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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

CONTRA COSTA COUNTY
CHILDREN AND FAMILY SERVICES
BUREAU,

Plaintiff and Respondent,

v.

DANIEL G., SR. et al.,

Defendants and Appellants.

A107951

(Contra Costa County
Super. Ct. No. J02-02253)

Daniel G., Sr. (Father) and S.T. (Mother) appeal a judgment terminating their parental rights of their son, Daniel G. (Daniel), under Welfare and Institutions Code¹ section 366.26. Both challenge the sufficiency of the juvenile court’s finding that Daniel was adoptable.² Specifically, Mother contends that the adoption assessment was inadequate and her counsel was ineffective for failing to challenge it. Mother further contends that she established two exceptions to terminating parental rights:

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

² Mother filed a separate appeal raising additional issues not raised in Father’s appeal. Father states that he joins such issues to the extent they benefit him.

the beneficial relationship exception (§ 366.26, subd. (c)(1)(A)) and the sibling relationship exception (§ 366.26, subd. (c)(1)(E)). We reverse the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In November 2002, the Contra Costa County Children and Family Services Bureau (CFS) filed a juvenile dependency petition alleging that Daniel, then three days old, came within the meaning of section 300, subdivisions (b) and (j), based on Mother's drug use, Daniel's positive test for drug exposure at birth, and Mother's admission of drug use while pregnant with Daniel's sibling born two years earlier. Immediately after Daniel was detained in November 2002, Mother entered a residential drug treatment program. Thereafter, the juvenile court released Daniel to Mother's custody on November 13, 2002.

On December 11, 2002, an amended petition was sustained, which dismissed the allegations under section 300, subdivision (j) and found true the following allegations under subdivision (b): "Said child's mother has a chronic substance abuse problem which interferes with her ability to adequately parent said child, in that: On or about October 29, 2002, said child was born premature, with a positive toxicology screen from methamphetamine and marijuana" and "On or about August 19, 2002, said father was incarcerated for violating his parole for possession of an illegal substance."

In January 2003, Sallie Leach, a social worker with CFS, prepared a disposition report, which stated that Mother had left the residential treatment program on January 6, 2003, with the consent of CFS so that she could reside with her uncle. According to Ms. Leach's report, Mother enrolled in the Born Free program on January 8, 2003, and had been attending the program on a regular basis. Ms. Leach further reported that Mother was participating in substance abuse treatment, parenting classes and random drug testing.

Daniel was described as a sociable and cheerful baby, who appeared to be developing appropriately for his age. Mother's home was described as an "appropriate environment" for Daniel where he could "safely remain in the care of

his mother.” Ms. Leach found that Daniel continued to thrive in Mother’s care and that she appeared “to be doing a good job taking care of her son while attending to her substance abuse recovery.” Ms. Leach noted that Mother had previously placed her two older children with their maternal grandmother when she entered the residential treatment program, and the two children continued to live with the grandmother. It was further noted that the two older children were doing well and that Mother was a frequent visitor and participated in their daily care.

On February 18, 2003, Penny James, a social worker retained by Daniel’s counsel, made an unscheduled visit to Mother’s home. Ms. James reported the maternal grandmother was present and was recovering from pneumonia and surgery, and Mother was caring for all three of her children. Ms. James noted that the bedroom Mother shared with Daniel was clean and orderly. She described Daniel as “cooing and looking like a normal healthy infant.”

Ms. James concluded the report by stating: “[Mother] is a personable young woman who is presently doing all the right things. She appears to definitely have the capacity to provide good care of her baby—when clean—and the baby looks well-cared for. If she continues her good recovery process I think the baby will thrive in her care.”

On April 7, 2003, the juvenile court adjudged Daniel a dependent child and ordered that he remain with Mother under the supervision of CFS and ordered CFS to provide family maintenance services. Pursuant to the case plan, Mother was required to participate in parenting classes, an outpatient substance abuse treatment program, and random drug testing.

