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

In re CLAIRE G. et al., Persons Coming
Under the Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

CRISTINA G.,

Defendant and Appellant.

A134388

(Sonoma County
Super. Ct. Nos. 3434-DEP, 3433-DEP)

Appellant Cristina G. was a single mother of newborn, twin girls. Respondent Sonoma County Human Services Department (Department) removed the infants from her care when they were just weeks old, when it was determined they were suffering from a failure to thrive due to Cristina's inability to properly feed and care for them. After six months of reunification services and on the recommendation of the Department, the court terminated services and set the matter for a selection and implementation hearing pursuant to Welfare and Institutions Code section 366.26.¹ Prior to the hearing, Cristina filed two petitions seeking to change the order terminating reunification services to an order returning the girls to her care under a family maintenance plan. Both times, the court denied the request without hearing. Cristina appeals, arguing that her petitions

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

made a prima facie showing of changed circumstances, such that the court should have ordered a hearing on the petitions. We conclude that the juvenile court did not abuse its discretion in summarily denying the petitions, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention

After years of failed in vitro fertilization attempts and adoption efforts, Cristina's dream of becoming a mother came true on August 26, 2010, when twin daughters Claire and Charlotte were born to a surrogate. Born at 38 weeks gestation with minor health issues, the girls were hospitalized for four days before being discharged to Cristina's care. Due to concerns by the hospital staff that Cristina was not prepared to take care of her newborns, a social worker from the Department made a home visit on September 7 and observed that both Cristina and her mother, who was there to help with the newborns, lacked basic childcare skills, including the ability to adequately feed the infants and read their cues. Cristina advised that she was working to find a nanny to help her care for her daughters.

At a pediatric appointment on September 13, it was determined that the twins were suffering from a failure to thrive, prompting their hospitalization. Significantly, they were malnourished (Claire having lost 12.4 percent of her birth weight); had low body temperatures, poor tone, and pallor; and were difficult to rouse. They were detained from Cristina's care on September 15, 2010.

Section 300 Petition

On September 17, 2010, the Department filed a section 300 petition, alleging that Cristina failed to protect the babies within the meaning of subdivision (b). Specifically: "The mother, Cristina G., has failed to provide adequate care, supervision, and safe living environment for the newborn twins, Charlette [*sic*] and Claire G., to wit, the mother has been slow to respond to childcare techniques, to include but not limited to, feeding, bathing, and holding the newborns, placing the minors at substantial risk of harm in her care. As a result of the mother's negligence, the newborns required hospitalization due to weight loss and low body temperature."

Jurisdiction

On October 5, 2010, the date set for a contested jurisdictional hearing, the Department filed an amended section 300 petition. It was largely identical to the original petition, but the facts supporting the failure to protect allegation were modified to allege that the newborns required hospitalization due to weight loss and low body temperature “[a]s a result of the mother’s inability to recognize and respond to the infants’ needs and cues,” rather than as a result of her negligence.

At the jurisdictional hearing, Cristina submitted the matter on the Department’s report, and the court sustained the amended petition and continued the matter for disposition.

Disposition

On October 25, 2010, the Department submitted a disposition report recommending that Claire and Charlotte be placed at home with Cristina under a family maintenance plan. This recommendation was supported by Laura L. Doty, Ph.D., whom the Department had commissioned to evaluate Cristina due to concerns about her cognitive abilities. Doty noted that, according to Cristina, she had been diagnosed at age five with dyslexia, an arithmetic disorder, and auditory processing problems. Doty found no diagnosable psychopathology, but assessed Cristina as having learning disabilities and “need[ing] more time than most people in order to process and integrate new learning experiences” As she explained it, Cristina was “capable of acquiring and implementing a set of skills effectively. Her *cognitive* functioning is clearly in the normal range; *learning* takes more time and effort.”²

In the disposition report, the social worker advised that she had spoken with a placement agency with which Cristina had contracted to provide round-the-clock nanny

² Cristina’s academic achievements and work history demonstrated her ability to learn and implement a new skill set: she obtained a Bachelor’s degree in art history from San Francisco State University, completed a Montessori teaching program after college, worked in Montessori preschools for a few years, and was the secretary for the Board of Directors of a family company.

services. She had also spoken with parent coach and educator Karen Church, who had begun working with Cristina. The social worker concluded: “With these two safeguards in place, [Cristina] will have the support needed and the babies will be under careful observation to insure no further problems occur. [¶] Therefore, it is safe for Claire and Charlotte to return home to their mother at this time.”

Counsel for Claire and Charlotte disagreed with the Department’s family maintenance recommendation, however, and a contested disposition hearing was set for October 27, 2010. The contested disposition hearing did not take place as scheduled and, following a November 8, 2010 settlement conference, disposition was trailed in order to allow Cristina further opportunity to demonstrate that she was capable of safely parenting her daughters.

On January 13, 2011, while disposition was still trailing, the Department filed an addendum to its disposition report changing its recommendation from family maintenance to family reunification. It advised that Church had been meeting with Cristina three times per week to instruct her on feeding and care of the infants. In Church’s opinion, Cristina had “great difficulty in doing more than one activity at a time” and was not “ready to assume the multifaceted and complicated tasks of parenting even one child.” According to Church, while Cristina tried “very hard, her ability to retain important instructions is limited.” As an example, Church described a recent visit in which Charlotte was crying and fussing. Cristina tried to calm her by walking with her and giving her a pacifier. After multiple prompts from Church, Cristina finally realized that it had been hours since the twins’ last bottle and that she should feed them. When fed, Charlotte immediately calmed down. In another example, Church accompanied Cristina to a pediatric appointment at which the doctor described when and how to introduce cereal into the infants’ diet. When Church later asked Cristina to relate what the doctor had told her about adding cereal, Cristina was unable to recall any of the instructions. Finally, during a visit, Church observed Cristina trying to feed both babies at once, one in her car seat and the other in Cristina’s arms. Both babies were crying and,

as they became more and more upset, Church intervened, only to discover that both bottles were internally capped so no formula was flowing.

