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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re David V., a Person Coming Under the
Juvenile Court Law

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

GINA A. et al.,

Defendants and Appellants.

A139278

(Contra Costa County
Super. Ct. No. J1101065)

Minor David V., now almost three years old, is a dependent of the Contra Costa County juvenile court pursuant to Welfare and Institutions Code section 300.¹ The court terminated the parental rights of appellants Gina A. (mother) and his father pursuant to section 366.26 after denying mother’s section 388 petition. Mother and father appeal from the juvenile court’s order terminating their parental rights, and mother appeals from the court’s denial of her section 388 petition as well. Respondent Contra Costa County Children and Family Services Bureau (the bureau) opposes both appeals. We affirm the juvenile court’s rulings in their entirety.

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

BACKGROUND

We summarize the facts and procedural history relevant to this appeal. Minor was born in July 2011. Two weeks after his birth, the bureau filed a section 300 petition alleging, pursuant to subdivision (b), that minor was at risk of suffering serious physical harm because mother had a chronic and serious substance abuse problem spanning over 20 years, and a history of drug-related arrests and convictions. The bureau also alleged pursuant to section 366.26, subdivisions (b) and (j) that minor's older half brother had tested positive for methamphetamine upon birth in 2000, was removed from mother's care, and remained in the guardianship of his maternal grandmother because mother was unable to reunify with him due to her substance abuse problem.

The Bureau's Detention and Jurisdiction Report

In the bureau's August 2011 detention and jurisdiction report, a bureau social worker reported that minor was born prematurely at 24 weeks with respiratory distress syndrome. He was in the hospital's neonatal intensive care unit because he was struggling to breathe adequately on his own. He was improving and his prognosis was good.

When minor was born, mother tested positive for methamphetamines. According to a hospital nurse, minor's birth was "presumably incited" by mother's use of methamphetamines.² Mother said she had been "clean for years, but went to a party the other day and used drugs." Asked why, after she had tested clean during her entire pregnancy, she would use methamphetamines a month before her due date, she said she had made "a stupid choice," and was tearful and remorseful. She was visiting minor daily and her care of him was appropriate.

The social worker interviewed father and mother. Father acknowledged being minor's father and said his name was on minor's birth certificate. He worked as a gardener and did not live with mother. It appeared mother had a serious drug abuse problem and needed treatment for it. Mother and father acknowledged they have a long

² Although this initial report stated that minor also tested positive for methamphetamine, a subsequent bureau report indicated he had not.

history of drug abuse, incarcerations, and arrests. They said they were “too old for all the partying they still involve themselves with and that they are ready to make life changes, especially now that their son is here,” but were not sure if they would want to change if there was no child involved.

Mother lived with her mother and her older son, then 11 years old, in San Pablo, California. Mother was not working and had applied for Aid to Families with Dependent Children (AFDC) to support herself and minor. The social worker visited mother’s residence in June 2011 and found mother appeared to be adequately prepared for minor when he came home. The older brother appeared to be a healthy, thriving boy who was happy to have a little brother.

In July 2011, the social worker and a team of professionals met with mother. Father was absent without explanation. Mother agreed to a safety plan that included her getting drug abuse treatment, being tested regularly for drugs, attending parenting classes, and remaining drug-free.

Mother later told the social worker that father did not attend the meeting because he had been arrested and jailed. She also said he lived with another woman and their relationship was unclear. She thought he would participate in a case plan, and wanted to help raise minor. The social worker also met the maternal grandmother, who said she would support mother and minor however she could.

The bureau recommended that minor be allowed to go home with mother, with court-ordered services. The court disagreed and ordered minor detained, with supervised visitation ordered for both mother and father.

On September 2, 2011, Mother pled no contest to an amended petition allegation, made pursuant to section 300, subdivision (b), that minor was “at risk of suffering serious physical harm in that the mother has a serious substance abuse problem that inhibits her ability to care for the child.” The allegation under section 300, subdivision (j) was dismissed.

Disposition

In a September 2011 disposition memorandum, the bureau reported that minor was in foster care after spending his first month alive in the hospital. Mother had been in a residential recovery program since early August, had been compliant with her plan and house rules, had tested negatively for drugs, maintained her positive drug test in the hospital was a “one-time misstep” resulting from her breathing in smoke while socializing with methamphetamine users, and asserted she had been drug free for 21 years. Father had not been located and interviewed. The social worker asked for a delay of the disposition hearing in order to obtain more information about minor’s health and about the father, and to adequately assess mother’s ability to care for minor.