For the six-month review in June 2003, CFS submitted a report prepared by social worker Autumn Blueford that recommended continuation of family maintenance services. Ms. Blueford reported that Daniel continued to reside with Mother in her uncle’s home. She stated that Mother appeared to be meeting Daniel’s basic needs and that he looked happy, healthy, and was thriving in Mother’s care.

Ms. Blueford noted that Mother had provided CFS with negative random drug testing. However, Mother had failed to appear for a scheduled test on May 1, 2003. Ms. Blueford stated that Mother reported that she had been attending Narcotics Anonymous meetings a couple of times a week, but was unable to locate her attendance log. Ms. Blueford further reported that Mother had not made much progress toward her other court ordered requirements.

At the six-month review hearing, the juvenile court found Daniel continued to be a dependent child and ordered that he remain in his Mother's care and that CFS continue to provide family maintenance services.

On October 9, 2003, CFS filed a supplemental petition for restrictive placement alleging that Mother had tested positive for methamphetamine on three separate occasions and had not been consistently attending her substance abuse program. CFS detained Daniel on October 10, 2003, and returned him to Mother's care when she entered a residential treatment program on October 13, 2003. The supplemental petition was to be dismissed on the condition that Mother remained in the program until she graduated.

In her 12-month status review report, Ms. Blueford recommended that family maintenance services be continued for an additional six months. Ms. Blueford noted that Daniel, now one year old, was living with Mother at her residential treatment program, and appeared to be happy and healthy in Mother's care. She reported that Mother loved Daniel and wanted him to remain in her care. Mother had also requested that Daniel be allowed to have occasional weekend visits with the maternal grandmother; CFS was in the process of assessing the grandmother and her home to determine if this was a possibility. Ms. Blueford stated that reunification was the first and desired goal for Daniel, but if this failed, adoption was the long-term back-up plan.

At the 12-month review hearing on November 21, 2003, it was noted that, although the supplemental petition was supposed to have been dismissed, it still remained in effect. Consequently, the supplemental petition was modified to allege

that Mother had tested positive for methamphetamine on three separate occasions; the other allegations were dismissed. Mother entered a no contest plea.

On April 15, 2004, a second supplemental petition was filed alleging that Mother had failed to remain free from illegal drug use, tested positive for illegal drugs, and failed to consistently participate in her outpatient drug treatment program. In a memorandum to the juvenile court in support of the petition, Ms. Blueford stated that she had removed Daniel from Mother's care on April 13, 2004, and placed him in emergency foster care. Ms. Blueford informed the court that Mother had graduated from her residential treatment program on January 12, 2004, but had failed to enter the recommended outpatient patient program until April 6, 2004. Ms. Blueford further reported that Mother had tested positive for illegal drugs on February 26, 2004, April 7, 2004, and April 12, 2004.

On April 16, 2004, the juvenile court detained Daniel and ordered supervised visitation for Mother. At the jurisdictional hearing on April 23, 2004, Mother admitted the allegations in the supplemental petition.

In the disposition report, Jacqueline Jackson, another social worker with CFS, recommended that Daniel continue as a dependent with no further services to Mother. Ms. Jackson reported that despite Mother's recurrent substance abuse, Mother had provided adequate care for Daniel in the six months since Daniel's case was last before the court. Ms. Jackson further noted that every time the continuing services worker visited, she found Daniel to "be clean and content[] in an orderly home with adequate food." The continuing services worker also told Ms. Jackson that Mother appropriately attended to Daniel's medical needs. Ms. Jackson further reported that the caseworker who observed the supervised visitation stated that Daniel and his Mother exhibited "a close mutually affectionate relationship during the visits and the visits unfold[ed] smoothly and without problems."

Ms. Jackson stated that during the time Daniel lived with Mother, he had close daily contact with his older half-siblings and his maternal grandmother. It was additionally noted that Mother reported that she had a very close-knit family. All of

the relatives who had regular contact with Daniel, especially his two older half-siblings, expressed sadness and concern about Daniel's absence and wanted to know when he would return.