The social worker also noted that Cristina had been provided the names of two psychotherapists who could help her with assertiveness training, but Cristina informed her that on the advice of her attorney she had not contacted either one.

The Department concluded that Cristina’s “learning disabilities are more profound and significant than originally thought. Her capacity for following through on simple tasks, such as reading assignments or the more complex tasks [such] as setting up a system for tracking feedings and diaper-changes in her home is limited” She lacked the ability to multitask, to “process information and read cues from her daughters,” and to keep the children safe, failing, for example, to secure them on a changing table on several occasions.

The proposed reunification case plan required Cristina to: visit her daughters regularly and on time; continue to work with Church and demonstrate a working comprehension of the issues discussed; engage in weekly psychotherapy to address assertiveness; demonstrate the ability to follow through on assignments from the parent educator and social worker in a timely manner; attend all medical appointments, participate in the discussions and demonstrate an understanding of any information given; cooperate with the social worker, accepting and following through on any referrals for further assistance; and sign all consents for the release of information from all service providers.

On January 31, 2011, following a contested hearing, the court adopted the Department’s recommendation and ordered that Cristina be provided reunification services.

In the months that followed, Cristina diligently visited with her daughters, with Church in attendance to help her develop her parenting skills. The period was fraught with conflict between Cristina and Church, however. While the visitation notes memorialized some concerns pertaining to the children’s well-being, many of the comments related to insignificant issues completely unrelated to Cristina’s ability to

safely parent her daughters. For reasons not evident from the record, Church was hypercritical of Cristina, who seemingly could do no right in Church's eyes. Despite this difficult environment, Cristina strove to master the tasks necessary for her to regain custody of her daughters.

During the same time period, there was also a dispute between the Department and Cristina regarding her participation in services at the North Bay Regional Center (NBRC), an organization that assists individuals with developmental disabilities. The Department requested that Cristina apply for services at NBRC. She was assessed and found ineligible because she had a high school diploma, a college degree, and a valid driver's license. The Department persisted in requesting that Cristina try to convince NBRC otherwise, and faulted her for not following up with appointments for reassessment.

Cristina's First Section 388 Request

On April 6, 2011, Cristina filed a section 388 request³ in which she sought to change the court's order for reunification services to one for family maintenance services. In describing "What changed after the judge's order that would change the judge's mind?", Cristina answered, "Family Services are now in place." The request was supported by a report prepared by Shelley Hamilton, a psychotherapist and social worker Cristina had retained. Hamilton opined that the Department had been "slow to incorporate both resources and learning aids that could have enhanced" Cristina's care for her infant daughters but that she was ready and capable of having her children returned to her custody. Hamilton identified "community resources that could assist and advocate for [Cristina's] successful management of the general welfare, safety and her ongoing parenting of the children in her care."

The Department filed opposition on April 21, 2011. It argued that the provision of family services was not a change in circumstances, nor had Cristina demonstrated how

³ Formally, a "Request to Change Court Order (JV-180)." We shall use the term section 388 request or petition.

such a change made family maintenance in the children's best interest. Further, the Department argued that services had been provided to Cristina at the outset of the case, but that she had not been diligent in pursuing the services. This claim was apparently based on the dispute regarding NBRC services, which the social worker described in a supporting declaration as follows: "[Cristina] was to follow through with a referral made by the undersigned to be assessed by North Bay Regional Center to ascertain whether she qualifies for services through this agency and also to determine if [Cristina] has a disability. It was reported by Ms. Shelley Hamilton, social worker consultant who is working with [Cristina's] legal counsel that [Cristina] appears to have an auditory processing issue as well as Dyslexia. The undersigned referred [Cristina] to North Bay Regional Center for an assessment as this agency would be able to determine what [Cristina's] needs are in the area of learning. This is important as [Cristina] appears to be making slow progress with the material taught by parent educator, Karen Church, and having difficulty retaining the information taught. An example of this involved [Cristina] continuing to measure the amount of formula drunk by her babies by tilting the bottle after being instructed numerous times to place the bottle on a level surface to get an accurate read of formula drunk. Another example involves [Cristina] being able to determine the amount of formula consumed by the babies by what formula remains in the bottle. ¶] 4. Barbara Sylvester of North Bay Regional Center, after hearing from the undersigned that [Cristina] has a driver's license and college education, stated that she felt [Cristina] would not qualify for services. However, she was willing to assess [Cristina] at the undersigned's request. Ms. Sylvester stated that she spoke with [Cristina], after leaving her a couple of messages, and [Cristina] reported to her that she had a college degree and did not need to be tested"

The court ordered a hearing on Cristina's section 388 request, setting it for May 19, 2011.

On May 17, 2011, Hamilton submitted a supplemental report in which she reiterated her recommendation that Claire and Charlotte be "immediately placed" with Cristina and that the family be provided family maintenance services. Hamilton also

advised that Cristina had followed up with the referral NBRC and was found ineligible for services. Per the court's request, Hamilton had explored whether neuropsychological testing would be beneficial for Cristina and concluded that it would not be. She also refuted the Department's claim that Cristina had "only participated wholeheartedly in two (of seven) components of her case plan)," arguing that Cristina had in fact either implemented or was in the process of completing all components of the case plan.

