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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.E., a Person Coming Under the
Juvenile Court Law.

H042647
(Monterey County
Super. Ct. No. J47151)

MONTEREY COUNTY DEPARTMENT
OF SOCIAL & EMPLOYMENT
SERVICES,

Plaintiff and Respondent,

v.

M.A.,

Defendant and Appellant.

The juvenile court declared J.E. to be a dependent child of the court. (Welfare & Institution Code, §§ 300, 360, subd. (d).)¹ At the section 366.26 hearing conducted on July 27, 2015, the court determined by clear and convincing evidence that J.E. was likely to be adopted. Accordingly, it terminated the parental rights of M.A., J.E.'s mother (mother), and his father, and selected adoption as J.E.'s permanent plan. (§ 366.26, subs. (b), (c).) Mother appeals from those orders. (§ 395, subd. (a)(1).)

On appeal, mother argues that the evidence was insufficient to support the court's finding that J.E. was adoptable. We disagree and affirm.

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

I.

Procedural History

On April 16, 2013, a juvenile dependency petition was filed on behalf of J.E., who was then one year old, pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling). Related petitions were filed on behalf of J.E.'s three older half-siblings.

The petition alleged the following. J.E.'s father had sexually molested W.L., J.E.'s half sister who was then 11 years old. A maternal aunt brought W.L. to the police department, where W.L. disclosed that J.E.'s father had touched her breasts and buttocks on three separate occasions and that he had said he would kill mother if W.L. told anybody. When a social worker met with mother in her motel room on March 1, 2013, the social worker found it to be an unsafe home for the children. There were dirty diapers and other items strewn around the room, dirty and moldy dishes in the sink, and moldy food on the kitchen table within easy reach of the children. Mother agreed to allow the children to temporarily live with their maternal aunt. Mother did not abide by the safety plan that was developed. She continued to have regular contact with J.E.'s father, and she took the three younger children to visit him. During a welfare check of the children at the home of their maternal aunt on April 12, 2013, it was confirmed that mother planned to take the four children to Visalia to live with J.E.'s father. The children were taken into protective custody the same day.

The jurisdiction/disposition report, filed May 23, 2013, indicated that J.E. and W.L. had been placed in a "Foster Family Agency" and the placement was concurrent. J.E.'s remaining half-siblings, two-year-old twins, had been placed in a licensed foster home that was not concurrent. The report disclosed that J.E.'s foster parent had voiced concerns regarding his emotional state. The foster parent had observed that J.E. was "not easy to settle and frequently [had] tantrums for long periods of time." At times, W.L. was able to comfort him.

Following an uncontested jurisdiction hearing on May 29, 2013, the juvenile court declared J.E. and his half-siblings to be dependent children of the court. J.E. and his half-siblings were removed from mother's physical custody, and they were placed under the care, custody, and control of the Monterey County Department of Social and Employment Services (Department) for suitable placement. Family reunification services were not provided to J.E.'s father because the court found, by clear and convincing evidence, that his whereabouts were unknown. (§ 361.5, subd. (b)(1); see 361.5, subd. (d).) It was determined that the father of J.E.'s half-siblings was deceased.

A "Family Mental Health Assessment and Recommendations" (Assessment) was prepared by licensed psychologists for the three-month review hearing that was scheduled for August 28, 2013. The Assessment described J.E. as "an engaging 14-month-old Hispanic boy," whose "mood was euthymic"² and whose affect was "spontaneous and playful after he became accustomed to the male interviewer and the unfamiliar office." J.E. and his foster mother enjoyed each other, and he "appeared to have broadly normal cognitive resources" He got "along well with others, including children, show[ed] no usual aggression, and [was] readily redirectable." Although J.E. had tantrums once or twice a day, he was "readily soothed." In general, the intensity and duration of his tantrums was diminishing. The foster mother's responses to a questionnaire and the evaluating psychologist's experience suggested that J.E. met the "developmental expectations for social-emotional behavior." While there were developmental lags, the psychologist concluded that they "likely relate[d] more to inadequate stimulation in the family home than neurologically-based developmental

² The word "euthymic" means "[r]elating to, or characterized by, euthymia." (PDR Medical Dict. (2d ed. 2000) p. 627.) The term "euthymia" is defined as "1. Joyfulness; mental peace and tranquility. 2. Moderation of mood, not manic or depressed." (*Ibid.*)

disorder.” One of the recommendations was that J.E. participate in attachment work with his primary caretaker.