In an October 2011 disposition report, the bureau indicated minor was developing normally. Mother had been in an inpatient recovery program for 60 days, and was compliant with its rules and testing negative for drugs. She was observed to be appropriate, loving, and nurturing with minor during her regular visits with him. Mother “had numerous arrests beginning in 1987 until 2011 for possession of drug paraphernalia (e.g. hypodermic needle/syringe), vandalism, theft, petty theft, burglary, possession of narcotic controlled substances, carrying concealed weapons, carrying loaded firearm, battery, willful cruelty to a child, taking vehicle without owner consent, DUI, and parole violations.” Charges were pending against her for possession of a controlled substance in January 2011. She “acknowledged having a long history of drug addiction and admitted that she recently used drugs,” and said “she did not have the capacity to parent her [older] son due to her drug addiction. She was determined, however, to change her life now. She apologized twice to the bureau’s social worker for previously telling her that her positive drug test was the result of inhaling smoke from others, “admitting that she was a drug addict and used drugs.”

The bureau also reported that mother said she began dating father a year and a half before, but they had drifted apart during her pregnancy. Father stated he was thrilled to be a father, was just friends now with mother, and had a long history of abusing drugs, incarcerations and drug-related arrests from 1988 through 2011. He was presently

incarcerated for receiving stolen property and a parole violation, and his future was uncertain. He needed to work on his substance abuse issues and wanted his son to be in his life once he successfully addressed them.

The bureau recommended that minor be adjudged a dependent of the court and placed with mother in her residential treatment program under the supervision of the bureau, and, it appears from a handwritten notation on the report, that mother be provided family maintenance services. It supported mother's plans to move in with her mother upon completion of the program, as she and minor "would benefit from the grandmother's oversight and guidance," and recommended no visitation between minor and father.

At the disposition hearing, the court adopted the bureau's recommendations and case plan, including the providing of family maintenance services. Minor was returned to mother's care in the residential treatment facility. Family maintenance services were ordered for mother so long as she refrained from drug and alcohol use, completed an inpatient and outpatient drug treatment program, attended 12-step meetings, randomly tested negative for drugs, participated in parenting classes, and lived with minor's maternal grandmother after completing her inpatient drug treatment program. Father was declared minor's presumed father. Visitation with father was not ordered because minor's prematurity and compromised health made it detrimental to him.

Six-Month Review

For the six-month review hearing in March 2012, the bureau reported minor had been placed with mother in October 2011. Mother had successfully completed her residential treatment program and was loving and attentive to minor. The two lived with the maternal grandmother. Mother said she attended Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) classes two or three times a week, but was not in an outpatient program, although her inpatient counselor had recommended it as part of her discharge plan. Mother "stated that she is very busy in being a mom to [minor] . . . that she [had] not had the time to participate." Father remained incarcerated, and had no contact with minor. Minor appeared healthy and did not display any developmental

concerns. He was “a relaxed, cheerful, playful, and engaging child.” He looked for his mother and was reassured when she was in sight.

Despite this progress, the bureau was concerned about mother’s lack of participation in an outpatient program, stating that she did “not appear to have gained insight that demonstrate[d] that she is committed to living a sober life.” The report further stated, “[H]er commitment to sobriety is almost an exact replay of her previous case [when she failed to reunify with her older son], in which [she] did well in a structured program but had difficulty following through when the structure and oversight were removed.” She had not provided proof of her attendance in AA and NA classes, nor did she appear to be learning or living the 12 steps. The report further noted, “Although [mother] appears to be a loving and capable mother while sober, her pattern is that she puts her child at risk when she relapses. It is unrealistic to expect that [she] can address and resolve her 31-year history of substance abuse within an 8-month period. [Mother] has a very serious and extensive substance abuse history that will take a lot of courage, emotional strength, and a lifelong strong commitment to sobriety. At this time, [mother] is very early in her recovery and has not demonstrated that she is fully committed to her recovery.” It recommended that minor remain in mother’s care with court-ordered services and supervision, but also stated that, if mother did not maintain sobriety, it would pursue a permanent plan, likely of adoption or guardianship.

At the disposition hearing, the court continued mother’s family maintenance services and set a 12-month review hearing. It encouraged the bureau to file a supplemental petition if mother relapsed.