The following day, the Department submitted an update advising the court on Cristina's progress. Parent coach Church, who was still attending the thrice-weekly visits and providing one-on-one parenting education, reported that Cristina was making slow progress and continued to struggle in implementing the skills taught. For example, she was still challenged by making the children's formula and cereal and often seemed confused about what to do next when caring for the children. The Department noted that Cristina had also met with another parenting educator, Holly Pace, who thought that Cristina was understanding the concepts taught with regard to infant care and development, but it was dismissive of Pace's opinion because she had never observed Cristina with her children. Cristina had also met with public health nurse Eileen Morbito on two occasions, and Morbito was uncertain that Cristina understood the information conveyed to her.

On May 19, 2011, the court continued the matter to July 14 for a hearing on Cristina's section 388 petition and a six-month status review. Meanwhile, visits continued much in the same fashion as they had since the court had ordered reunification services: Cristina diligently participated in visits with Church providing parenting education, while Church's hypercriticism of Cristina persisted.

On July 7, 2011, the Department submitted a status report changing its recommendation to termination of services. The social worker noted that Cristina had continued to work with Church, who had provided 127 hours of parenting education. Church advised that Cristina had worked very hard over the last eight months to try to learn how to take care of the children and there was no doubt that she loved her daughters very much. Further, Cristina had learned many aspects of basic infant care. Church

could not say, however, that Cristina could keep the babies safe during their visits because she continued to leave them on the changing table unsafely and to employ inadequate hygiene practices when changing the girls' diapers. As a result, Church was concerned that the children would be unsafe when Cristina moved on to more complex tasks, like bathing.

The social worker advised that Cristina's learning disabilities continued to present a barrier and that she was resistant to assessment at NRBC as well as individual counseling, both of which "could have helped shed light on [her] strengths and weaknesses so these could have been addressed toward reunification." Ultimately, because Cristina's "serious deficits remain and she has not pursued Regional Center help," the Department recommended terminating family reunification services and setting the matter for a section 366.26 hearing.

At the July 14, 2011, hearing, Cristina requested a contested hearing on the Department's recommendation. The court set a contested hearing on both the recommendation and Cristina's section 388 request for September 2, 2011.

Six-Month Review Hearing

On September 2, 2011, the matter came on for the contested hearing as scheduled. Two days prior, the Department had filed an addendum report, updating the court on the status of the case, including current reports of service providers. It also included a report by psychologist Albert Kastl, who had assessed Cristina for a possible learning disability and overall cognitive ability, and to rule out autism and autistic spectrum disorder. At the hearing, Cristina objected to the Department's late filing of the supplemental report, and the court ruled that it, and Kastl's report, would not be considered.⁴

⁴ Cristina's counsel advised the court that Dr. Carolyn Crimmins, a psychologist retained by Cristina, had also conducted an assessment and prepared a report. The Department's counsel offered that she "would not object to a judicial settlement conference for the purpose of comparing the psychological evaluations if [Cristina's counsel] will stipulate to Dr. [Kastl's] report going into evidence." We cannot ascertain from the record the outcome of that offer. Cristina's brief states that "[t]he report and attachment is not discussed further as it was not admitted into evidence," while the

Cristina's counsel then requested a settlement conference, which was held off the record and resulted in an agreement regarding the termination of services. Back on the record, Cristina's attorney represented that Cristina agreed to submit on the Department's recommendation to terminate services and that she understood the Department would no longer be paying for services. Counsel for the Department then stated the rest of the agreement, as follows: "Visitation shall continue as currently set which is a 2 hour visit in the home on Fridays and a 2 hour visit on Monday and [a] 1 and a half [hour] visit on Wednesday. That visitation will remain subject to reduction at the social worker's discretion if there are problems with the visits that affect the best interest of the children. The visits will be supervised by an agreed upon supervisor at the mother's expense and the social worker will provide a list of potential supervisors to mother's counsel promptly. Likewise, the visits will be attended by an agreed upon parent educator also at mother's expense. The mother will be selecting a parent educator and submit that for agreement to the Department. Additional persons will be allowed at the visit to consist of the nanny who's currently attending visits, the maternal grandmother, or other professionals so long as additional visitors are cleared with the Department in advance of the visits with one week's notice." Apparently, Cristina's plan in submitting on the Department's recommendation was to retain her own providers, who would develop their own case plan, one tailored to Cristina's particular learning and cognitive disabilities. After acquiring the necessary parenting skills with the help of her providers, Cristina would then file a section 388 petition to change the order terminating reunification services to one of family maintenance.

In light of Cristina's submission, the court terminated family reunification services and ordered the matter set for a section 366.26 hearing.

Department represents that "[t]he parties agreed to both Dr. Kastl's and Dr. Crimmin's reports coming into evidence." Neither report is in the record.

Cristina's Continued Attempts to Demonstrate Sufficient Parenting Skills

Consistent with the agreement reached during the September 2 settlement conference, over the following three months, Cristina continued in her efforts to acquire the skills necessary to safely parent her daughters. At the same time, and despite the agreement reached, the Department presented obstacles to Cristina regaining custody of her children. It made it very difficult for Cristina to have her support people present as visits. Per the agreement, the parties were to select a mutually agreed upon visitation supervisor to be paid for by Cristina. Although the Department agreed to promptly send a list of proposed supervisors, it failed to do so, so Cristina forwarded the name and resume of a suggested supervisor, retired social worker Rosa Baumgartner. Cristina also requested that the Department provide its list of suggested supervisors. The Department responded by rejecting Baumgartner as an appropriate supervisor, instead providing Cristina with the name of the one retired social it would accept—Pamela Berlanga.

