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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JOSHUA S. et al., Persons Coming Under the Juvenile Court Law.	B210664
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ANTWAIN S., Appellant.	(Los Angeles County Super. Ct. No. CK46619)

APPEAL from an order of the Superior Court of Los Angeles County, Jan Levine, Judge. Affirmed.

Joseph D. MacKenzie, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Byron G. Shibata, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Antwain S. (Antwain or father) is the alleged father of Joshua S. (Joshua). Father appeals an order of the juvenile court terminating his parental rights with respect to Joshua. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. *The Detention of Joshua*

On October 6, 2001, Pomona police officers responded to an anonymous call stating that there was prostitution occurring inside a room at the Lemon Tree Motel in Pomona. When the police officers arrived at the motel room, they found Rebecca C. (mother), Joshua's mother, Joshua and two adult males. A pornographic movie was playing on the television. Crack cocaine and drug paraphernalia were found all over the room.

Joshua was just four months old at the time. He was temporarily detained by the Los Angeles County Department of Children and Family Services (Department). Mother was arrested and incarcerated for "child endangerment" and "exposing a child to immoral acts."[2]

On October 11, 2001, the Department filed a juvenile dependency petition requesting the juvenile court to exercise jurisdiction over Joshua. The Department

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[1] California Rules of Court, rule 8.204(a)(2)(C) states that an appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record." This rule applies to briefs filed in dependency appeals. (See Cal. Rules of Court, rules 8.360(a), 8.412(a).) Father did not comply with this rule. His recitation of the facts was not in summary style, was too lengthy, and mainly consisted of irrelevant information. For example, father's brief includes 2½ pages devoted to an "Out to Court Appearance Waiver." The document, however, has nothing to do with the issues in this appeal, and father's detailed discussion of the document does not provide useful background information. Father's counsel is cautioned not to submit such a brief again to this court. (See Cal. Rules of Court, rule 8.276(a)(4); *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 164.)

[2] Mother was a known prostitute and user of illegal drugs with a long criminal record. Mother was convicted for willful harm to a child (Pen. Code, § 273a) for her conduct on October 6, 2001.

alleged that mother's substance abuse endangered Joshua's physical and emotional health. On that same date, the juvenile court placed temporary custody over Joshua with the Department. The court also ordered paternity tests to determine whether Antwain was Joshua's biological father. At the time, Antwain was in state prison.[3]

In January 2002, the juvenile court sustained the Department's petition and declared Joshua a dependent of the court. Mother was granted family reunification services, but father was not provided such services. Mother was also granted the right to visit Joshua.

2. *Joshua Lives With His Great-Grandparents, Who Seek to Adopt Him (November 2001 to November 2005)*

Joshua lived with Antwain's grandparents, Alice L. and Sylvester L. (great-grandparents) from November 2001 to November 2005. The great-grandparents took good care of Joshua, and Joshua was generally happy living with them. The great-grandparents initiated the process of adopting Joshua, though they did not complete the required adoption paperwork.

In the meantime, mother struggled. After she was released from jail, she lived a transient life and only sporadically visited Joshua. Mother's whereabouts were usually unknown to the Department. In July 2002, the juvenile court terminated mother's family reunification services. In January 2004, the court approved of a permanent plan for the adoption of Joshua.

Mother, however, eventually turned her life around. She checked into a women's drug treatment center, obtained a job as a receptionist, abstained from the use of drugs for long periods of time, and began visiting Joshua on a regular basis two to three times a week. In April 2005, mother gave birth to a daughter, Savanna P. (Savanna).[4]

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[3] Father had a history of drug use and a long criminal record.

[4] Savannah's alleged father is Kim P.

In November 2005, pursuant to the Department's recommendation, the juvenile court granted mother family reunification services. The court also ordered that Joshua be placed with mother, who was living at the home of her brother David C. (David).

In this time period, from November 2001 to November 2005, father remained in prison. Paternity tests indicated that there was a 99.96 percent probability that father was Joshua's biological father.