The Bureau’s Supplemental Petition

On July 19, 2012, the bureau filed a section 387 supplemental petition in which it alleged that mother had tested positive for alcohol in June 2012. Minor was ordered detained on July 20, 2012.

In a July 2012 memorandum, the bureau reported that mother had provided urine samples with creatinine levels too low to yield valid results for nine tests in April, May, and June 2012, except for the June positive test. A July 2012 test was negative. Mother

denied drinking alcohol and blamed the positive test on her using vanilla extract in her coffee. She could not explain the invalid tests. The bureau recommended that the court detain minor and find the supplemental petition to be true, and reported that the maternal grandmother was willing and able to be a placement resource for minor. In the record, following this memorandum, are documents indicating mother had frequently attended 12-step meetings and enrolled in an outpatient drug program on April 12, 2012

In August 2012, mother pled no contest to the supplemental petition allegations. The court sustained them and set a date for a contested dispositional hearing.

Disposition of the Supplemental Petition

In an October 2012 disposition report, the bureau recommended that minor be removed from mother's custody, mother's family maintenance services be terminated, the court not provide reunification services for mother or father, father be determined to be "an alleged natural father" of minor, and a section 366.26 hearing be set. It reported that mother had been tested eight times from July to September 2012, and all the results were negative. Since late August 2012, mother had been participating in a residential treatment program and was compliant with its rules. She provided the bureau with "several 12-Step meeting slips" for the period from March 15 to August 5, 2012, which indicated she had participated in 139 12-Step meetings. Mother still "refuse[d] to admit using alcohol and she [had] yet to provide an explanation why her drug tests were inconclusive." Father remained incarcerated.

The bureau social worker writing the report had "reservations" about the maternal grandmother's home. The bureau had conducted an unannounced visit of the home in July 2012. The maternal grandmother and mother were not present. A maternal uncle was present who appeared to be under the influence of a substance. Grandmother denied allowing anyone to consume alcohol before they visited while they were in her home. Told about the uncle, she said he was an alcoholic, was not a hurtful person, visited at least two times a week, and did not live there.

In a December 2012 update, the bureau reported mother remained enrolled in the residential treatment program, and staff reported that she was doing well and was "a

model to the other residents.” Her therapist reported that she was participating in weekly therapy sessions, taking advantage of therapeutic resources available in the program, and consistent in her commitment to her recovery. Mother had been tested randomly nine times in approximately 11 weeks and all produced negative results.

However, the bureau was still “very concerned that the mother continues to lack insight as to her addiction” and continued to assert her positive test was the result of her drinking vanilla extract. When asked about her invalid tests, she said she had been drinking a lot of water, had no idea you could dilute the test, and had eaten “a lot of pickles and bathed with it to tighten [her] vagina.”

The bureau further reported that father had been sentenced to four years in prison, and had 15 months left to serve. It attached a letter from father to its report, in which he wrote his incarceration was related to his addiction and the biggest mistake of his life. He asked that the court allow him and mother to have custody of minor, and asserted his commitment to support his family. Father also asked that his brother be considered as a placement option for minor, but brother, after being contacted by the bureau, had not had not submitted the necessary paperwork for consideration. The bureau continued to recommend that the court deny the parents services and set a section 366.26 hearing.

After a number of continuances because father was not transported from jail to the hearing, a contested dispositional hearing commenced on January 30, 2013. Father still was not in attendance due to his incarceration. His counsel requested another continuance, but county counsel objected, arguing father did not have an absolute right to be present for the adjudication of a section 387 petition. The court denied a continuance and proceeded with the hearing.

Mother testified that she had completed a residential treatment program in December 2011 after voluntarily extending her stay one extra month. She claimed to have had clean test results from December 2011 to April 2012, when she entered an aftercare program.

Mother testified that she relapsed with alcohol in June 2012. She first said she had a glass of wine “maybe once a week,” then said she had a couple of glasses a week. She

said she had lied about drinking vanilla extract because she was afraid she could lose her son, but denied trying to dilute any drug tests. She admitted using illegal substances on and off for at least 16 years, including marijuana since age 12, and methamphetamines since age 18, and said she used alcohol since age 16.

Mother said she had been in an inpatient treatment program for the past six months and was scheduled to be released the following month. She was going to NA meetings, but was still on the first step because it took her awhile to admit she was powerless to overcome her addiction. Upon discharge, she planned to live in a transitional program that provided housing and other services, and to work with her program case manager for two years.