While the Department insisted on Berlanga as the visitation supervisor, Cristina nevertheless retained Baumgartner to assess her needs and prepare a case plan. The Department did not welcome Baumgartner's involvement in the case, however, often preventing her from attending visits, ostensibly because Cristina's counsel had not followed the proper procedure to arrange for her attendance.

Throughout September and October, there continued to be ongoing disputes between the Department and Cristina's counsel concerning who would be permitted to attend the visits. Counsel repeatedly requested that Cristina's service providers be allowed to attend, so she could receive the parenting training that she needed to ameliorate the Department's concerns, while the Department insisted on limiting the number of adults present at the visits to four, including Cristina and Berlanga. As a result, the Department would not permit Cristina to have her nanny, Baumgartner, and parent educator at the same visit, despite that Cristina needed her nanny's assistance, and Baumgartner needed to observe Cristina and the parent educator in order to prepare her evaluation and case plan.

Also in September and October, the Department canceled many of Cristina's weekly visits and objected to Cristina visiting her daughters while Claire was in the hospital for a medical procedure. It also advised that it would be reducing visits to two per week, eliminating the one weekly visit that took place at Cristina's home, because "the social worker determined that it is not in the girls best interest to continue with the pace of three visits a week." The Department further advised that it anticipated additional decreases in visits as the time for the section 366.26 hearing approached.

On October 12, 2011, Baumgartner sent a memorandum to Cristina's counsel conveying her opinion that the Department was impeding her ability to assess Cristina's needs and formulate the appropriate case plan. In addition to limiting the support persons that were authorized to attend Cristina's visits with her daughters, as well as canceling visits, it had not provided requested information regarding the children's "food intake (likes/dislikes), any known allergies, or prescribed medications being taken by the girls [or] information about the girls medical conditions and doctor's recommendations." Baumgartner also expressed concern that while Berlanga was required to document weaknesses in Cristina's parenting, there were "numerous strengths in [her] parenting that were overlooked or not documented"

Baumgartner's memorandum also related her observations of Cristina, as follows: "[Cristina] was prepared, appropriate, attentive, calm, creative, and playful with her daughters. She was also welcoming, polite, respectful, attentive, and appropriate to service providers. She supervised her daughters appropriately. She interacts, engages, and plays at an age appropriate level. The girls clearly are attached and bonded to [Cristina] as she is to them. I have observed the girls during visits display attachment and bonding to [Cristina] by seeking her attention, leaning towards her, sitting with [Cristina] for long periods of time, to looking for [Cristina] in a room with other adults and collaterals are also in the room. I have never witnessed [Cristina] overwhelmed, distracted, leaving either of her girls unsupervised, appear uncomfortable around her girls, or not being attentive to her daughters or their needs. I have observed her provides [sic] appropriate time with each child. Be an affectionate parent. She also appears to

enjoy her time with her daughters despite collaterals observing her. I *do not* support the Departments [*sic*] recommendations to limit or terminate [Cristina]'s visits. I support [Cristina]'s request to have her visits extended and at her home at this time. Appropriate services can be provided to support [Cristina] and to assure the court the twins safety.”

The Department’s Section 388 Request to Reduce Visitation

On November 8, 2011, the Department filed a section 388 request seeking to reduce weekly visits to one per week, later decreasing to two visits per month, with one support person present for Cristina. As to why the changes would be better for the girls, the Department stated: “The safety of the minors continues to be a serious concern, even during supervised visits. Since the mother has demonstrated that she is unable to implement the parenting skills needed to keep the minors safe during visits, despite 168 hours of one-on-one parent education during visits and the presence of her chosen support people during visits. Further, as she has recently declined some of the time offered to her to visit, a reduction of visits would be in the best interest of the minors. The length of the visits is too long for the girls and mother has recently asked to end the visits early. Mother demonstrates she is too tired toward the end of the visits and has recently begun asking to end the visits early.”

On November 17, 2011, Cristina filed opposition to the Department’s request. Her primary argument was that the request was based on information available when the court entered its visitation orders, such that it did not demonstrate a change of circumstances or present any new evidence. She also argued that the Department failed to demonstrate that it was in the girls’ best interest to decrease visits.

On November 21, 2011, counsel for the minors filed a memorandum in support of the Department’s section 388 request. It argued that the case had been pending for over fourteen months, and Cristina had not demonstrated that she could safely parent her children. The section 366.26 hearing was approaching, and as the focus shifted to permanency, it was appropriate and necessary to begin a reduction in visitation. -

On December 1, 19, and 21, 2011, the court held a contested hearing on the Department's request. At the conclusion, it granted the petition and ordered visits reduced to one per week to be held at the Department.⁵

The Department's Section 366.26 Report

On December 23, 2011, the Department submitted its section 366.26 report. It related that the three weekly visits had interfered with the children's play time and nap schedule, which caused them to be cranky and exhausted. Once visitation was reduced, the girls had more consistent routines that allowed for adequate rest and play time. It reported that the "girls are very affectionate toward their potential adoptive parents; they seek them out to meet their daily physical and emotional needs and for comfort and nurturing. Charlotte and Claire are also very attached to their sixteen year-old foster sister"⁶ Appended was a report from the State Department of Social Services assessing the children as adoptable and advising that they "appear[ed] to have substantial emotional ties to the potential adoptive parents. Removal from the current home would be detrimental to the children's well being." Accordingly, the Department "determined the minors are likely to be adopted and recommend[ed] parental rights be terminated and a plan of adoption be ordered."