3. *Joshua Lives with Mother at Maternal Uncle's Home; Mother Begins Using Drugs Again and is Incarcerated (November 2005 to January 2007)*

In November 2005, Joshua moved in with mother at David's home. This household included David, his wife Christine C. (Christine), their three children, Savanna, mother and Viola C., David's and mother's mother.

After Joshua began living with mother, mother began experiencing problems with her drug addiction again. Random drug tests revealed that mother's urine samples were diluted with a creatinine substance. Mother also missed several scheduled drug tests. David advised the Department that he believed mother was using drugs again and described behavior that supported his belief.

During this time period, from November 2005 to January 2007, Joshua continued to regularly visit the great-grandparents, who indicated that they were still willing to take care of him, if necessary.

In May 2006, father was released from prison on parole. About two months later, however, father was arrested for stealing a vehicle, and then was incarcerated for violating the terms of his parole. During his brief period out of prison, father visited Joshua several times at the great-grandparents' home, and stated to the Department that he wanted "the opportunity to raise his son, Joshua."

In September 2006, mother committed the crime of petty theft. On January 31, 2007, mother was convicted of that crime, sentenced to one year in jail, and incarcerated.

4. *Joshua Lives with Maternal Uncle, Who Seeks to Adopt Him (February 2007 to September 2008)*

On February 9, 2007, the Department filed a supplemental juvenile dependency petition with respect to Joshua and an original petition with respect to Savanna.[5] On that same date, the juvenile court ordered that Joshua and Savanna be placed with their maternal uncle, David.

On April 11, 2007, the Department filed a first amended juvenile dependency petition relating to Joshua which included allegations regarding mother's continued drug use and conviction and incarceration for petty theft. The juvenile court sustained the amended on that same day. The court did not grant mother family reuinification services. The court found that it was in the best interest of Joshua to set a hearing to select a permanent plan of adoption or other permanent arrangement pursuant to Welfare and Institutions Code section 366.26[6] (section 366.26 hearing), and directed the Department to initiate an adoption home study.

Unfortunately, there were several delays in the approval of a permanent plan for Joshua. Father claimed American Indian heritage. The Department's investigation indicated otherwise. This raised the issue of whether Joshua's case fell within the scope of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA). Further, the Department belatedly realized that the juvenile court had not made a paternity finding with respect to Antwain, i.e., whether he was Joshua's alleged, biological or presumed father.

On October 11, 2007, at the Department's request, the juvenile court found that Antwain Smith was Joshua's alleged father. The court also ordered the Department to

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[5] Father does not claim paternal rights with respect to Savanna and has not raised any issues relating to her on appeal.

[6] Unless otherwise indicated, all further section references are to the Welfare and Institutions Code.

provide father with an ICWA notice. In November 2007, the court found that this was not an ICWA case.

The section 366.26 hearing was further delayed due to delays in completing an adoption home study. Because he was extremely busy working and taking care of five children, David took a long time to complete all of the necessary paperwork for a home study.[7] Thus the juvenile court continued the section 366.26 hearing on several occasions because an adoption home study was not completed.

In the meantime, Joshua was thriving in the care of David and Christine. Joshua developed a strong bond with David and Christine and their three children, and Joshua was happy living in their home. David and Christine both quickly expressed their willingness to adopt Joshua, as well as Joshua's half-sister Savanna.

While Joshua was living in their home, David and Christine increasingly had marital problems. The couple ultimately decided to get a divorce, ending their 16-year marriage, and Christine moved out of the home. David alone thus applied to adopt Joshua and Savanna.

After David submitted his adoption application, his girlfriend Ms. T. began spending a great deal of time in his home taking care of Joshua, Savanna and David's children. Ms. T. eventually moved into David's home. David and Ms. T. advised the Department that they intended to marry once David's divorce to Christine became final. Joshua and Savanna also became very attached to Ms. T. David and Ms. T. thus asked the Department to begin an adoption home study for Ms. T.

During this time period, from February 2007 to September 2008, father was in and out of prison. In February 2007, father was released on parole. However, he was incarcerated again in April 2008 due to another parole violation. Father was released from prison at the end of August 2008. Despite his legal problems, father expressed an interest in raising Joshua, and did not want Joshua adopted.

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[7] David also had serious health problems. However, David's physician stated in a Department form that David was in adequate health to adopt Joshua.

