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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

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

**ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,**

**A132342**

**Plaintiff and Respondent,**

**(Alameda County  
Super. Ct. No. HJ09013609)**

**v.**

**GINA G.,**

**Defendant and Appellant.**

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Appellant Gina G. appeals from an order terminating her parental rights as to her daughter Mia. She contends the trial court erred when it denied her request under Welfare and Institutions Code section 388<sup>1</sup> to modify the pending order. We conclude the court did not abuse its discretion and will affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Appellant gave birth to Mia in June 2009. Mia tested positive for marijuana when she was born and appellant admitted using the drug daily during her pregnancy. In the

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

months that followed, appellant was reported to child protection authorities twice but no formal action was taken.

On October 13, 2009, appellant was spotted driving on a highway with the hood of her car open and both airbags deployed. In order to see around the hood, appellant was hanging her head out the window. Appellant was stopped by police who found that Mia also was inside. Appellant smelled strongly of alcohol and her blood alcohol content was nearly twice the legal limit. Appellant was arrested for driving under the influence.

Two days later on October 15, 2009, a petition was filed alleging Mia was a dependent child within the meaning of section 300, subdivisions (b) and (g).

The court detained Mia and placed her in the home of her maternal grandmother. Appellant was granted supervised visits.

A jurisdictional hearing was scheduled. Reports prepared prior to that hearing showed appellant faced many challenges. Appellant was diagnosed with bipolar disorder when she was 14 years old, but instead of taking her prescribed medications she began to use illegal drugs. Appellant also had a significant criminal history having been arrested no less than six times for offenses such as assault with a deadly weapon, grand theft auto, and felony possession of illegal firearms.

Appellant entered a residential treatment program and for a time, she actively participated in the classes that were offered there. Appellant also visited Mia on a regular basis and she was attentive to the child's needs. In fact, appellant did so well that child protection authorities recommended that Mia be allowed to visit with appellant at her program for up to two weeks. But appellant left her program on November 29, 2009. Appellant briefly enrolled in a different residential drug treatment program but she left that one too explaining that it would not accommodate the special diet she required.

A combination jurisdictional/dispositional hearing was conducted on December 1, 2009. The court declared Mia to be a dependent child and ordered that appellant receive reunification services.

A six-month review hearing was scheduled. Reports prepared prior to that hearing showed appellant was having mixed success overcoming the problems she faced.

Appellant entered another drug treatment program but she left that one too after she was accused of being rude to staff and other residents. In February 2010, appellant enrolled in yet another residential program but left it after about a month.

A psychologist who evaluated appellant diagnosed her as suffering from a moderate to severe mood disorder, polysubstance abuse dependence, and personality disorder with antisocial and obsessive compulsive features. A psychotropic medication evaluation indicated appellant exhibited excessive anger, impulsivity, abandonment fears, interpersonal conflict, low self-esteem and alcohol dependency.

Appellant continued to visit Mia on a weekly basis. She did a good job of grooming the child during the visits and was appropriately attentive, sensitive and nurturing.

At the six-month review hearing conducted on May 11, 2010, the court found appellant had made partial progress toward alleviating the causes that led to the dependency and ordered six months of additional reunification services.

Reports prepared prior to the 12-month review hearing again indicated appellant was making mixed progress. On the one hand, appellant continued to visit with Mia and was attentive and engaged during the visits. Mia's response was more equivocal. On some occasions she appeared happy to see appellant. On others she was less enthusiastic and would direct her attention elsewhere.

Appellant participated in substance abuse counseling regularly although she would test positive for marijuana every time. Appellant said this was because she had a medical cannabis card.

On the other hand some aspects of appellant's life were extremely troubling. Appellant threatened to kill the maternal grandmother after a visit with Mia. The social worker had to take steps to ensure the grandmother and Mia were safe both before and after the visits.