A three-month review hearing was held on August 28, 2013.

The status review report for the six-month review hearing (see § 366.21, subd.(e)) was filed November 18, 2013. It indicated that the children continued in the same placements. D.C. was W.L. and J.E.’s caregiver.

The report further indicated that J.E. was developmentally on target for his age group. He did not have any special needs. J.E. had adjusted well to his foster home and was “no longer tantruming on a regular basis.” He was “easily soothed and redirected” when he had a tantrum. D.C. indicated that W.L. and J.E. were a joy to have in her home and that they were both doing well. They appeared comfortable in her home.

An uncontested six-month review hearing was held on November 27, 2013. The court ordered J.E. and his half-siblings to continue as dependents of the court and to remain in the care and custody of the Department. It found that the whereabouts of J.E.’s father were “unknown for most or all of the review period.” The court continued family reunification services for mother.

A status review report for the 12-month review hearing (see § 366.21, subd. (f)) was filed April 21, 2014. It indicated that J.E. and his half-siblings continued in the same placements. J.E. appeared to be developmentally on target for his age group. J.E. had adjusted well to his foster home, and he was “no longer tantruming on a regular basis.” He was easily soothed and redirected when he had a tantrum. He was “a happy child who smile[d] frequently and love[d] attention.” But he was having a difficult time going to sleep during his nap time and at night, and he cried very loudly when told to go to sleep. D.C. still reported that W.L. and J.E. were a joy to have in her home, and they were both doing well.

A “Family Treatment Update and Progress Report,” which was prepared by Children’s Behavioral Health (CBH) clinicians, was filed April 24, 2014. J.E. was developmentally on target, and there were no concerns regarding his emotional state.

At the uncontested 12-month review hearing on May 6, 2014, the court ordered J.E. and his half-siblings to continue as dependent children of the court and to remain in the Department’s care and custody. It ordered family reunification services to continue for mother.

A “Family Treatment Update,” which was prepared by CBH clinicians, was filed October 24, 2014. It stated that J.E. was developmentally on target. There were still no concerns regarding his emotional state.

A status review report for the 18-month review hearing (see § 366.22) was filed October 24, 2014. On August 8, 2014, W.L. had been moved from her previous placement to a new, noncurrent placement by herself. The former caregiver “seemed to have a difficult time meeting [W.L.’s needs] . . . in terms of her emotions and appropriate developmental milestones for a young teenager.” J.E.’s placement with caregiver D.C. was no longer concurrent.³ The Department was in the process of assessing maternal cousins for long term placement of both W.L. and J.E. At the time the report was written, the social worker was scheduled to conduct a home visit on October 21, 2014 in order to complete the final paperwork for that placement.

The report further stated that J.E. appeared to be developmentally on target for his age group. J.E. was described as “sweet, funny, affectionate, and active.” He was a happy child who smiled frequently and loved attention. Although J.E. had difficulty sharing at times, he could be easily redirected and he had “learned to take space for himself and come back to his surroundings when he is calmer.” He was easily soothed

³ J.E.’s original placement was made on April 13, 2013. The status review report for the 18-month review hearing indicated that the date of J.E.’s then current placement was April 13, 2013 but inconsistently stated he was on placement number two.

and redirected when he had a tantrum. D.C. had not noted any concerns regarding J.E.'s emotional state. She described him as "a wonderful two year old." She had begun introducing J.E. to potty training; he needed "lots of encouragement and reassurance while he [was] sitting at the potty." According to the social worker, J.E. appeared "to be bonded with his caregiver as evidenced by [his use of] his caregiver as a safety person while exploring and the ease [with] which he reach[ed] out for hugs, kisses and guidance."

The report also indicated that the whereabouts of J.E.'s father were unknown. It recommended that the court terminate family reunification services to mother and set a selection and implementation hearing (a section 366.26 hearing).

A contested 18-month review hearing was held on January 12, 2015. The juvenile court ordered J.E. and his half-siblings to continue as dependents of the court under the care and custody of the Department. It terminated family reunification services for mother. It set a section 366.26 hearing.

