DP022449)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Andre  
Manssourian, Judge. Affirmed.

Johanna R. Shargel, 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 Minors.

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S.J. (the mother) appeals from the termination of her parental rights as to her children, R.A. (age 5 at the time of detention), V.A. (age 3), E.A. (age 2), and Ro.A. (one month old). The mother's only claim on appeal is that the juvenile court erred by finding the children adoptable. We conclude there was sufficient evidence in the record to support the dependency court's findings that the children were generally adoptable. Moreover, because there were no legal impediments to their current caretaker adopting them, they were also specifically adoptable. Accordingly, we affirm.

## I FACTS

While we have reviewed the rather lengthy record in this case, the issue on appeal is quite limited, and therefore we shall limit our statement of facts accordingly. In April 2012, the children, along with their maternal half-siblings, were detained by the Orange County Social Services Agency (SSA). The allegations of the sustained petition under Welfare and Institutions Code section 300<sup>1</sup> included failure to protect and abuse of sibling. The allegations stated Ro.A. had tested positive for methamphetamine at birth and showed signs of withdrawal, and that on numerous occasions, the mother had been under the influence of methamphetamine while caring for the children. The children's father (the father) was given custody under a family maintenance plan and the mother was provided with services and visitation.

Eventually, the father decided he could not continue to care for the children, and they were detained. In July 2013, the court sustained a supplemental petition, removed custody from the parents, and ordered services.<sup>2</sup>

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The father is not a party to this appeal and is mentioned only as relevant.

In their initial placement, as of December 2013, the foster mother reported the children lacked routines, structure, and boundaries. The three older children demonstrated behavioral issues, which sometimes worsened after parental visits. Nonetheless, the foster mother described them as making gradual progress. R.A. was described as “friendly and talkative,” and V.A. as “friendly and inquisitive,” E.A. was characterized as “rambunctious and hyperactive,” but also as “curious and alert.” Counseling referrals were made for all three of the older children.

Over time, the foster mother reported improvement. Seven months later, in June 2014, R.A. was described as having made great academic improvements as well as behavioral ones. The foster mother no longer felt he needed counseling. V.A., too, had made great strides in school as well as behaviorally. She had also been diagnosed with a speech delay, and resources to assist with her condition were sought. Her foster mother recommended that counseling continue to provide V.A. with assistance. E.A. continued to demonstrate behavioral difficulties such as hyperactivity, but his behavior had improved. He was enrolled in Head Start, and his foster mother reported he was doing well there despite his behavioral difficulties. The foster mother stayed in constant communication with his teacher to address these concerns. E.A. also continued to receive counseling, and his therapist had diagnosed him with oppositional defiance disorder. His counselor and foster mother worked with him on developing specific skills. Ro.A., who was by then two years old, was described as healthy. His foster mother said she had no concerns with his mental or emotional status.

The mother was only minimally compliant with her case plan.<sup>3</sup> The court eventually terminated services and set a permanency planning hearing (§ 366.26) (the .26 hearing).

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<sup>3</sup> Although the mother’s brief spends much time discussing her situation, we need not delve into these facts given the sole issue on appeal.

In its report prior to the .26 hearing in October 2014, SSA found the children were generally adoptable, but difficult to place. Nonetheless SSA determined that adoption was probable and requested an order continuing the matter for 180 days to locate an adoptive family. An assessment a few months earlier had found the children, who were between two and six years old at the time, were generally adoptable based on their characteristics, but they were difficult to place and there was no potential adoptive family in the picture because they were a sibling set of four. The foster mother was not a potential adoptive placement.

The .26 hearing report described the children as doing well in their placement. They were healthy and developmentally on track, and their behavioral issues appeared to be largely addressed. E.A., though still characterized as hyperactive and needing redirection, was described as “stable and has no behavioral issues at this time. The child continues to grow and thrive in his placement. He continues to eat and sleep well and is reportedly improving very well with his behaviors in his foster home. Additionally, no behavioral concerns were reported by the child’s teacher at this time.” V.A. was described as responding well to the structure the foster mother had implemented, and was learning to “talk through her feelings with the caregiver, who takes a hands on approach and is supportive of the child.”

The social worker did report an incident in which R.A. had thrown a tennis shoe while playing, which accidentally hit E.A. and resulted in a bruise on his face. SSA took no further action after the incident was reported.

The .26 report stated the mother had identified several relatives as possible permanent placements. A maternal aunt, Nancy A., stated that she and her husband Antonio were willing to adopt. Nancy lived in Utah, and SSA initiated an Interstate Compact on the Placement of Children (ICPC). Nancy had three young children of her own, and she did not work outside the home.

At the October 2014 hearing, the court found the termination of parental rights was not detrimental. The court also found that adoption was probable, but the children were difficult to place, and SSA had not yet identified a prospective adoptive family. A continuance of 180 days was ordered to permit SSA time to do so.

In an addendum report filed in March 2015, SSA recommended a 120 days continuance to allow for the completion of the ICPC as to Nancy. Nancy's current home did not meet the space requirements for seven children, but Nancy and her husband were searching for a four bedroom home that would meet the requirements. The Utah social worker reported that Nancy and her husband had completed most of the other requirements and were "anxiously waiting to receive these children." The Utah social worker felt the home would be approved once the space issue was addressed. The court granted the continuance to permit the ICPC to be completed.

In a July 2015 addendum report, SSA recommended the court find the children adoptable and terminate parental rights. Utah had conditionally approved Nancy for foster placement, and the children were placed with her on June 26 under an ICPC. SSA reported Nancy and her husband were dealing well with various behavioral situations as they arose, and had stated their readiness to help the children get any services they needed. Nancy was enrolling the three older children in school. She reported that they were adjusting well, despite some upset at the beginning. Ro.A., then three years old, was somewhat aggressive with his cousin. Once Nancy began disciplinary time outs, this behavior decreased. She did not observe any behavior problems with the three older children.