Ms. Jackson also reported that the possibility of placing Daniel with a relative was explored at the time of his initial placement. However, placement with his maternal grandmother did not seem feasible because she had only one bedroom and already had two of Mother's children living with her. Additionally, CFS later learned that both the maternal grandmother and her husband had criminal convictions, which could prevent placement of Daniel in their home. Ms. Jackson also noted that Angela H., a paternal cousin, had completed an application for relative placement. However, she was currently on probation regarding a misdemeanor conviction for domestic violence.

In describing the family strengths, Ms. Jackson reported: "Daniel has close relationships to extended family relatives on the maternal and paternal sides as well as with his mother and half-siblings. In this regard there is a wealth of relatives who are concerned about him and willing to provide for his care."

Ms. Jackson noted that Daniel was 18 months old and was developing normally. She reported that his foster mother said that he was a "good child," who ate and slept well. Mother had weekly supervised visits at the CFS office, which went well. Daniel had no contact with Father, whose whereabouts were unknown.

Ms. Jackson stated that Mother had been an "adequate parent" to her young toddler son. However, Mother was a chronic substance abuser who had not conquered her addictions. CFS felt that Mother had exhausted the time allotted to resolve her substance abuse problems. Ms. Jackson recommended long-term foster care for Daniel "until prospects for permanent placement with a relative [could] be more fully explored." Ms. Jackson's report was dated May 12, 2004.

However, the next day Ms. Jackson prepared a memo to the juvenile court stating that she wanted "to make major changes to the recommendations." She now

recommended that a section 366.26 hearing be set, with the goal being adoption rather than long-term foster care with a relative.

At the contested section 366.22 hearing on June 3, 2004, Ms. Jackson testified that when she supervised Mother's visits with Daniel, Mother seemed appropriate with him, suggesting that they had a close relationship and good family bond. She admitted that her original report recommended long-term foster care and that there were no changes in the facts when she changed her recommendation for termination of parental rights.

Mother testified that she had basically raised Daniel his entire life and she was the only mother he knew. Mother further testified that while she and Daniel were living with her uncle other family members saw them regularly. She stated that she continued to maintain contact between Daniel, his grandparents, and other relatives. Other family members had expressed an interest in getting custody of Daniel; Mother had cousins with foster care licenses. Mother felt that with a little more time she could resolve her problems in a manner that would convince the court that she could regain custody.

Mother admitted that she had used marijuana and methamphetamine, but denied using cocaine, for which she had tested positive. She believed that her recent drug use had not placed Daniel in danger because she was not around him when she took the drug. Mother's attorney requested that the court order a plan of long-term foster care for Daniel, which would give Mother more time to deal with her addiction.

The juvenile court followed CFS's recommendation and set the case for a section 366.26 hearing. Neither Mother nor Father sought review by a petition for extraordinary writ.

In September 2004, Paula Hollowell, yet another social worker with CFS, prepared a report for the section 366.26 hearing that was entitled "366.26 WIC Report." Ms. Hollowell reported that since family reunification services were terminated on June 3, 2004, Mother had visited Daniel five of the ten scheduled

visits. Mother had either cancelled or failed to appear for the other five visits. Ms. Hollowell did not know, at the time of writing her report, whether Mother had come to the eleventh visit, which was scheduled for September 7, 2004.

In the section of the report entitled “Analysis of the Likelihood of Adoption and Proposed Permanent Plan,” Ms. Hollowell stated: “Daniel is a healthy and responsive African-American child of nearly two years of age. He is a highly adoptable child.” In the next section entitled: “Prospective Adoptive Parents/Legal Guardians,” Ms. Hollowell reported: “No prospective adoptive parents have been identified for Daniel, but there are several concurrent families, as well as two family members, who are interested in becoming his adoptive parents.” Ms. Hollowell stated that Angela H. had decided to withdraw her application for adoptive placement. Additionally, Malcolm M., Mother’s uncle, was described as being “very slow to proceed.” Malcolm M. had no telephone and a live-in girlfriend who was schizophrenic. He was hesitant to ask his girlfriend to submit to a background check or leave his home. Ms. Hollowell reported that Malcolm H. had been given until September 17, 2004, to obtain a telephone and to make a final decision about his girlfriend, or his case would be closed.

