Filed 9/8/11

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re P.C., A Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. Y.C., Defendant and Appellant.	A130866 (Alameda County Super. Ct. No. OJ10014922)

Shortly after Y.C. (mother) gave birth to P.C., the Alameda County Social Services Agency (the agency) filed a petition pursuant to Welfare and Institutions Code section 300[1] on behalf of P.C. Subsequently, the juvenile court held a permanency planning hearing pursuant to section 366.26. The court found by clear and convincing evidence that P.C. was adoptable and likely to be adopted within a reasonable period of time and terminated mother's parental rights. Mother appeals and contends that P.C. is not adoptable because of her multiple severe medical problems. We affirm the judgment.

BACKGROUND

On May 26, 2010, shortly after mother gave birth to P.C., the agency filed a petition pursuant to section 300, subdivisions (b) and (g), on behalf of P.C. Under subdivision (b) of section 300, the petition alleged that mother had mental problems impacting her ability to provide suitable care for P.C. The petition stated the following: "a. After giving birth to the minor, hospital staff . . . expressed concern regarding the

[1] All further unspecified code sections refer to the Welfare and Institutions Code.

mother's ability to interact appropriately with staff about the ongoing needs of the minor by participating in her medical care when appropriate; [¶] b. The mother claims to have found God and believed all social workers are liars[.]" The petition further alleged that P.C. was medically fragile and weighed only four pounds and eight ounces at birth. She had difficulty eating and was experiencing respiratory problems. The petition added that P.C. had "extensive medical problems" requiring "intubation for a critical airway[,]" had "respiratory problems and" needed "a nasal cannula[,]" had "to be fed through a feeding tube[,]" needed "continued medical observation" and had to "be transported by trained medical staff[,]" had to be "in a facility that" could "manage her care 24/7[,]" and was "trach dependent."

Under section 300, subdivision (b), the petition also alleged that mother had an extensive history with the child protection services and had five other children; none of the children lived with her. It noted that mother was homeless and lived in a shelter. Mother also failed to sign the consent for P.C.'s surgery despite being informed of P.C.'s medical needs. Under subdivision (g) of section 300, the petition alleged that mother was no longer living at the shelter and her whereabouts were unknown.

The agency filed a detention report, and requested that the court detain P.C. The report indicated that mother had a history of poor mental health and substance abuse since the age of 13. Mother, according to the report, was diagnosed with Post Traumatic Stress Disorder and as being bipolar; she was not compliant with her psychotropic medication. Mother had tested positive for cocaine about two weeks prior to the filing of the detention report. The report also pointed out that mother had two of her other children removed from her care and permanently placed due to her substance abuse and chronic homelessness.

The court held a detention hearing on May 27, 2010. The court ordered P.C. detained and committed her to the care, custody, and control of the agency to be placed in a suitable family home or private institution.

The agency filed an amended petition on June 7, 2010. The petition alleged that P.C. came within the jurisdiction of the juvenile court under subdivisions (b) and (j) of

section 300. Under subdivision (b), the amended petition reiterated the allegations set forth in the original petition and added that both mother and P.C. tested positive for cocaine. It further alleged that P.C.'s "birth was complicated by Intrauterine Growth Retardation (IUGR) and multiple prenatal drug exposures, including alcohol, as evidenced by the minor's overlapping features with fetal valproate and fetal cocaine syndrome, abnormal corpus callosum with mild ventriculomegaly, short midface with down slanting palpebral sissures, large fontanel, and low set ears, all consistent with Fetal Alcohol Syndrome."

Under section 300, subdivision (j), the amended petition alleged that P.C.'s siblings had been abused or neglected. It noted that two of mother's children had been removed from her care in 1999 and 2000 because of mother's substance abuse problem. Mother's reunification services were terminated and both children were "permanently planned and [placed in a] legal guardianship with the maternal grandmother . . . ." In 2005, another child was removed from mother's care due to her substance abuse problem and mother was denied reunification services. That child also had been placed in the home of the maternal grandmother and the agency was recommending adoption of the minor. Finally, the petition asserted that a warrant was issued to have P.C. "placed on police hold at Children's Hospital Oakland due to the mother's refusal and inability to provide for the child's numerous and serious medical needs; the minor's inability to feed and breathe on her own as a result of the mother's drug usage during pregnancy; the minor's trach dependency, and the doctor's assessment that the minor needed to have a surgical procedure performed under anesthesia." The petition noted that mother had left the hospital and her whereabouts were unknown.