In an August 18 addendum report, SSA continued to recommend the court find the children adoptable and terminate parental rights. Nancy reported some behaviors of concern, including some inappropriate behaviors with their cousins. E.A., age five, on one occasion, attempted to touch his male cousin's genitals. On another occasion, Nancy found V.A., age six, laying on top of her female cousin and trying to kiss her. Nancy

attempted to address these by talking to the children, removing bedroom doors and watching the children's interactions closely. She hoped to address these behaviors in counseling. Nancy persisted in establishing a routine and structure. SSA reported that despite the difficulties, Nancy and her husband demonstrated a continued commitment to adoption. She loved the children deeply and wanted to do whatever it took to demonstrate that.

In an August 26 addendum report, SSA maintained its recommendation. In September, the parents requested a continuance of the .26 hearing, stating the placement was too new. SSA and minors' counsel opposed. The court denied the motion, stating the delay would waste time and make the children less adoptable, a concern which outweighed any information that might be gained by delaying the .26 hearing date.

At the .26 hearing in September, the social worker testified in a manner consistent with the prior reports. She also testified the children were doing well with Nancy, including their academic performance, and were starting to receive counseling services to address any issues that may have arisen since their June placement. Nancy and her husband were providing consistency, love, and were steadfast in their willingness to adopt, despite any behavioral issues. The social worker had no concerns about Nancy's competence to address any problems. The adoption home study had not yet been completed, because in Utah, the home study could not be initiated until the .26 hearing was over.

The mother also testified, expressing her opinion that Nancy had too much on her plate. She opposed the termination of her rights.

After argument, the court concluded the children were generally adoptable and likely to be adopted. Parental rights were terminated. The mother filed the instant appeal.

## II DISCUSSION

The mother claims the court lacked sufficient evidence to support its finding that the children were likely to be adopted. “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. [Citations.]” (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204.) Although somewhat counterintuitive, this is nonetheless “a low threshold: The court must merely determine that it is ‘likely’ that the child will be adopted within a reasonable time. [Citations.]” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

On appeal, we review the juvenile court’s decision for substantial evidence. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 224.) In doing so, we examine the court’s findings “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. [Citation.]” (*In re K.B., supra*, 173 Cal.App.4th at p. 1292.) We give the court’s adoptability finding the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of the judgment of the juvenile court. (*In re Autumn H.* (1994) 27 Cal.App.4th, 567, 576.)

The issue of adoptability focuses on the child, specifically, whether the child’s age and physical and emotional condition are likely to make it difficult to find an adoptive placement. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) “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.]” (*Id.* at pp. 1649-1650.) If the child is considered

generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) When adoptability is based solely on the fact that a particular family is willing to adopt, however, the juvenile court “must determine whether there is a legal impediment to adoption.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526.)

The mother argues “an adoptability determination cannot hinge on a placement as new and uncertain as this one.” The mother cites no authority for this proposition, but makes much over the juvenile court’s expression of some concerns about the placement being new in August. At the .26 hearing in October, the court asked county counsel about the placement and asked about general adoptability. The court was apparently satisfied with counsel’s arguments, because at the conclusion of the hearing, the court found the children generally adoptable. Nancy had, the court noted, shown a willingness since August 2014 to take the children on.

The mother also argues the children, as a bonded sibling set, risk being separated if the placement with Nancy does not lead to adoption, but this does not render them unadoptable. Indeed, if the mother believed this to be the case, she should have argued the sibling bond exception to the termination of parental rights should apply. (§ 366.26, subd. (c)(1)(B)(v).)

In any event, the case the mother relies on, *In re B.D.* (2008) 159 Cal.App.4th 1218, is different from the instant case in many ways. The five children in that case had not been placed in an adoptive home. The social worker had found, on a database search, only five out-of-county families interested in such a sibling group. (*Id.* at pp. 1232-1233.) As to the prospective adoptive home, the potential adoptive parents had no relationship with the children, and had only been spoken to “in ‘hypotheticals’ about ‘more extreme behaviors.’” (*Id.* at p. 1233.) The family did not have a license or an approved home study. (*Ibid.*) The court found the lack of such a license or preliminary assessment constituted a legal impediment to adoption. (*Ibid.*)

This is a very different case. Here, the court had substantial evidence to find the children were generally adoptable. “A child’s young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability.” (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.)

The children were young (from ages three to eight), physically healthy, and improving in their schoolwork. The juvenile court rejected any argument that behavioral issues that arose after placement with Nancy impacted general adoptability, and that conclusion was supported by the record. The children had adjusted to their former and only foster placement, which concluded only because of Nancy’s stated willingness to adopt. Although the change to Nancy’s care had been difficult at first, they had begun to adjust and improve. The court found the incidents between E.A. and V.A. and their cousins were not sexualized behavior or acting out. The children were beginning to bond with Nancy and her husband, demonstrating the ability to form relationships and attachments.

Finally, to the extent specific adoptability is an issue at all, neither the court nor the mother identifies any legal impediment to adoption in the instant case. Indeed, the record reflects that Nancy’s commitment to adoption has been unwavering and extraordinary, in light of her responsibilities to her biological children and the need to find a new home to accommodate the children. There is nothing in the record that would suggest a legal impediment to adoption.

Accordingly, the juvenile court’s orders are supported by substantial evidence.

III  
DISPOSITION

The orders are affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.