A "366.26 WIC Report" (section 366.26 report) was filed on May 12, 2015. It recommended that the court declare adoption to be the appropriate permanent plan for the four children, including J.E., and that the court terminate the parental rights of mother and J.E.'s father. The whereabouts of J.E.'s father remained unknown.

The section 366.26 report indicated that W.L. and J.E.'s placement had changed on October 30, 2014. W.L. and J.E. had been placed with a maternal cousin, A.S., a single, 25-year-old woman who was working two jobs to support herself. Her income was approximately \$14,000 a year, and she was renting a room from her twin sister and her brother-in-law, who had three children of their own. The new caregiver was interested in adopting W.L., but she was not interested in adopting J.E.

A.S. had "realized after [J.E.] was placed with her that she [did] not have the time to take care of a two-year-old child due to her busy work schedule." She did "not believe that she ha[d] the time or the capability to care for a two-year-old child." She had asked

for him to be removed from her care. She wanted “him to be with a family who [could] give him the attention and supervision that he need[ed].”

The section 366.26 report disclosed that the Department was in the process of locating an adoptive home for J.E. It was assessing a paternal aunt for possible placement. She had expressed an interest in adopting him.

According to the section 366.26 report, a follow-up developmental assessment performed on April 8, 2015 showed that J.E. was “developmentally on target with his communication skills, problem solving skills, personal social skills, and his fine and gross motor skills.” There was concern, however, about his “social/emotional skills.” The assessor found that J.E. lacked attachment to his current caregiver, which would have “a major impact on his emotional and cognitive development.” Attachment therapy was recommended once J.E. was placed in a concurrent home.

As to J.E.’s mental and emotional status, the report indicated that J.E. was a “sociable, energetic, and active child who require[d] a lot of attention and supervision.” According to his current caregiver, J.E. had a short temper, he could be aggressive toward his siblings and other children, he did not like to be cuddled, and he was overly friendly with strangers. J.E. tended to overeat, and he was experiencing a lot of anxiety. When he felt anxious, J.E. picked at his thumb and toe nails until they bled. J.E. cried and refused to go to bed every night, and the caregiver stayed with him until he fell asleep, which took approximately 30 minutes. The caregiver did acknowledge that J.E.’s tantrums, which had occurred daily at the beginning of the placement, had “decreased a little over the past six months.” The social worker indicated that J.E. needed “comprehensive services to assist him with his social/emotional development.”

In recommending to the court that J.E. was likely to be adopted, the section 366.26 report stated that he was “a cute little two-year[-]old boy who is very outgoing and

sociable.”⁴ It recognized that J.E. had been “displaying concerning behavioral problems,” including “aggressive behaviors, severe anxiety and attachment problems.” “He ha[d] poor self regulation and frequent tantrums.” The social worker was seeking further assessment and services.

At the section 366.26 hearing on July 27, 2015, the deputy county counsel representing the Department told the court that the caregiver with whom J.E. and W.L. had been placed was no longer able to take J.E. She explained that J.E. was highly adoptable but the caregiver did not have the time to parent a child his age. Mother’s counsel informed the court that one of mother’s sisters, M., was very interested in having J.E. placed with her. The Department’s counsel told the court that all the children were adoptable. The Department was looking for a concurrent home for J.E., and it did not anticipate any problems. The Department’s counsel informed the court that there were several relatives who were interested in having J.E.

Mother’s counsel remarked that the adoption of J.E. was “going to be difficult because he [did] have pretty severe behavioral problems.” The Department’s counsel indicated that the Department disagreed with that assessment. She did not believe that it would be hard to find an adoptive home because J.E. was young and healthy. She acknowledged that J.E. had issues as many dependent children do, but the Department had several families that were interested in having him.

The Department submitted on its report. Mother presented no evidence.

The court stated that it was convinced under the clear and convincing standard that all four children, including J.E., were adoptable. The court terminated mother’s and J.E.’s father’s parental rights. It selected adoption as the permanent plan for the four children, including J.E.

⁴ By the time the section 366.26 report was filed, J.E. had turned three years old.

II

Discussion

A. Governing Law

Section 366.26 specifies “the exclusive procedures for conducting” the hearing to select and implement a permanent plan for a dependent child. (§ 366.26, subd. (a).)