The agency filed its jurisdiction/disposition report on June 10, 2010. The agency recommended that P.C. be adjudged a dependent of the court and that reunification services be denied to mother. It added that mother's whereabouts were unknown and mother never identified the whereabouts or name of the father of P.C. The petition stated that P.C. would remain an in-patient at the hospital for at least another four weeks from the date of the filing of the report and that it was expected that she would be transported

to the recovery center, a facility that provides around the clock care for medically fragile infants. The report noted that P.C. was born very small for her gestational age, and doctors expressed concern that the circumference of her head was not growing. However, she did respond to being bathed, loved to be in the water, had gained two pounds, and was receiving a lot of loving attention from the staff as she appeared to be a favorite.

The agency provided the following assessment of P.C. in the report: "The baby has a strong will and her own little personality despite being so ill, and she opens her eyes to sounds and loves to be held. She had a grim prognosis, but this little girl might fool everyone and one should never give up despite how the situation looks right now. [P.C.] is still here, and she will eventually thrive and grow, in spite of this rather traumatic entrance into this life. The undersigned holds out hope for this little one, that the best family in the world will adopt her, cherish her, love her and make her whole."

The court held the contested jurisdiction/disposition hearing on July 14, 2010. At the end of the hearing, the court declared P.C. a dependent. It denied reunification services to mother, ordered adoption as the permanent plan goal, and directed the agency to prepare an adoption assessment. The court also directed the agency to file an amended petition. An amended petition filed on July 26, 2010, eliminated references to prenatal drug exposure, but otherwise set forth the same allegations included in the first amended petition.

On September 29, 2010, the court held a hearing on the agency's due diligence and found that that the agency had exercised due diligence in attempting to locate mother and the alleged father of P.C. Subsequently, the alleged father filed a statement regarding parentage. He declared that he was not the parent of P.C. and that he did not wish to participate in the juvenile court proceedings.

The agency filed its section 366.26 report on November 23, 2010. The agency recommended that parental rights be terminated so that P.C. could be adopted. It disclosed that mother was opposed to adoption. It observed that mother refused to identify the biological father and the man listed as the father in hospital records stated

that he was not the biological father. Thus, the agency declared that it could not identify the biological father of P.C. The report indicated that an adoption assessment for P.C. was completed on November 4, 2010, by Child Welfare Worker Amy Dooha and Child Welfare Adoptions Supervisor Renee Cage. Dooha and Cage concluded that P.C. was adoptable, although there was no identified adoptive family at the time the report was written. The agency also acknowledged that P.C. has serious medical issues. It stressed that Adoption Placement Specialist Wayne Luk maintained that adoptive families had been found for children with similar medical problems, and that an adoptive family could be found for P.C.

With regard to P.C.'s health, the agency stated in the report that P.C. still needed a tracheostomy tube to breathe. It added that she would need surgery on her airway to breathe on her own, but surgery could not be done until she was older, probably 12 to 18 months. She was unable to suck or swallow on her own. She also had surgery for glaucoma in both eyes. The report indicated that she appeared to have some vision, but it was not clear how much vision she currently had or may have in the future. It noted that another eye surgery was planned for December 2010.

The report set forth the following additional medical issues related to P.C.: "[R]ight choanal stenosis (unusually small nasal passage), small larynx, filum cyst (cyst on the spinal cord), ventriculomegaly (dilated vessels in the brain), mid face hypoplasia (underdevelopment), middle ear opacification, Micrognatha (undersized jaw), absent maxillary sinuses, Hemoglobin C trait, and abnormal corpus callosusm (missing a portion of the brain that normally connects the two hemispheres)." It stated that P.C. was at the recovery center, which is a facility providing around the clock care for medically fragile infants.

With regard to P.C.'s development, the agency declared that she was small for her gestational age and was developmentally delayed. She was not yet able to roll over, or remain sitting when placed in a sitting position. She did, however, reach for toys and looked toward rattles and voices.

The agency indicated that it would be easier to identify an adoptive family for P.C. if parental rights were terminated. It noted that P.C. would need to remain at the recovery center for the next few months, and possibly longer.

The court held the section 366.26 permanency planning hearing on December 6, 2010. Mother was incarcerated and signed a waiver of her appearance. Counsel for the minor indicated that he agreed with the recommendations of the agency that the parental rights should be terminated and adoption should be the permanent plan for P.C.