Mother, too, continued to have trouble with the law. She was released from jail in February 2008. But in about two months, in April 2008, she was arrested on a felony charge. In about August 2008, mother was incarcerated. Despite her ongoing problems with substance abuse, mother still wanted Joshua returned to her care.

Joshua continued to visit his great-grandmother, Alice L., every other Sunday. In August 2008, Alice L. stated to the Department that she would like to see Joshua more often.

5. *Termination of Father's and Mother's Parental Rights*

On September 11, 2008—almost seven years after Joshua was first detained by the Department—the juvenile court finally held the section 366.26 hearing. The Department reported to the court that the adoption worker recommended the approval of David's adoption of Joshua. The Department further reported that the home study was completed, except that it needed the approval of the adoption worker's supervisor, which was anticipated.

Counsel for Joshua argued in support of the Department's request to terminate the parental rights of mother and father. Father, through counsel, argued against the termination of his parental rights on the grounds that he and Joshua have maintained regular visitation and contact and that Joshua would benefit from continuing the relationship. (See § 366.26, subd. (c)(1)(B)(i).)

At the hearing, the court stated that Joshua was "[c]learly . . . adoptable." In its minute order, the court found "by clear and convincing evidence that it is likely that the Minor will be adopted." The court ordered the termination of mother's and father's parental rights. Father filed a timely notice of appeal from that order.

CONTENTIONS

Father makes three arguments on appeal. First, he contends that substantial evidence did not support the juvenile court's finding that Joshua was adoptable. Second, father argues that the prospective parent's home study did not provide substantial evidence that Joshua would be adopted within a reasonable time. Finally, father contends

that the fact that David wanted his girlfriend to be a co-adopter of Joshua posed a legal impediment which precluded the basis for finding that Joshua was adoptable.

DISCUSSION

A section 366.26 hearing proceeds on the premise that the efforts to reuinify the parents and child are over, "and the focus of the hearing is on the long-term plan for care and custody." (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1808.) "The court must proceed by section 366.26, subdivision (c)(1) and terminate parental rights if clear and convincing evidence shows that it is likely that the minor will be adopted."[8] (*Ibid.*)

"When reviewing a court's finding a minor is adoptable, we apply the substantial evidence test. [Citations.] 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. [Citations.] Rather, our task is to determine whether there is substantial evidence from which a reasonable trier of fact could find, by clear and convincing evidence, that the minor is adoptable. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order." (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

"The adoptability issue at a section 366.26 hearing focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citation.] It is not necessary that the child already be in a potential adoptive home or that there be a proposed adoptive parent ' "waiting in the wings." ' [Citation.]

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[8] Section 366.26, subdivision (c)(1) provides in part: "If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, and any other relevant evidence, 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 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, 1311, 1312; see also *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

A child is either "generally" or "specifically" adoptable. A child is generally adoptable if the child's age, physical condition, mental state, and other relevant factors do not make it difficult to find a person who will adopt him or her. On the other hand, if a child is deemed adoptable *only* because of the caregiver's willingness to adopt, the child is specifically adoptable. (See *In re R.C.*, *supra*, 169 Cal.App.4th at pp. 492-494; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

If a child is generally adoptable, "the suitabability or availability of the caregiver to adopt is not a relevant inquiry. [Citations.] Rather, a caregiver's willingness to adopt serves as further evidence the minor is likely to be adopted within a reasonable time either by the caregiver '*or by some other family*.' " (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 493-494; see also *In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.)

Here, there was clearly substantial evidence supporting the juvenile court's finding that Joshua was adoptable. The juvenile court received numerous reports from the Department over a seven year period. These reports showed the following:

1. Joshua was developing normally;
2. Joshua had no serious physical or emotional health problems;
3. Joshua's height and weight were within the normal range for his age;
4. Joshua's academic ability was somewhat below grade level, but he was improving and did not need special education;

5. Although at times he had temper tantrums and oppositional behavior, and was not very talkative, Joshua generally had an age-appropriate temperament, and got along well with peers at school and with his cousins and sister at home.