Ms. Hollowell further reported that Elizabeth B., a maternal cousin, had called her at Mother’s request to apply for adoptive placement of Daniel. Ms. Hollowell stated that Elizabeth B. would be sent an application to request a home study. Ms. Hollowell further noted that Elizabeth B. had “some DMV issues,” as her driver’s license had been suspended, but she took the bus. Ms. Hollowell concluded this section of the report by stating: “A recruitment has taken place to locate a prospective adoptive home for Daniel. There have been many responses. In summary, there are many prospective adoptive homes that would be available for Daniel should he be freed for adoption.”

The section 366.26 hearing was held on September 21, 2004. No witnesses were called. However, Ms. Hollowell orally amended her “366.26 WIC Report” to state that there were now “three concurrent families,” as well as Elizabeth B., who

were being “considered” for adoptive placement of Daniel. However, Daniel was not yet in a “concurrent home.” Daniel’s counsel agreed with CFS’s recommendations and stated that Daniel was “cute” and was “imminently adoptable.”

Ms. Hollowell further amended her report by stating that Mother had visited Daniel on September 7, 2004, but had cancelled the visit scheduled for September 14, 2004. Mother’s counsel argued that Mother had made a significant number of weekly visits with Daniel and that he had lived with her most of his life. Counsel further argued that Mother was attempting to keep Daniel in the family “because of the close bond between the child and the mother.” Counsel further argued that termination of parental rights would be detrimental to Daniel because of his relationship with Mother. Counsel added that if parental rights were terminated, Mother would like a family member to adopt him.

The juvenile court agreed with CFS’s recommendations to terminate parental rights and to find adoption as the appropriate permanent plan. The court expressly found beneficial relationship under section 366.26, subdivision (c)(1)(A) did not apply to either parent, nor did any other exception under subdivision (c)(1) apply. This timely appeal followed.

II. DISCUSSION

A. Adoptability

1. Adoption Assessment Statutory Requirements

Appellants argue that the adoption assessment in this case was statutorily deficient. We agree. Whenever the juvenile court orders a section 366.26 hearing, it must direct the appropriate agency to prepare an assessment. (§§ 366.21, subd. (i), 366.22, subd. (b). The assessment must include, among other things, “[1] A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement [¶] [2] An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status. [¶] [3] A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal

guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption [¶] [4] The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition. [¶] [5] A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange. [¶] [6] An analysis of the likelihood that the child will be adopted if parental rights are terminated.” (§ 366.21, subd. (i)(2)-(7); see also § 366.22, subd. (b)(2)-(6).)

2. *Statutorily Deficient Adoption Assessment*

Deficiencies in an assessment report go to the weight of evidence, and “if sufficiently egregious may impair the basis of a court’s decision to terminate parental rights.” (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 413.) An adoption assessment is sufficient if it substantially complies with what the assessment statutes require. (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) The question is whether the totality of the evidence supplies evidence not present in the adoption assessment. (*Ibid.*)

The report entitled “366.26 WIC Report” submitted by CFS failed to meet statutory requirements. In the section entitled “Evaluation of Child,” the report described Daniel as being a “happy-appearing” child who was “responsive and developing normally.” It indicated that although Daniel tested positive for drug exposure at birth, he had no reported health problems other than asthma.

In the section entitled, “Analysis of the Likelihood of Adoption and Proposed Permanent Plan,” the report provided a conclusory statement about Daniel’s

adoptability. It states verbatim: “Daniel is a healthy and responsive African-American child of nearly two years of age. He is a highly adoptable child.”