Dooha testified at the hearing and stated that she had been a child welfare worker for 31 years. For the past 18 years, she had worked in the adoptions unit. Her job sometimes involved finding placements; it also involved supervising the placement until the adoption was completed. She stated that she had worked with hundreds of children and probably chosen the placement for dozens of them. She added that she had placed many special-needs children and had placed two other highly special-needs children in the past five years. She remarked that the severity of the medical needs of these two children was similar to those of P.C.

The court asked Dooha the following: "In comparison with the other two special-needs children that you were able to get adoptive parents for and [P.C.], would her needs exceed or are they less than these other two special needs?" Dooha responded: "One of them, I think, would be fairly equal to what [P.C.'s] disabilities are. The other child, it's very interesting because in the beginning I might have said they were very comparable, but the other child just as she got older truly blossomed. You know, although she may have walked late or responded to things late, she did develop. So it's difficult to know when they are just infants what their potential will be. But one of the children that I placed in Utah I would say would be very comparable to [P.C.]."

Dooha testified that she determined that P.C. was adoptable. When coming to this decision, she visited with P.C., spoke with the social worker at the recovery center, and met with supervisors. She stated that she, Cage, Luk, and two others discussed P.C. and decided that she was adoptable. She said that in the past both Luk and she had worked together and found homes for special-needs children, and they both were confident that

there were families out there who would care for P.C. The case was assigned to Luk to find a home. She stated that she believed the parental rights had to be terminated prior to locating a family because "there are a lot of families out there who don't want to take a risk if a child is not freed . . . ." According to Dooha, prospective families do not want to invest the time if there is a chance the child will not be placed with them. Dooha's supervisor signed the adoptive placement assessment, which stated that they decided that P.C. was adoptable.[2]

Dooha acknowledged that P.C. would have to be off "the trach" before she could be placed with a family because she needed to be "suctioned every 20 minutes, and nobody can, except around-the-clock care, . . . do that." She elaborated: "But part of what we do is assess when she is ready to leave that with the medical needs that she has would—has there been a history of people with those needs finding adoptive homes? And there have been. And that's what we based our decision to find her adoptable." Dooha emphasized that P.C.'s strengths were that she was "a very charming little child. She's got a very nice personality. She's not a fussy baby . . . ." She added that she responds to stimuli and plays with toys.

The court concluded that the agency presented clear and convincing evidence that P.C. is adoptable. The court explained: "[P.C.] has the benefit of a very experience[d] child welfare worker, Ms. Dooha. There's five different people working on this particular adoption case. [¶] Mr. Wayne Luk does make the point that some families will not consider placement of a child unless parental rights are already terminated. I'm not rushing to terminate parental rights for that purpose, but I do want this child's situation assessed as quickly as possible given her tender age and her special needs so that the appropriate parent or set of parents are trained to deal with her special needs, which will have to happen here, and that this child gets into a stable family situation as soon as possible. [¶] And I do agree with the analysis that it would be good if we can identify that kind of person before the child is released from the current institution she's in, that is

[2] The adoptions assessment sheet was not introduced as evidence, but was discussed at the hearing, and the court read it.

the Children's Recovery Center. [¶] So the court does make a finding by clear and convincing evidence that [P.C.] is adoptable and that there is a likelihood that she will be adopted." The court terminated parental rights.

Mother filed a timely notice of appeal.

DISCUSSION

I. *Standard of Review*

Mother's sole issue on appeal is that the juvenile court erred in terminating her parental rights because there was insufficient evidence to support its finding that P.C. is adoptable and is likely to be adopted within a reasonable period of time.

" 'At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . The permanent plan preferred by the Legislature is adoption.' " (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368, italics omitted.) A juvenile court may terminate parental rights and order a child placed for adoption only if it finds by clear and convincing evidence that the minor is likely to be adopted within a reasonable amount of time. (§ 366.26, subd. (c)(1); see also *In re Zeth S.* (2003) 31 Cal.4th 396, 406.) This is a low threshold, as the court must merely determine that it is "likely" that the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

The issue of adoptability focuses on the *minor*—on whether the child's age, physical condition, and emotional state might make it difficult to find someone willing to adopt him or her. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) The child need not already be placed in a potential adoptive home, nor must a proposed adoptive parent be waiting. (See *In re Brian P.* (2002) 99 Cal.App.4th 616, 624.)