Mother could not explain her June 2012 relapse except to say that she had become “complacent” and was probably just substituting one substance for another. She was never “falling down drunk” nor unable to care for minor during that time. She stopped drinking when she was told minor was being removed from her care. Asked what was different about her now, she said, “I want a new way of life. I don’t have to use drugs or alcohol to be able to have a social life. I don’t need—in order for me to have a clean and sober family. I just want a new way of life. I used drugs all of my life pretty much, and I have two children that—really I want it for me. I really want a new way of life.”

A bureau social worker assigned to the case since June 2012 also testified. She said mother lacked insight and could not identify her triggers. The social worker thought she was just going through the motions, and questioned if she could do well outside a structured program. The first time the social worker had heard mother say she had a problem was at the hearing. Five days before the hearing, on January 25, 2013, mother had not admitted using alcohol and not said she was an addict. Also, mother did not complete intake for drug testing until March 13, 2012.

After evidence was presented, the bureau argued for its recommendations. Counsel for father and mother urged the court to give mother six more months of services. Counsel for minor said it was a “borderline” case and thought mother, while in the midst of a fragile recovery, recognized she had a “deep-seated problem.” Counsel

indicated she could support reunification as a goal “for a mother who has done this much in a short amount of time.”

The court stated it was evaluating the matter pursuant to section 361.5, subdivision (b)(10).³ It thought this was “a fairly close case,” but that there were “significant things” it could not overlook. These included the positive and invalid tests, and mother’s newly revealed lie about the vanilla extract causing the positive test. Mother’s recent efforts at recovery had to be taken with a “pinch of salt” because parents in dependency proceedings comply with their programs “pretty much at the point of a gun” and simply “go through the motions for the most part.” The court concluded that mother was not telling the truth about having nothing to do with the invalid tests, and noted that she remained on the first step of her 12-step program after many months. It said that, while some people in recovery “never get past the first step,” time was “not a luxury that [minor] has while his mother gets her life together.” The court concluded that “the progress is much less than reasonable” and “the evidence is clear and convincing that the court is required to order termination of services.” It so ordered, accepted the recommendations of the bureau, and scheduled a section 366.26 hearing.

Mother’s Section 388 Petition

On May 22, 2013, before the section 366.26 hearing commenced, mother filed a section 388 petition. She asked the juvenile court to change its order terminating services and scheduling a section 366.26 hearing.⁴ She asserted that, contrary to the social worker’s testimony at the disposition hearing, she “has maintained testing, is employed,

³ Section 361.5, subdivision (b)(10) states in relevant part that reunification services need not be provided to a parent in mother’s circumstances when the court finds by clear and convincing evidence that it previously ordered termination of reunification services for any half siblings of minor who were removed from the parent pursuant to section 361 because of the parent’s failure to reunify, and the parent “has not subsequently made a reasonable effort to treat the problems that led to removal” of that half sibling.

⁴ Mother and father also filed petitions for extraordinary writs in this court after the juvenile court set a section 366.26 hearing, which we denied in an unpublished opinion in case No. A137820, filed on May 10, 2013.

continues in 12 step, has housing, is a mentor for numerous women at her drug treatment, goes to meetings regularly, and has done this consistently” since the disposition hearing. She asked that the court reinstate reunification services and/or return minor to her care, asserting these changes were better for minor because he was bonded to her and attached to his half sibling and biological family.

The Bureau’s Report for the Section 366.26 Hearing

In its section 366.26 report, the bureau stated minor was a generally healthy child who appeared on-target in his physical development, but was “a sensitive and somewhat fragile child who sometimes seemed more affected by his life circumstances than many other same aged children that interact with the dependency system.” He had recently been referred for assessment because of suspicion of delayed expressive and receptive language. He was living in a concurrent home in Contra Costa County with prospective adoptive parents, a married couple, ages 42 and 58, who were both employed and without children in their home, had expressed a strong desire to adopt minor, and had an approved homestudy for adoption.

Minor lived with mother for nine months, until he was one years old, during which time they appeared to have a “healthy and close relationship.” After his removal in July 2012, mother maintained daily contact with him and his foster care provider until September 2012, when the bureau set a schedule for her calls of two to three times a week. After the 366.26 hearing was set, calls were tapered down to twice monthly. Mother had made all of her scheduled calls.