The section entitled, “Prospective Adoptive Parents/Legal Guardians” provides similarly bare statements. It provides: “No prospective adoptive parents have been identified for Daniel, but there are several concurrent families, as well as two family members, who are interested in becoming his adoptive parents.” Despite the statement that no prospective parents had been identified, this section concludes with the following statement: “A recruitment has taken place to locate a prospective adoptive home for Daniel. There have been many responses. In summary, there are many prospective adoptive homes that would be available for Daniel should he be freed for adoption.”

In the section entitled “History of Contacts Between Child and Family,” the report fails to describe the nature of the visits between Mother and Daniel. Rather, it summarily lists the scheduled visits with Mother and notes whether Mother attended, cancelled or failed to appear. Notably, the report fails to mention anything at all about the relationship between Daniel and Mother, which had been consistently described as an appropriate and loving relationship. (See e.g., *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 [finding insufficient evidence of adoptability where, among other things, an adoption assessment failed to consider child’s close relationship with his mother].) The report also fails to describe Daniel’s extended family network.

Although the “366.26 WIC Report” purports to address the various categories listed in sections 366.21, subdivision (i) and 366.22, subdivision (b), its bare conclusory statements fail to comply with the detail specified in the statutes. Further, because no other evidence was presented at the section 366.26 hearing, the deficiencies in the “adoption assessment” were not otherwise cured. (*In re John F.*, *supra*, 27 Cal.App.4th at p. 1378.) Accordingly, we find CFS failed to substantially comply with statutory requirements. (*Ibid.*)

3. *Ineffective Assistance of Counsel Due to Failure to Object to Statutorily Deficient Adoption Assessment*

Mother acknowledges that the failure to object to the adequacy of an adoption assessment waives the issue on appeal. (See *In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) Mother argues, however, that her attorney provided ineffective assistance of counsel by failing to object to the adoption assessment in this case.³

“To establish ineffective assistance of counsel in dependency proceedings, a parent ‘must demonstrate both that: (1) his appointed counsel failed to act in a manner expected of reasonably competent attorneys acting as diligent advocates; and that (2) this failure made a determinative difference in the outcome, rendering the proceedings fundamentally unfair in that it is reasonably probable that but for such failure, a determination more favorable for [the parent’s] interests would have resulted.’ [Citations.] In short, appellant has the burden of proving both that his attorney’s representation was deficient and that this deficiency resulted in prejudice. [Citation.]” (*In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98.)

To prove deficient representation, Mother “ ‘must “affirmatively show that the omissions of defense counsel involved a crucial issue, and that the omissions cannot be explained on the basis of any knowledgeable choice of tactics.” [Citation.]’ ” (*In re Dennis H.*, *supra*, 88 Cal.App.4th at pp. 98-99.) Mother contends there can be no plausible reason or strategy for not objecting that the adoption assessment did not comply with statutory requirements.

We agree that counsel’s failure to object to the deficient adoption assessment cannot be attributed to any tactical decision. CFS does not address whether the

³ In general, the proper way to raise a claim of ineffective assistance of counsel is by writ of habeas corpus, not appeal. (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1253, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.) However, an ineffective assistance claim may be reviewed on direct appeal where “ ‘there simply could be no satisfactory explanation’ for trial counsel’s action or inaction.” (*Ibid.*)

failure to object to the adoption assessment was deficient.⁴ Rather, it argues that Mother has failed to demonstrate any prejudice by her counsel's failure to object because the adoption assessment was not defective, and in any event substantial evidence supported the juvenile court's finding that Daniel was likely to be adopted. This argument is without merit. First, as discussed above, the report submitted by CFS was statutorily deficient. Second, as discussed below, there was insufficient evidence to support a finding that Daniel was adoptable.

Counsel's failure to object to the inadequate assessment was particularly egregious given the last minute change in the permanent plan from long-term foster care to adoption, which CFS admitted was not based on any change in the facts, and in light of the fact that no other evidence was presented at the section 366.26 hearing. The likelihood of Daniel's adoption was a crucial issue before the juvenile court and the failure of Mother's counsel to object to the deficient report upon which the court based its finding resulted in prejudice to Mother.