On appeal, "we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) "In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses,

attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. [Citation.] When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. [Citation.] The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. [Citations.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916.)

II. *Substantial Evidence*

Mother contends the record contains insufficient evidence that P.C. would be adopted within a reasonable time because she has significant medical problems, including the need for a tracheostomy tube. She asserts that if P.C. is not adopted, she will become a legal orphan because the court terminated her parental rights.

A child is generally adoptable when his or her personal characteristics are sufficiently appealing to make it likely that an adoptive family will be located in a reasonable time, regardless of whether a prospective adoptive family has been found. (See *In re Sarah M., supra,* 22 Cal.App.4th at p. 1649.) A child's relative youth, his or her good physical and emotional health, the minor's intellectual capacity and his or her ability to develop interpersonal relationships all indicate that the child is adoptable. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562; *In re Helen W.* (2007) 150 Cal.App.4th 71, 79-80.)

The possibility that a child may have future problems does not preclude a finding that he or she is likely to be adopted. Even a minor exposed to substances in utero and suffering speech delays may be found generally adoptable. (*In re R.C.* (2008) 169 Cal.App.4th 486, 492.) Young children may be generally adoptable despite evidence of physical and developmental conditions, significant delays, and speech issues. These conditions require time to determine the full severity of the issues the minor will face. The certainty of a child's future medical condition is not required before a court can find

that the minor is generally adoptable. (See *In re Helen W., supra,* 150 Cal.App.4th at p. 79.)

Here, the record contains evidence of P.C.'s appealing characteristics, which support the lower court's finding that she was generally adoptable. P.C. is a baby. Even if it will be six months or more before P.C. will be well enough to leave the recovery center, she will still be very young. She was under the age of one year at the time of the adoptability finding. Moreover, the plan is for the prospective family to have the opportunity to interact with P.C. and learn how to tend to her needs while she is in the recovery center.

P.C. does have serious physical health problems. She needs a tracheostomy tube to breath and needs surgery on her airway when she is 12 to 18 months to permit her to breathe on her own. Additionally, she has a G-tube inserted and had two eye surgeries. It is unclear how much vision she has but, at the time of the hearing, she did have some vision as she paid attention to shiny objects. She also suffers with an assortment of other developmental issues related to facial and sinus development.

The agency noted that P.C. was very likeable, despite her ailments. The agency's first assessment of P.C. provided the following: "The baby has a strong will and her own little personality despite being so ill, and she opens her eyes to sounds and loves to be held. She had a grim prognosis, but this little girl might fool everyone and one should never give up despite how the situation looks right now. [P.C.] is still here, and she will eventually thrive and grow, in spite of this rather traumatic entrance into this life. The undersigned holds out hope for this little one, that the best family in the world will adopt her, cherish her, love her and make her whole." Dooha testified at the section 366.26 hearing that P.C.'s strengths were that she was "a very charming little child. She's got a very nice personality. She's not a fussy baby . . . ." She added that she responds to stimuli and plays with toys.

P.C.'s special needs, although extensive given her medical problems, do not preclude a finding that she is generally adoptable. Child Welfare Worker Dooha, Dooha's supervisor, Cage, Adoption Placement Specialist Luk, and two other people

assessing P.C. concluded that, despite P.C.'s serious medical problems, a family could be found to adopt P.C. Their opinion was based on reports regarding P.C. and their observations of her. The court was entitled to find these opinions credible and give great weight to their assessment. (See, e.g., *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420-1421 [social worker may be expert in assessment and selection of permanent plan for dependent minor].)

Mother argues that there was no medical opinion as to when P.C. would no longer need a tube and when she would no longer need constant medical care. Thus, she maintains there is no evidence that P.C. would be adopted within a reasonable time. She maintains that the evidence, here, is weaker than the evidence supporting an adoptability finding in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, and the appellate court in *In re Jerome D.*, reversed the lower court's finding of adoptability. (*Id.* at p. 1205.)