Cristina's Second Section 388 Request

On December 28, 2011, Cristina filed a second section 388 request (December 388 request), this time seeking to change the order terminating services to an order for "Family Maintenance with services outlined in Case Management Plan prepared by Rosa Baumgartner, with girls transitioning to Mother's custody over an appropriate transition time." As to what had changed since the prior order, Cristina stated: "Since September 2, 2011, Mother has continued to participate in services. All service providers have noted that that [*sic*] Mother has numerous strengths not previously noted by the

⁵ By this point, the section 366.26 hearing was only two full weeks away, with no visits scheduled during one of the weeks due to the social worker's mandatory time off.

⁶ The twins, now 16 months old, had lived with their prospective adoptive parents since they were four months old.

Department and that Mother is capable of learning new information and incorporating the new knowledge into her parenting. All service providers note Mother's parenting has improved and continues to improve." According to Cristina, the requested change would be better for the children because "Despite the Department's efforts to limit Mother's contact with the girls[, t]he girls have a strong bond and attachment to their Mother. All service providers have observed positive interactions and behaviors between the girls and the mother. Mother is attentive, nurturing, and is able to recognize the girls moods and sooth [*sic*] them when they are upset."

In support of her request, Cristina submitted a declaration by Baumgartner, who recommended that the girls "transition to Mother's home and a plan of Family Maintenance be ordered" According to Baumgartner, Cristina, "though clearly coping with auditory and cognitive processing challenges, has demonstrated a level of functional cognitive ability that allows her to meet her daughters' need for care, to understand when she needs assistance and seek direction from support persons in the appropriate care of her children. [¶] . . . Moreover, when [Cristina] has received explanation and instruction tailored to her auditory and cognitive processing disability, she has demonstrated the ability to absorb new information and acquire new skills necessary to address the emergent needs of her daughters. Although sometimes initially hesitant with a new challenge, [Cristina] will quickly seek advice from supports and works diligently to establish a routine and will improve over time with the repetition of the routine. Over the last three months I have witnessed [Cristina] become more comfortable with new situations and more assertive in explaining that she has learning and cognitive disabilities and requesting accommodation for her disabilities either by having one-on-one meetings with medical staff or requesting information in writing." Baumgartner also testified that Cristina and her daughters shared a strong, affectionate bond.

Baumgartner outlined the additional services in which Cristina had participated since the September 2, 2011 order. They included consulting with social worker Susan Miner from Chance 4 Change, an organization that assists persons with disabilities by

providing support for independent living. Miner had conducted a functional assessment and prepared a “Plan of Support,” which provided in part that “Cristina can learn new tasks and has the ability to grasp new concepts with repetition, organization, reminders, visual cues, written cues, verbal cues, and support.”

Cristina also continued one-on-one parenting instruction with California Parenting Institute parenting instructor Holly Pace. During the reunification period, Cristina had worked with Pace, who was only allowed to attend one visit in May 2011 to observe Cristina’s interaction with her daughters. Since October, Pace had attended 10 additional visits, where she witnessed Cristina incorporating information learned from past sessions. As described by Baumgartner, Pace “has documented Cristina’s ability to learn new skills with the girls, attend to their needs, provide appropriate food, and ask for help from [nanny Kathy] Gotshalk and Ms. Pace when she has questions about how to do something that she has not yet mastered. Ms. Pace has documented [Cristina’s] clear ability to learn in the appropriate environment with the appropriate teaching techniques and has further documented that Mother continues to improve after she first learns a new skill.”

Cristina had also begun individual counseling with Reyna Seminara, MFT, who used verbal, written, diagram, and modeling techniques in the counseling sessions. Through the sessions, according to Baumgartner, Cristina had grasped the concepts discussed, learned tools to manage her anxiety and stress, and worked on assertion. She had also learned the importance of being forthcoming about her auditory processing and intellectual disabilities in order to request assistance and accommodation.

Lastly, Baumgartner noted that Cristina continued to employ Gotshalk, the nanny hired in October 2010 to help Cristina care for the girls. As Baumgartner described it in her declaration, “Ms. Gotshalk has commented that Mother has continued to learn new parenting techniques with her girls and improve her parenting skills since September 2011. Mother has improved new skills by repetition and practice which she does with diligence. Mother asks Ms. Gotshalk for advice when she is attempting

something new during the visit and further discusses how to improve after the visits. She attends to and ensures the girls are safe in the visits.”

Baumgartner testified that the Department itself had recognized an improvement in Cristina’s parenting since the September 2 order. A visit note of Pamela Berlanga, the visitation supervisor on whom the Department insisted, observed that “in contrast to the previous five visits it appears that Cristina has been coached as to how to behave with the girls during the visit.” Additionally, Brenda Fonarev, a Department social worker who supervised a visit when Berlanga was unavailable, noted no concerns about Cristina’s interactions with her daughters. According to Baumgartner, Fonarev’s visitation notes documented a parent who was “attentive, loving, safety-conscious, age appropriate in her interactions with her daughters, and competent in tending to the girls’ basic needs,” in stark contrast to Berlanga’s observations.