4. *Insufficient Evidence of Adoptability*

In order for a juvenile court to terminate parental rights under section 366.26, the court must find by clear and convincing evidence that it is likely that the child will be adopted. (§ 366.26, subd. (c)(1).) We review the juvenile court's order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that Daniel was likely to be adopted. (*Ibid.*; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) As with any substantial evidence review, we presume in favor of the order and consider the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.) "Clear and

⁴ However, by its argument that Mother has waived the issue of challenging the sufficiency of the adoption assessment report, CFS implicitly concedes that counsel's failure to object was deficient.

convincing” evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. (*In re Jerome D.*, *supra*, 84 Cal.App.4th at p. 1205.)

“The issue of adoptability requires the court to focus on the child, and whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citations.] It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting. [Citations.] However, there must be convincing evidence of the likelihood that adoption will take place within a reasonable time. [Citation.]” (*In re Brian P.*, *supra*, 99 Cal.App.4th at p. 624.) This quality of evidence was lacking in this case.

As discussed *ante*, the juvenile court did not have the benefit of an adequate adoption assessment report, which would have presented the kind of facts needed to support a finding of adoptability. The only evidence pertaining to Daniel’s likelihood of adoption was the conclusory statement by the social worker that he was “highly adoptable” because he was “healthy and responsive.” This hardly amounts to clear and convincing evidence. “A social worker’s opinion, by itself, is not sufficient to support a finding of adoptability. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 253.)” (*In re Brian P.*, *supra*, 99 Cal.App.4th at p. 624.)

In *In re Brian P.*, *supra*, 99 Cal.App.4th 616, Division Three of this District found a similarly bare statement by a social worker to be insufficient to establish clear and convincing evidence of adoptability. There, a social worker stated in a section 366.26 report that Brian’s chances of adoption were “ ‘very good.’ ” (*Id.* at p. 624.) The court found that facts about Brian’s age, physical condition, and emotional state were fragmentary and ambiguous and were not enough to support the agency’s position that Brian was adoptable. (*Id.* at pp. 624-625.) Specifically, Brian was described as a “healthy four-and-a-half-year-old boy” who had only recently learned to dress himself and who communicated with the child welfare worker by using his facial expressions.

Although in the instant case there was no evidence presented that Daniel was not adoptable, aside from the social worker's opinion, there was no evidence he was adoptable. *In re Kristin W., supra*, 222 Cal.App.3d 234, involved a similar situation. There, like here, there was no evidence that the children were not adoptable. (*Id.* at p. 253.) However, the only mention of adoptability was a statement in the social worker's report that " '[i]t is felt that these minors are adoptable and that they would benefit from a permanent plan.' " (*Ibid.*) The court held that social worker's opinion alone was insufficient to support a finding of adoptability. (*Ibid.*) As in *In re Kristin W., supra*, the bare statement by the social worker that Daniel was "highly adoptable" is insufficient to support a finding of adoptability.

Additionally, substantial evidence did not support the likelihood that Daniel would be adopted within a reasonable time given the absence of any prospective adoptive parents. "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.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) "Alternatively, evidence of '*approved families* willing to adopt a child of [this] "age, physical condition, and emotional state" ' can be used to evaluate the likelihood of the child's adoption. (*In re Jerome D., supra*, 84 Cal.App.4th at p. 1205; *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 224-225 [finding a likelihood of adoption where the social worker had identified one family within the foster care system and three families outside the system, in addition to a potential relative, who were all willing to adopt a child with potential neurological problems and all the attendant risks].)" (*In re Asia L.* (2003) 107 Cal.App.4th 498, 510, italics added.)