In *In re Jerome D., supra*, 84 Cal.App.4th 1200, the lower court's finding of adoptability for a child was premised entirely on the willingness to adopt by an individual whose suitability for adoption had not been assessed. (*Id.* at p. 1205.) There was evidence that the person willing to adopt the child was not suitable. The reviewing court concluded that it could not affirm on the basis that the child was generally adoptable because the adoption assessment lacked important information about the child's history, such as details about his mental and physical health, the care and treatment of his prosthetic eye, and his close relationship with his mother. (*Ibid.*)

The present situation is not similar to the facts in *In re Jerome D., supra*, 84 Cal.App.4th 1200. The juvenile court in *In re Jerome D.* did not make a finding that the minor was generally adoptable; rather, its finding of adoptability was based on the willingness of the mother's former boyfriend to adopt the child. (*Id.* at p. 1205.) In contrast, here, the lower court's finding was that P.C. is generally adoptable; thus, our review of the record is different. Furthermore, contrary to the present situation, the minor in *In re Jerome D.* was not a baby; he was almost nine years old and had a close relationship with his mother. No social worker in *In re Jerome D.* had specifically addressed the minor's special needs, the care of his prosthetic eye, and his relationship

with his biological mother. In contrast, here, the social workers have assessed P.C.'s special needs and recognize that a special family will need to be found to adopt her and care for her needs. Their experience with placing special needs children for adoption and assessing P.C.'s situation and personality led them to conclude that a family could be found given P.C.'s young age and appealing personality. Thus, the posture and the facts of the present case distinguish it from *In re Jerome D.*

Mother also relies on *In re Amelia S.* (1991) 229 Cal.App.3d 1060 where the Court of Appeal reversed a finding that the minors were likely to be adopted because of uncertainty as to whether the adoptions would be completed. In *In re Amelia S.*, the appellate court determined that there was no evidence of a " ' "high probability" ' " of adoption where 10 children from a sibling group suffered from various developmental, emotional, and physical problems, and a few of the foster parents were considering, but not committed to, adoption. (*Id.* at p. 1065.) The 10 children were described as " 'hard to place' " minors. (*Id.* at p. 1063.)

The present case is not similar to *In re Amelia S., supra,* 229 Cal.App.3d 1060. In that case, there was no evidence that the children were adoptable other than a report indicating that a few foster parents were considering adoption. (*Id.* at p. 1065.) Here, the court considered that five professionals concluded that P.C. is adoptable. The court also evaluated evidence that P.C. is a charming baby and one of the favorites of the tending nurses.

Mother argues that no adoption assessment report was on file and she claims that the social worker's opinion that P.C. was adoptable "was based on conjecture, not on any evidence of specific approved potential families willing to adopt such a child, or the opinion of her doctors or a qualified medical expert." She adds that Dooha had placed only two children with special needs similar to P.C. in 18 years. Two placements, according to mother, do not support a finding of clear and convincing evidence of adoptability. Furthermore, she complains that the social worker did not provide much description of the other children's "deficiencies" so that the court could make an

adequate comparison and no medical opinion was provided to support a finding of adoptability.

In the present case, Dooha as well as four other experts concluded that P.C. was adoptable. Although the adoption assessment report was not filed, it was completed and discussed at the hearing. The record makes it clear that the report was before the court and in the possession of mother's attorney. In the lower court, mother never asserted that the report did not comply with section 366.21. She has therefore forfeited any argument that the adoption assessment report did not satisfy the requirements of section 366.21. (See *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411.)

Since the report was not introduced into evidence, we cannot assess whether the report was deficient. Although egregious deficiencies in an assessment report may " 'impair the basis of a court's decision' " (*In re Brian P., supra,* 99 Cal.App.4th at p. 623), the juvenile court's decision in the present case was sufficiently supported by evidence in other portions of the record and by testimony by Dooha regarding the contents of the report.

Mother complains about the absence of a medical opinion regarding how long P.C. would have to remain at the recovery center, and asserts that there is no evidence that P.C. will be adoptable in a reasonable period of time. It is true that a period of time is necessary to determine the full severity of the medical and developmental issues that P.C. will suffer. However, Dooha and the others have been involved in assessing her development and are knowledgeable about her medical ailments as well as the surgeries she has had and will need in the future. "Nowhere in the statute or case law is certainty of a child's future medical condition required before a court can find adoptability." (*In re Helen W., supra*, 150 Cal.App.4th at p. 79.) The agency was not waiting for P.C.'s discharge to search for adoptive placements, and hoped to introduce her to a potential adoptive parent while she was still at the recovery center.