In short, in light of the predicament of his mother and alleged father, Joshua was doing remarkably well. Although Joshua was seven years old at the time of the section 366.26 hearing, there was ample reason for the juvenile court to believe that he was adoptable. This conclusion was supported by facts wholly unrelated to the issue of whether his caretaker at that time was willing to adopt him.

In addition, the juvenile court's conclusion that Joshua was adoptable was bolstered by the fact that over a seven-year period many of Joshua's caretakers consistently were willing to adopt him. The great-grandparents, David, Christine, and Ms. T. each repeatedly expressed a willingness to do so. Moreover, at the time of the section 366.26 hearing, Joshua was already placed with a relative, David, who was willing to adopt him. For all of these reasons, there was substantial evidence supporting the juvenile court's finding that Joshua was adoptable and its order terminating father's parental rights.

Father's arguments to the contrary border on the frivolous.[9] He first contends that an adoption assessment reportprepared by the Department was "inadequate." Whenever a juvenile court orders a section 366.26 hearing, the Department is required to prepare a report that contains certain information relating to the possible adoption of the child. (See § 366.21, subd. (i)(1).) However, father did not challenge the adequacy of the assessment report in the juvenile court. Father thus waived any objection to assessment's

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[9] We question whether father even has standing to challenge the juvenile court's order terminating his parental rights. Antwain was merely Joshua's alleged father; the juvenile court declined to make a finding that he was the child's presumed or biological father. An alleged father's parental rights are limited to establishing presumed father status. (See *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811; *In re Alyssa F.* (2003) 112 Cal.App.4th 846, 855.) Respondent Department, however, has not challenged father's standing. We therefore will not decide the issue. Instead, we will reject father's arguments on the merits assuming, arguendo, that father has standing.

adequacy on appeal, though he may still challenge the sufficiency of the evidence supporting the juvenile court's termination order. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1317.) Apart from challenging the alleged inadequacy of the adoption assessment report, father makes no coherent argument about why there is a purported lack of substantial evidence supporting the juvenile court's finding that Joshua was adoptable.

Next, father argues that Joshua's home study did not show that Joshua would be adopted in a reasonable time. Father, however, did not make any arguments regarding the adequacy of the home study in the juvenile court. He thus waived any objections to the home study on appeal. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 493, fn. 2.) Further, father concedes that "there is no requirement that an adoptive home study be completed before a court can terminate parental rights . . . ."

In any case, the purported inadequacy of the home study was of no consequence. Because there was evidence supporting Joshua's adoptability apart from the willingness of a particular caregiver to adopt Joshua, Joshua was generally adoptable, not merely specifically adoptable. Thus the suitability of David as the adoptive parent was irrelevant at the section 366.26 hearing. (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 493, 494; see also *In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.)

Father contends that Joshua was not generally adoptable because the adoption assessment report identified David as "the prospective adoptive parent for Joshua." However, father has not cited, and we have not found, any authority for the proposition that statements in an assessment report govern the issue of whether a child is generally or specifically adoptable. The report, moreover, did not state that Joshua was adoptable solely because of the willingness of a specific family to adopt him. Rather, the report provided information indicating that Joshua was generally adoptable. For example, the report stated that Joshua was developing appropriately, was doing well in school, was well behaved, played well with other children, was up-to-date on medical and dental exams, and did not have any physical or mental health problems. The fact that the report also stated that his caretaker, David, was willing to adopt him, did not make Joshua specifically adoptable.

Finally, father argues that David's request to have Ms. T. become a co-adoptive parent posed a "legal impediment" which precluded the basis for finding that Joshua was adoptable. However, father concedes, as he must, that "[i]f a child is considered generally adoptable, the Court does not examine the suitability of the prospective adoptive home." As we have explained, Joshua was generally adoptable. Accordingly, whether or not there was a legal impediment to David adopting Joshua was irrelevant.[10]

DISPOSITION

The order terminating father's parental rights with respect to Joshua is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

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[10] We do not reach the issue of whether there was a legal impediment to David's adoption of Joshua. However, it is worth noting that David and Ms. T. have expressed an intention to marry, and that if that marriage occurs prior to the actual date of adoption, there will be no basis for father's argument.