“[T]he Legislature has made adoption the preferred choice. (Welf. & Inst. Code, § 366.26, subds. (b), (c).)” (*In re Celine R.* (2003) 31 Cal.4th 45, 49, fn. omitted.)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.)” (*Id.* at p. 53.) “If adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child. (§ 366.26(c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 53.)” (*In re S.B.* (2009) 46 Cal.4th 529, 532, fn. omitted; see *In re Zacharia D.* (1993) 6 Cal.4th 435, 447 [“If there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic. [Citation.]”].)

“ ‘The issue of adoptability . . . 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.]’ (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) All that is required is clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.)” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) Section 366.26 provides that “[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.” (§ 366.26, subd. (c)(1).)

“ ‘The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.’ [Citations.]” (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) A court’s finding of adoptability under section 366.26 is reviewed under the substantial evidence test. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1290.)

In reviewing the sufficiency of the evidence, we review the whole record in the light most favorable to the court’s determination. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) The power of an appellate court “begins and ends with a determination of whether there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. ([*In re*] *Brison C.* [(2000)] 81 Cal.App.4th [1373,] 1378-1379.)” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313; see *Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.* (1967) 66 Cal.2d 782, 784 (*Green Trees*).) “All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. We may not reweigh [the evidence] or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.)” (*In re A.A., supra*, at p. 1313.) “When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. [Citations.]” (*Green Trees supra*, at pp. 784-785.)

B. Analysis

At the time of section 366.26 hearing, J.E. was only three years old, he was generally developmentally on target, and he had no medical issues. J.E. had done well in his previous placement. The status review report for the 18-month review hearing indicated that J.E. had bonded with his former caregiver. The Department had changed

W.L.'s placement with her for reasons unrelated to any problem with J.E., and it had then found a joint placement for both W.L. and J.E.

As it turned out, that caregiver was willing to adopt only W.L. She did not feel she was capable of caring for a child who was J.E.'s age. As indicted, the caregiver for W.L. and J.E. was a young, single woman who was holding down two jobs and renting a room from her relatives, who had three children of their own. The section 366.26 report did not analyze whether J.E.'s emotional/bonding issues were related to the circumstances of his current placement or whether he had been receiving sufficient age-appropriate attention from his current caregiver. In any event, there was no affirmative evidence that his behavioral issues were not remediable or rendered adoption unlikely. There was no evidence that J.E.'s age or any special needs had made him generally unadoptable. To the contrary, there were a number of persons, including a paternal aunt and a maternal aunt, who had expressed an interest in having J.E. placed with them.

“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*. (See [*In re*] *Scott M.* [(1993)] 13 Cal.App.4th [839,] 844.)” (*In re Sarah M., supra*, 22 Cal.App.4th at pp. 1649-1650.)

Mother argues that the evidence that there was a probability of adoption in this case was even less substantial than the evidence in *In re Jerome D.* (2000) 84 Cal.App.4th 1200), which the appellate court found insufficient. (*Id.* at p. 1209.) In that case, the finding of adoptability had been based on the willingness of Jerome’s caregiver (his mother’s former boyfriend who had been convicted of domestic violence) to adopt him but the county health and human services agency’s assessment had not “address his criminal and CPS history” (*Id.* at p. 1205.) Jerome had a physical disability, a

“prosthetic eye, which apparently required care and treatment.” (*Ibid.*, fn. omitted.)

“At the time of the section 366.26 hearing, Jerome was nearly nine years old.” (*Id.* at p. 1207.) In the opinion of a testifying psychologist, Jerome could experience emotional and behavioral difficulties if his relationship with his mother were severed. (*Ibid.*) Jerome had lived with his mother for the first six and one-half years of his life, and he wanted his relationship with his mother to continue. (*Ibid.*)

The facts of this case are much different. While the social worker’s report for the section 366.26 hearing could have done a more thorough assessment of J.E.’s prospects for adoption in light of the issues that had arisen, the evidence was sufficient to support a finding that it was likely J.E. would be adopted given his young age, his sociable personality, the absence of any diagnosed medical, physical, or mental disability, his most recent developmental assessment, his bonding with his former caretaker, and the interest expressed by one or more relatives in having J.E. placed with them for adoption. Substantial evidence supported the juvenile court’s determination that there was a likelihood of adoption.

DISPOSITION

The July 27, 2015 orders are affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.