Finally, Baumgartner also testified that she had developed a case management plan that would allow Cristina to “provide a safe and rich environment in which her daughters [could] thrive.” It included round-the-clock nanny assistance by Gotshalk and additional care providers; biweekly visits with a public health nurse to ensure the girls’ continuing health; implementation of the Chance 4 Change “Plan of Support,” which would include a parent mentor, monthly check-ins, and ongoing evaluations by staff; continuing parent education with Pace; ongoing individual counseling with Seminara; and weekly unannounced home visits by Baumgartner herself to ensure that the children were receiving appropriate care.

Appended to the Baumgartner declaration were four exhibits: Miner’s “Plan of Support”; a letter from Chance 4 Change president and CEO Jill Power summarizing her observations of Cristina’s interactions with her daughters during a visit; social worker Fonarev’s visitation notes from October 7, 2011; and a resume of home health nurse Laura Dutch.

By order signed on December 29, 2011 (but not filed until January 4, 2012), the court summarily denied Cristina's request on the ground that it did not state new evidence or a change of circumstances.⁷

Section 366.26 Hearing

On January 5, 2012, the matter came on for a section 366.26 hearing. At the outset, Cristina requested that the court reconsider its denial of her December 388 request, citing the opinion of Gloria Speicher, Ph.D., an expert on bonding attachment and child development who had conducted an assessment of Cristina. The court denied her oral motion, but advised that it would consider a written motion if she filed the proper paperwork. The matter was then continued to January 9, 2012, for a contested section 366.26 hearing.

Cristina's Third Section 388 Request

On January 6, 2012, Cristina filed another section 388 request (January 388 request), again requesting that the order terminating services be changed to an order for family maintenance. In terms of what had changed since the September 2 order, Cristina stated: "Dr. Speicher observed hat [*sic*] Mother is an individual capable of parenting her daughters and no evidence of concern regarding Mother's parental capacity. Dr. Speicher observed no circumstances that would raise concern as to the safety of the children, of Mother's ability to multi-task or problem solve in flexible ways. Mother is able to interpret child's cues and meet their needs." The requested change would be better for the children, Cristina stated, because she had "over come the problems that made the parent's home unsafe for the children[.] [T]here is an existing positive parent child relationship and the girls have a secure attachment and bond with their Mother[.]"

In the memorandum of points and authorities in support of her request, Cristina argued that the court was required to hold a hearing on the request because she made a prima facie showing of new evidence or changed circumstances. In support, she

⁷ On January 4, 2012, counsel for the children submitted opposition to Cristina's request. Because the court signed the order on December 29, it appears that it did not consider the opposition in denying Cristina's motion.

appended a report prepared by Speicher, whose evaluation of Cristina was based on a two-hour visit between Cristina and her daughters, a two and a half hour clinical interview of Cristina, and excerpts from service logs, three psychological evaluations of Cristina, visitation notes made by the Department's visit supervisor and Cristina's social worker, and notes provided by the parents educators retained by the Department and Cristina. From that, Speicher formed an opinion that Cristina "was able to adapt easily to each child's differences," "was able to demonstrate multi-tasking with regard to attending to each child's different needs simultaneously," and could interpret the children's cues and meet their needs appropriately. In short, Speicher concluded that Cristina was "fully capable of parenting her daughters."

Cristina also submitted a new declaration by Baumgartner that, as Cristina described it in her memorandum, documented that she, Cristina, had "over the prior three months blossomed in her parenting of her girls; she has continued to learn and incorporate new information, she demonstrates multi-tasking with the girls, she is able to attend to both girls' needs, Mother recognizes when she needs help or assistance, Mother uses the assistance of a Nanny, Ms. Gotshalk, to help her with the girls, but is not capable of providing care for the girls on her own. Ms. Gotshalk routinely steps back from the visits to allow Cristina to handle all the activity, diaper changing, feeding or play. It is Ms. Baumgartner's opinion that the Mother can safely provide care for her daughters and that they can be returned home to her immediately with an appropriate healthy transition from the foster parents."

In her declaration, Baumgartner listed what she labeled the "five alleged persistent weaknesses" in Cristina's parenting skills that the Department had purportedly identified over the course of the dependency proceeding. They were Cristina's inability or unwillingness to: (1) multitask; (2) provide a safe home environment; (3) read and follow the girls' cues; (4) access the resources that would allow her to safely and effectively parent; and (5) nurture her children. Baumgartner testified that she had observed Cristina "address and completely corrected" these alleged deficiencies, detailing how Cristina had done so.

Baumgartner concluded her declaration with the following testimony: “I have observed Mother acquiring and incorporating new information. I have observed Mother correct deficits in her parenting that the Department has identified. I have witnessed Mother provide a safe, responsive, informed and loving environment for her girls. Moreover, I have discussed with the service providers . . . , their observations of these same abilities and qualities. It is my opinion, supported by the opinions of the service providers . . . , that the girls can be immediately returned to the safe, loving and nurturing home environment of their Mother.”

The Department filed opposition the same day. It argued that Cristina failed to demonstrate a change of circumstances, relying solely on the opinion of privately retained service providers, and failed to explain how it was in the children’s best interest to “derail a permanent plan of adoption with stable careproviders in the home where these children have lived happily for almost their entire young lives.”

That same day, the court denied without hearing Cristina’s January 388 petition. Per the order, “A JV 180 was filed on 12/28/11 and denied on 12/29/11. This new request dated 1/6/12 contains additional expert opinions but does not differ in substance from the request dated 12/28/11.”

Section 366.26 Hearing

On January 9, 2012, the matter came on for a contested section 366.26 hearing. Evidence was taken that day and the next, with both sides presenting testimony as to the level of bonding and attachment. At the conclusion of the hearing, the court took the matter under submission.