Mother was attending all scheduled visits with minor, who was observed to be comfortable and engaged in play during her visits. He smiled and gave hugs to mother when requested, and said goodbye easily without upset. He separated from her without protest and smiled upon seeing his caregiver. The maternal grandmother attended most of the visits, but stayed in the background; the social worker denied a request to include the half sibling in visitation in March 2013.

The bureau opined that minor was generally adoptable. He smiled and reached for his caregivers, sought their reassurance and guidance, and was observed hugging and

snuggling when in their arms. He would go quickly to his prospective adoptive father for hugs, while saying, “ ‘Papa!’ ” Given minor’s lack of contact with his incarcerated father, minor would not be affected by the termination of those parental rights. There also was no evidence to suggest a current relationship existed between minor and his half sibling; they had not visited one another since July 2012.

As for mother, she had a relationship with minor, and continued since his removal from her to interact easily with him during supervised visits. She made a concerted effort to interact lovingly and playfully, while also setting appropriate limits when necessary. While minor was comfortable and engaged in play, and would smile and give hugs to mother when requested, he also would look at the social worker. He attempted to leave the visiting room a few times, consistently separated from mother without tears or protest, and smiled upon seeing his caregiver. Terminating mother’s parental rights would interfere with their current relationship, but there was no evidence to suggest it would be detrimental to minor, or that he would benefit in some way from continued contact. Furthermore, “given the totality of [the] case history (for both [minor] and his older sibling . . .), the stability, safety, and security of adoption for [minor] outweighs any benefit of a continued relationship with [mother].”

The Combined Section 366.26/388 Hearing

The court held a combined section 366.26 and section 388 hearing on July 15, 2013. It first considered mother’s section 388 petition. At the request of mother’s counsel, it admitted into evidence documents showing her recent clean tests, regular and well-reviewed participation in a treatment program, participation in a transitional program, recovery and parenting services certificates, and the like.

Mother then testified that she was going to graduate from her drug treatment program in August 2013 after six months of inpatient treatment, at which time she would become an outpatient. She was living in a housing program that required her to remain clean and sober, complete the outpatient program, and then find employment. She was about to start work at a shoe repair shop and hoped to be employed elsewhere when her felonies were expunged from her record.

Mother further testified that she was on step eight of the 12-step program. She had been on step one for a long time because she could not read or write, but was now working hard with a sponsor to do so, and intended to study reading and health education at a local college. She used to call her difficulties dyslexia, but she now understood she was illiterate. She said she “had to really get honest” and was “willing to do whatever it takes.” Reading gave her the ability to work through the AA book. She was attending AA meetings every day, and had been clean and sober for 13 months. Her case manager at the transitional housing program referred to her in a letter as a “success story.” Her triggers were old friends, but she no longer saw them. She was “living her life differently now” than she had ever before, with greater structure and with the 12 steps as a part of her life every day. Father was supportive of her sobriety.

Mother said she was permitted to visit an hour a month with minor, and the bond was still there. They enjoyed their time together and the love between them, communicated very well, and minor was very active with her. Minor had recently seen his older brother, and was “ecstatic.”

Mother now said she relapsed with alcohol ‘between May and June’ 2012, for a two-week period that ended on June 14, when she received a call from a social worker informing her that she had relapsed for alcohol. Asked how often she drank during that time, she said, “I would have like one or two glasses of wine and that was it.” She did not do this often, and said it was a hard time because an uncle had passed away in May and “we had another loss, too.” She did not become intoxicated or unable to function from the wine.

Asked about the invalid tests in 2012, she said they were “from the water,” and explained that she drank a lot of water because she knew she had to relieve herself for the tests. Also, her gall stones were removed in July 2012 and her doctor told her to drink a lot of water to keep her system clean and clear.

Asked about her initial use of controlled substances and alcohol as a teenager, mother said “a lot of it was to do with because of being embarrassed,” referred to her illiteracy, and said, “I had to hide behind something.” She said she used

methamphetamine on and off for about 20 years, and acknowledged that she had previously relapsed while living with her mother and older son.

The bureau social worker assigned to mother's case since February 2013 also testified. She testified about the bond between minor and his foster parents, and minor and his mother, consistent with the accounts contained in the bureau's section 366.26 report. She agreed with a statement by minor's caregiver that minor needed a safe, predictable environment with consistent nurturing care to support his continuing growth.