Here, the "366.26 WIC Report" states that while no prospective adoptive parents had been identified, there were "several concurrent families, as well as two

family members” who were “interested” in becoming Daniel’s adoptive parents. However, after noting various problems with the two family members, the report concluded that there had been “many responses” to a “recruitment” and there were “many prospective adoptive homes that would be available.” CFS argues that in “Contra Costa County the term ‘concurrent family’ can be used to mean any family with an approved adoptive home study. Narrowly speaking, the term applies only to a family with an approved home study with whom a child has been placed while reunification services are being provided to the child’s parents. [Citation.] Less precisely, as in this case, the term *can be used* to refer to any family with an approved adoptive home study.” (Italics added.) We find nothing in the record supporting CFS’s definition of “concurrent family.” Moreover, the statements that three “concurrent families” and a family member were “interested” or were being “considered” for adoptive placements are too vague and speculative to amount to clear and convincing evidence that Daniel is likely to be adopted within a reasonable time. (*In re Asia L.*, *supra*, 107 Cal.App.4th at pp. 511-512 [statements by social worker that foster parents were “ ‘willing to explore adoption’ ” and that department was “confident” that prospective adoptive family could be located failed to demonstrate clearly and convincingly that there was likelihood that children would be adopted within reasonable time].)

CFS cites to *In re Jennilee T.*, *supra*, 3 Cal.App.4th 212, in support of its assertion that substantial evidence supported the juvenile court’s finding of adoptability. There, the child had potential neurological problems, however, the social worker testified at the section 366.26 hearing that a “family within the system expressed an interest” in adopting her. (*Id.* at p. 224.) While that family was being considered, an out-of-state relative requested adoptive placement. (*Ibid.*) The social worker opined that “even if specific families had not been identified as potential adoptive placements, she believed Jennilee was ‘generally adoptable.’ ” (*Ibid.*) “The child was functioning appropriately for her age level.” (*Ibid.*) Finally, the social worker reported that “three additional families outside the system expressed an

interest but had not yet been investigated, in light of the relative’s request.” (*Id.* at pp. 224-225.)

The instant case is distinguishable from *In re Jennilee T.*, *supra*, 3 Cal.App.4th 212. Here, no specific family had been identified for Daniel. While it is not necessary to have an adoptive parent waiting in the wings, the willingness of the prospective family to adopt Jennilee indicated that she was likely to be adopted within a reasonable time, either by that family or some other family. (*In re Jennilee T.*, *supra*, 3 Cal.App.4th at p. 223, fn.11; *In re Sara M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.) Additionally, we find *In re Jennilee T.*, *supra*, is inconsistent with *In re Asia L.*, *supra*, 107 Cal.App.4th 498, and *In re Brian P.*, *supra*, 99 Cal.App.4th 616, to the extent it appears to approve of a conclusory statement made by the social worker that the child was “generally adoptable.”

This case is more akin to *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200. There, the minor was a nine-year-old boy, who was described as adoptable “ ‘based on his good mental, physical health, and sociability.’ ” (*Id.* at pp. 1204-1205.) The agency based its finding of adoptability on the willingness of Jerome’s stepfather to adopt him, but it did not indicate “whether there were any *approved* families” willing to adopt Jerome. (*Id.* at p. 1205, italics added.) A background check on the stepfather had not been completed, which presumably would have revealed his three prior convictions of domestic violence involving Jerome’s mother and being listed as a perpetrator with Child Protective Services for emotionally abusing his nephews and niece. (*Id.* at pp. 1203, 1205.) The court found there was insufficient evidence of general adoptability to support the agency’s finding. (*Id.* at p. 1205.) The court stated that the stepfather’s desire to adopt Jerome was not sufficient to support the adoptability finding, as the adoption assessment failed to address his “criminal and CPS history as required by section 366.22, subdivision (b)(4).” The assessment also did not consider Jerome’s close relationship with his mother. (*Ibid.*) As such, the court held that evidence of adoptability failed to meet the clear and convincing standard required by law. (*Id.* at pp. 1205-1206.)

Here, as in *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200, there is insufficient evidence of Daniel’s general adoptability, given the absence of approved families willing to adopt him. Additionally, as previously mentioned, the “366.26 WIC Report” failed to consider Daniel’s close relationship with Mother and extended family network.