The fact that no family has yet been identified to adopt P.C. is not determinative. The focus is P.C., and whether her attributes make it likely that a family will be willing to adopt her. "Hence, it is not necessary that the minor already be in a potential adoptive

home or that there be a proposed adoptive parent 'waiting in the wings.' " (*In re Sarah M., supra,* 22 Cal.App.4th at p. 1649.)

We conclude that mother's concern that P.C. might become a legal orphan if no adoptive family is found is not persuasive. Mother has had minimal contact with P.C., her substance abuse is the cause of many, if not all, of P.C.'s medical problems, and she has shown no ability and little interest in caring for her child. Furthermore, there is always a danger that the adoption may not occur. Since such a risk is always present, the Legislature permits a parent to file a petition pursuant to section 388 to set aside the order terminating parental rights when, for example, the child is not adopted within three years of termination and the court determines adoption is no longer the child's permanent plan. (§ 366.26, subd. (i)(3).) In any event, we conclude that the record supports a finding that P.C. is adoptable and therefore P.C. is not likely to be left without any legal parent.

We agree that "special needs" children may be more difficult to place than those without such needs. However, we strongly disagree with the statement by counsel for mother that "[if] ever there was a case where a child was not likely to be adopted in a reasonable amount of time, this is it." Counsel defines P.C. by her medical problems, which she refers to at one point in her brief as "deficiencies." Five experts, unlike counsel for mother, do not define P.C. by her medical ailments, but consider all of her attributes. The record establishes that five experts assessed P.C.'s medical condition, special needs, age, and interactions with the nurses, and *all of them* concluded that a family could be found for P.C. They understood the challenge of finding an appropriate family and indicated that they were going to look for the right family throughout the country. The record shows that the court carefully considered all of the pertinent facts and circumstances. We conclude that sufficient evidence supported the lower court's finding that clear and convincing evidence showed that P.C. is likely to be adopted.

Finally, we are troubled by this appeal. At oral argument, counsel for mother acknowledged that she has had *no* contact with mother, her client.[3] Neither counsel nor the agency has been able to locate mother. Mother's attorney stated that she had some contact with mother's trial counsel, who filed and signed the notice of appeal on behalf of mother, but appellate counsel had no contact with her client. We recognize that an appeal from the order terminating parental rights does not require the notice of appeal to be authorized by the parent, as is required in a writ petition to review an order to set a section 366.26 hearing. (See Cal. Rules of Court, rule 8.450(e)(3).) However, it is troubling that counsel has chosen to pursue an appeal that is borderline frivolous on behalf of a nominal client.

We appreciate that appellate counsel for parents in dependency cases frequently find themselves in the position of representing a client whose whereabouts are unknown. In such situations, counsel clearly have an obligation to pursue vigorously issues that affect the rights of the parents. However, dependency proceedings involve children who have been abused or neglected and a delay will generally be detrimental to the child. Thus, counsel have a heightened responsibility not to pursue issues of questionable merit, especially at the stage where the lower court has terminated parental rights and the child's interests are of paramount importance. Here, despite receiving no direction from her client and despite being aware of her client's apparent abandonment of any relationship with her child, counsel pursued a marginal appeal. For counsel, who has no reason to believe her client has any interest in this appeal, to take it upon herself to try to reverse the finding of adoptability, which was supported by the opinion of five experts, and thereby prevent P.C.'s chance of having an adoptive parent, raises, in our view, a

---

[3] We note that counsel's request for oral argument is unusual. Unless the appeal in a dependency case raises a unique or compelling issue, counsel for parents normally forego requesting oral argument. In appeals from orders terminating parental rights, counsel are normally sensitive to the importance of having the case resolved as quickly as possible and recognize that requesting oral argument generally delays the issuance of an appellate court's decision.

significant ethical issue. This ethical issue, however, is one that may be unique to the dependency process and not directly addressed by the canons of professional conduct.

DISPOSITION

The court's order terminating parental rights and placing P.C. for adoption is affirmed.

_____
Lambden, J.

We concur:

_____
Kline, P.J.

_____
Haerle, J.

Trial Court:	Alameda County Superior Court
Trial Judge:	Hon. David Krashna
Attorneys for Defendant and Appellant	Under Appointment by the Court of Appeal Matt Zwerling Carol Federighi Linda S. Rehm
Attorneys for Plaintiff and Respondent	Office of the County Counsel Richard R. Karlsson Lindsey G. Stern Melinda Leong East Bay Children's Law Offices Roger Chan