By order dated January 13, 2012, the court terminated Cristina’s parental rights and ordered Claire and Charlotte placed for adoption. It found that “even though [Cristina] has maintained regular parenting time and contact with the children, she has not proven by a preponderance of the evidence that severing the natural parent/child relationship would in this case deprive the children such that they would be greatly harmed.”

This timely appeal followed.

DISCUSSION

Cristina contends that her December and January section 388 petitions made a prima facie showing of changed circumstances or new evidence, which entitled her to a full hearing on her petitions. Accordingly, she argues, the juvenile court abused its discretion in summarily denying both petitions. Applying the well-established legal principles that govern her argument, we conclude otherwise.

The Law and Standard of Review

Pursuant to section 388, “Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” (§ 388, subd. (a).) Under this section, the juvenile court may modify or set aside a previous order if new evidence or changed circumstances exist, and the proposed modification is in the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) To be entitled to a hearing on a section 388 petition, a parent must make a prima facie showing both that there is new evidence or changed circumstances *and* that the proposed change would promote the child’s best interests. (*In re Zachary G., supra*, at p. 806; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432; § 388, subd. (d) [“If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held”].) While the petition must be liberally construed, more than general conclusory allegations are required to make a prima facie showing. (*In re Aljamie D., supra*, 84 Cal.App.4th at p. 431; *In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

The section 388 petition is addressed to the sound discretion of the juvenile court, and its decision will not be disturbed on appeal absent a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re A.S.* (2009) 180 Cal.App.4th 351, 358; *In re D.R.* (2007) 155 Cal.App.4th 480, 487; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

The Trial Court Did Not Abuse Its Discretion In Summarily Denying the Petitions

Cristina identifies six alleged deficiencies that the Department believed rendered her incapable of adequately parenting Claire and Charlotte.⁸ They were the lack of: (1) “comfort in parenting and multi-tasking”; (2) “comfort with parenting tasks and her ability to read cues of the children”; (3) “comfort with parenting tasks such as food preparation and feeding”; (4) “ability [to] protect her children’s general safety and changing”; (5) “parental capacity”; and (6) “ability to prioritize.” She then identifies opinions by her numerous service providers and experts—Baumgartner, Pace, Miner, Power, Gotshalk, and Speicher—that she claims showed she had ameliorated each of these individual deficiencies. Cristina’s lengthy argument—all 20 detailed pages of it—no doubt demonstrates that she was supported by a cadre of professionals who believed in her ability to learn new parenting skills. It does not, however, show changed circumstances or new evidence, for at least two reasons.

First, Cristina’s petitions did nothing more than present what was essentially her own reunification plan supported by her privately-retained providers. As detailed above, during the reunification period, the Department developed a reunification plan and provided Cristina with service providers, including a parent educator who had, as of June 2011, spent 127 hours working with Cristina, to help her develop the skills necessary to safely parent Claire and Charlotte. The Department ultimately recommended termination of reunification services because, in the opinion of its experts, Cristina had not, and could not, develop the necessary skills.

Cristina’s December 388 petition presented Baumgartner’s “case management plan” which, Baumgartner opined, would enable Cristina to “provide a safe and rich environment in which her daughters can thrive.” It included the following elements: round-the-clock nanny assistance, bi-weekly meetings with a public health nurse, implementation of Susan Miner’s “Plan of Support,” continuing parent education with

⁸ These appear to be derived in part from Baumgartner’s “five alleged persistent weaknesses,” discussed *ante*.

Holly Pace, and continued individual counseling for Cristina. The petition was further supported by the opinions of Cristina's professionals that her parenting skills were improving. This was in essence nothing more than a second bite at the apple: an alternative case plan supported by the opinions of Christina's own providers that, contrary to the opinion of the Department's experts, she could either acquire the skills necessary to safely parent her daughters, or would have backup support where her skills were still lacking. Cristina provides no authority, and we are aware of none, for the proposition that the contrary views of her private service providers are sufficient to make a prima facie showing of change circumstances, such that a hearing was warranted.

The same was true of Cristina's January 388 petition. That petition, filed a mere eight days after the December one, did little more than add Speicher's opinion, which, as noted, was based on a two-hour visit between Cristina and her daughters; a two and a half-hour clinical interview of Cristina; and review of excerpts from service logs, three psychological evaluations, visitation notes made by the Department's visit supervisor and Cristina's social worker, and notes provided by the parent educators retained by the Department and Cristina. From this limited evaluation, Speicher concluded that Cristina was "an individual fully capable of parenting her daughters" and that there were no safety concerns. But nothing in this generalized opinion identified the concerns that lead to the children's removal and addressed how Cristina had resolved them.

Cristina's petitions fell short for a second reason. The supporting evidence repeatedly stated that with instruction tailored to her specific needs, Cristina had the ability to absorb new information and acquire new skills. For example, Baumgartner opined that "when [Cristina] has received explanation and instruction tailored to her auditory and cognitive processing disability, she has demonstrated the ability to absorb new information and acquire new skills necessary to address the emergent needs of her daughters." Similarly, Miner's assessment stated that Cristina "can learn new tasks and has the ability to grasp new concepts with repetition, organization, reminders, visual clues, written cues, verbal cues, and support." Pace likewise documented Cristina's "clear ability to learn in the appropriate environment with the appropriate teaching

techniques.” Significantly, these opinions did not state that in the three months since reunification services had been terminated, Cristina had developed the skills necessary to parent Claire and Charlotte. In other words, at best the evidence showed *changing* circumstances, not *changed* circumstances. And it is well established that a parent must show changed, not changing, circumstances. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 49.) A petition which alleges merely changing circumstances would mean delaying the selection of a permanent home for a child to see if a parent, who has failed to reunify with the child, might be able to reunify at some future point, and does not promote stability for the child or the child’s best interests. (*In re Edward H., supra*, 43 Cal.App.4th at p. 594.)