More disturbingly, appellant moved in with a boyfriend and shortly thereafter child protection authorities began to notice bruises on appellant. Appellant told her social worker that her boyfriend hit her, and she was going to move to a domestic violence

shelter. Appellant made similar statements to the maternal grandmother saying her boyfriend hit her and threatened to kill her. When appellant did not follow through with her plan to move to a shelter, her social worker provided her with a list of domestic violence shelter programs. Appellant never moved into a shelter.

As for Mia herself, the reports indicated that she was progressing well under her maternal grandmother's care. She was developmentally on target and there were no concerns regarding her mental, physical, or emotional development.

The trial court considered this evidence at the 12-month review hearing conducted on December 17, 2010. After hearing the evidence presented the court terminated reunification services and set the matter for a hearing to determine whether appellant's parental rights should be terminated.

On February 9, 2011, appellant filed a motion under section 388 asking that Mia be returned to her care. Appellant supported her motion with a letter from her therapist who opined appellant could successfully care for Mia, an insurance claim form that appellant characterized as "proof" she had been in a car accident and she was not beaten by her boyfriend, and certificates which indicated she and her boyfriend had completed a parenting class.

Appellant's section 388 motion and the termination hearing were heard together on May 26, 2011. The report prepared prior to that hearing recommended the court terminate appellant's parental rights so she could be adopted by her maternal grandparents. That recommendation was supported by a letter from Mia's psychologist who stated Mia viewed her grandparents as parental figures and that a change in placement would be detrimental to her.

After considering the arguments presented the trial court rejected appellant's section 388 motion ruling she had failed to show the circumstances had changed significantly and that a change in the pending order would not be in Mia's best interests. The court then continued the termination hearing to a later date.

At the continued hearing the court terminated appellant's parental rights.

## II. DISCUSSION

Appellant contends the trial court erred when it denied her section 388 motion.

Section 388 allows a parent to petition the court to change, modify or set aside a previous order in the dependency based on changed circumstances or new evidence. The parent bears the burden of showing that a change of circumstance exists and the proposed change is in the best interests of the child. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) “[C]hildhood does not wait for the parent to become adequate.” (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) On appeal, we will not reverse the juvenile court's decision unless the parent establishes the trial court abused its discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

We find no abuse here. The evidence appellant submitted in support of her section 388 motion was extremely weak. The letter from appellant's therapist failed to show a detailed understanding of appellant's situation. For example, the letter suggested appellant could parent Mia effectively because she was living with her partner and they were attending parenting classes together. But the letter failed to note that appellant's partner had beaten her and threatened to kill her. Based on this omission, the court reasonably could question the validity of the therapist's conclusions.

The insurance claim appellant submitted did not prove appellant was not being abused. As the trial court noted, “there's no supplemental proof now that the auto accident is what caused the black eye or black eyes. The evidence is overwhelming that the black eye was caused by the boyfriend.”

The fact that appellant and her boyfriend had completed a parenting class was commendable but it was far from the level of proof required to demonstrate appellant was making the changes needed to reunify with Mia.

Furthermore, even if we were to assume the evidence appellant submitted showed her situation had changed to some extent, appellant was also obligated to demonstrate the change she proposed was in Mia’s best interest. (*In re Michael B., supra*, 8 Cal.App.4th at p. 1703.) This appellant did not do. Again, as the trial court explained, “the reports show the caregivers are doing very well, that the child is doing very well with the caregivers. And once again, as far as the mother goes, it’s not what’s in the best interest of the mother. The law at this point is what’s in the best interest of the child. [¶] Anyone who is a parent has the satisfaction in having a child, but our focus always should be the child. And given the problems that exist with the . . . mother . . . obviously the best interest of the child is overwhelmingly with the [¶] . . . [¶] . . . caregivers.”

In sum, the trial court’s resolution of these issues was reasonable and certainly did not constitute an abuse of discretion. The court did not err when it denied appellant’s section 388 motion.

III. DISPOSITION

The order terminating appellant’s parental rights is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Bruiniers, J.