Although the question is a close one, we must conclude the record contains insufficient evidence to support the juvenile court’s finding that it is likely Daniel will be adopted. Under other circumstances, this error might not have been prejudicial. But here, as will be discussed, there is strong evidence that Daniel would benefit from a continuing relationship with Mother.

B. *Beneficial Relationship*

Mother also argues that the trial court erred in terminating her parental rights because she established that Daniel would benefit from continuing his relationship with her.

As discussed *ante*, section 366.26, subdivision (c)(1) allows termination of parental rights upon clear and convincing evidence of adoptability. An exception exists if “[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(A).) A beneficial relationship is one that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs” (*Id.* at p. 576.)

“When contesting termination of parental rights under the statutory exception that the parent has maintained regular visitation with the child and the child will benefit from continuing the relationship, the parent has the burden of showing either that (1) continuation of the parent-child relationship will promote the well-being of

the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents [citation] or (2) termination of the parental relationship would be detrimental to the child. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) “In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

“Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) We review the court’s determination in this matter for abuse of discretion. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351-1352.)⁵ As the reviewing court we will only interfere if under all of the evidence, viewed most favorably in support of the trial court’s action, no court could have reasonably ruled as it did. (*Id.* at p. 1351.)

⁵ In *In re Jasmine D., supra*, 78 Cal.App.4th 1339, the court recognized that some courts have applied the substantial evidence standard of review to determinations under the continuing parental relationship exception. (*Id.* at p. 1351.) In choosing to apply the abuse of discretion standard of review, the court in *In re Jasmine D.* noted that practical differences between the two standards of review in this context are not significant. We agree, and observe that under either standard of review the result in this case would be the same.

At the time of the section 366.26 hearing, Daniel was nearly two years old. He had been removed from Mother's care for approximately six months. Thus, for approximately 18 months, Mother had been the only parent Daniel had ever known. Until that point, Mother was the one who provided Daniel with all the day-to-day, hour-by-hour care needed by an infant and then growing toddler. By all accounts, Mother was described as a good parent, who provided Daniel with a clean and orderly home. Daniel was consistently described as being happy, healthy, and thriving in Mother's care. Additionally, Mother took appropriate efforts to nurture Daniel's relationship with his extended family for his benefit. Daniel was described as having a close family bond with members of his extended family.

We are not persuaded by CFS's assertion that a beneficial relationship does not exist because Mother only attended half of her scheduled, supervised visits with Daniel during the three-month period between June 2004 (when the § 366.26 hearing was recommended) and September 2004 (when the § 366.26 hearing was held). By this argument, CFS overlooks the fact that Mother visited Daniel weekly in the initial two months following his placement in foster care and that their relationship was described as appropriate and "close" and "mutually affectionate." Moreover, CFS ignores the fact that Daniel thrived in Mother's care during the first 18 months of his life.

"Parent-child relationships do not necessarily conform to a particular pattern. The juvenile court should be concerned not with finding a certain type of parental relationship but with the interests of the particular child or children before it, and whether there is a compelling reason not to terminate parental rights." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Mother has maintained regular contact with Daniel and termination of the parental relationship would be detrimental to him. While it is apparent that Mother failed to comply with the objectives of her case plan within the allotted time, it is equally apparent that she and Daniel have a close and loving relationship, in which Daniel has thrived. Inasmuch as we find that severing the parent-child relationship would deprive Daniel of a substantial, positive

attachment, we find the preference for adoption is overcome. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Accordingly, we find the trial court erred in finding the beneficial relationship exception did not apply.

III. DISPOSITION

The judgment terminating parental rights is reversed. The matter is remanded for further proceedings consistent with this opinion.⁶

Reardon, Acting P.J.

We concur:

Rivera, J.

Munter, J.*

⁶ In view of our determination that the judgment terminating parental rights must be reversed based on insufficient evidence to support the findings of adoptability and that the trial erred in finding no benefit from a continuing relationship between Daniel and Mother, we need not address whether the potential interference with the sibling relationship (§ 366.26, subd. (c)(1)(E)) alone would have required reversal.

* Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.