Cristina also argues that her petition made a prima facie showing that the children’s best interests would be served by changing the order to family maintenance. The juvenile court did not reach this issue since it summarily denied the petitions based on a failure to demonstrate changed circumstances. We need not address it for the same reason.

CLOSING OBSERVATION

We close with an observation that despite our conclusion, we are troubled by the Department’s handling of this case. Cristina’s situation differs greatly from what we usually see in the dependency cases that come before us. Rather than a parent who lacks commitment to reunification and makes no attempt to complete his or her case plan (typically, due to substance abuse problems), Cristina was very dedicated to regaining custody of her daughters, including an unwavering commitment to participating in visits and retaining a cadre of service providers—at no doubt great expense to herself—in an effort to ameliorate the problems identified by the Department. She showed her children unwavering love and devotion, and for this we commend her.

From the record before us, it appears these efforts were hindered by a parent educator, and later a visitation supervisor, who held Cristina to a standard that virtually no parent could satisfy. By way of example, Church’s visitation notes were replete with

trivial criticisms of Cristina's conduct, such as, but most certainly not limited to, the following:

"Cristina typically does not remember to burp baby until most of bottle is gone. Still have to remind Cristina to do tummy time after each diaper change."

"Cristina still has difficulty telling girls apart in beginning of some visits [;] today argued with nanny about who was who, the nanny was right."

"Cristina had changed Charlette's [*sic*] poopy diaper. I discovered later she had left poop in the creases of her legs and diaper area."

Cristina used a cool washcloth, instead of a warm one, to wash the girls' faces.

"Cristina put one of the girls into a bouncing saucer and walked away. I had to ask her to come back and look under because one of the baby's leg [*sic*] was stuck up in the chair under her body."

After Claire "loudly" filled her diaper on one occasion, "Cristina began changing her in a way that looked like she really did not want to get it on herself or touch it."

Repeated complaints that Cristina favored Charlotte over Claire.

After reunification services were terminated, retired social worker Pamela Berlanga—the sole individual offered by the Department as a suitable visitation supervisor—continued with the hypercriticism:

"Cristina stood by while both girls crawled under the chair without protecting them from hitting their head. The nanny held her hand in between the chair and Claire's head so that she wouldn't hit her head, however, Cristina did not copy this."

"While Cristina did play some of the time with the babies, she only played with one at a time throughout the entire visit."

When changing a diaper, Cristina used a wipe and " 'dabbed' the perineum area as opposed to wiping the entire area," a complaint repeated multiple times.

"Cristina continues to feed the girls their milk out of a bottle despite being told by the foster mom three visits ago that the girls had been weaned off of the bottle and are using a sippy cup."

“While sitting next to Charlotte, Cristina watched while Charlotte came close to the wall and bumped her head on it.”

“Cristina put the diaper on crooked.”

“Nanny told Cristina to clean Claire’s face. Cristina did. Nanny then cleaned Claire’s face again (right after Cristina had).”

“Cristina changed Charlotte’s diaper. The diaper was put on crooked despite Charlotte holding still throughout the diaper change.”

“[I]t is . . . clear to this supervisor that Christina cannot adequately read the interests of her children. She often attempts to engage them in activities that appear to be of more interest to her than to them, often interrupting them when they are engaged elsewhere and playing quietly, or conversely discouraging them from engaging in something they are interested in (such as a noisy toy) when they are clearly enjoying the activity.”

To be sure, and as her professionals acknowledged, Cristina had learning and cognitive disabilities that impacted her parenting skills and led to the children’s initial detention. And certain observations by Church, as well as the Department’s social worker, raised legitimate concerns about Cristina’s ability to keep the girls healthy and safe. But, following detention, the Department was obligated to provide Cristina with services aimed at helping her reunify with her daughters, services tailored to her specific circumstances. (See *In re Elizabeth R.* (1995) 35 Cal.App.4th 1775, 1792 [“Family reunification efforts must be tailored to fit the unique challenges suffered by individual families unless a Welfare and Institutions Code section 361.5 disability is proven by clear and convincing evidence. In other words, the juvenile dependency system is mandated by law to accommodate the special needs of disabled and incarcerated parents.”]; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1474 [specific reunification plan and services must be designed to serve the particular needs of the individual family and be related to the reasons the child was removed from the parent’s custody].) Instead, Cristina was subjected to hypercriticism by a parent educator who seemed more determined to nitpick her developing parenting skills than to help her gain the skills necessary to reunify with

her children. As Cristina aptly describes it on appeal, she “somehow got on the wrong side of the parenting coach designated by the Department,” and we cannot help but question whether this negative dynamic impeded Cristina’s ability to complete her case plan.

That being said, Cristina submitted on the Department’s report recommending termination of reunification services, and that issue is closed. The only question before us is whether the court abused its discretion in summarily denying Cristina’s section 388 requests for a family maintenance order. And because her requests and supporting documentation failed to make a prima facie showing of new evidence or changed circumstances, we cannot answer that limited question in the affirmative, despite our misgivings about the Department’s handling of the case.

DISPOSITION

The orders summarily denying Cristina’s section 388 requests to change the order terminating reunification services to an order for family maintenance are affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.