The social worker further testified that the bureau maintained its recommendation to terminate parental rights and work toward adoption in the current home, despite the efforts made by mother. Although mother had "done a lot," her efforts were more passionate after minor was removed a second time from her, and the focus now was on his best interests. Mother had previously relapsed with her older son, and the social worker could not say the same thing was not going to happen in minor's case. Also, the social worker testified, "for [minor] to have been in a home for the last 13 months where he is experiencing trust and security and consistency and stability, for him to have to reestablish those connections someplace new . . . would be extremely difficult and there . . . can be setbacks." Regarding minor's interactions with his visiting half sibling, the social worker did not think minor recognized his brother, but the two had played together.

Counsel for mother and father argued in favor of the petition, while counsel for the bureau and the minor argued against it.

The court denied mother's section 388 petition. It noted that mother had the burden of showing two prongs were met: changed circumstances and that the best interests of minor were met by granting the petition. The court found that, while circumstances were changing, it was not clear they had changed so as to warrant granting the petition. Given that mother claimed to be on the eighth step of the 12-step program, it expected more candor from her about the reasons for her 2012 relapse, what was ingested, and how often. The court found her account of drinking one or two glasses of wine "too far-fetched" to accept, given that she would have had to drink them at the precise moment the bureau decided to test her.

The court acknowledged that minor recognized his mother, but concluded that it was in minor's best interest to reach permanence, and that there was undisputed evidence that he has potential adoptive parents who were stable, not at risk, and with whom he had bonded. The court concluded that, although it was a "close question as to where exactly the best interests lie, after balancing the various factors it seems to me that the court must rule in favor of denying the motion"

The court then immediately held the section 366.26 hearing. The parties had no additional evidence to present, so the court heard argument only. Mother's counsel, with the support of father's counsel, argued that one of the exceptions to the termination of parental rights, the beneficial parent/child relationship exception, applied, and that there was also a sibling relationship. She asked the court to order long-term foster care or a legal guardianship so that mother and minor's relatives could maintain their visits. Counsel for the bureau and the minor argued the court should order adoption as a permanent plan, as recommended by the bureau, and that the mother-child bond was not significant enough to merit making an exception. The court ruled that no exception applied for the same reasons that it articulated regarding mother's section 388 petition, followed the recommendations of the bureau, and terminated mother's and father's parental rights.

Mother and father filed timely notices of appeal of the court's order terminating their parental rights, and mother is also appealing from the court's denial of her section 388 petition.

DISCUSSION

I. Mother's Section 388 Petition

Mother first argues that the trial court abused its discretion in denying her section 388 petition in light of her commendable change of circumstances and the established bond between her and minor. We disagree.

"Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in dependency. The parent bears the burden of showing both a change of

circumstance exists and that the proposed change is in the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*).

We "review the juvenile court's denial of a section 388 petition for an abuse of discretion. [Citation.] The court 'exceeds the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.' [Citation.] . . . '["]When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citation.]' " (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.)

We need not discuss mother's contentions in any detail because they ignore the most critical reason asserted by the court for its denial of her petition. There is ample evidence in the record that mother had a long-time substance abuse problem that led to the removal of her older son from her care, her failure to reunify with him, and, years later, the juvenile court's decision to make minor a dependent and subsequently remove him from mother's care. Ample evidence also indicates mother repeatedly minimized and lied about her substance abuse, including about her use of methamphetamine while pregnant with minor and her relapse with alcohol in 2012, and that she had a history of succeeding in structured treatment programs, only to relapse after completing them.

Accordingly, a major focus of the dependency proceedings below was on mother's 2012 relapse with alcohol, and her subsequent account of it. When it terminated services and scheduled the section 366.26 hearing, the court expressed its concern that mother had lied that her June 2012 positive test resulted from her ingesting vanilla extract with her coffee. The court also concluded that she was not telling the truth about the nine invalid tests that preceded that positive test.

Consistent with this concern, the court, in denying mother's subsequent section 388 petition, focused again on mother's account of her 2012 relapse. It concluded that, while mother's efforts at recovery indicated that circumstances were "changing," they had not changed so as to warrant granting her petition because she was not yet fully candid about the reasons for that relapse, what she ingested, and how often she did so.

The court acted well within its discretion in reaching this conclusion. Mother's testimony at the section 388 hearing was vague and confusing. As the court noted, she admitted only to drinking one or two glasses of wine infrequently, which the court could reasonably conclude was not credible in light of her positive test. Other aspects of her testimony could also reasonably engender the court's skepticism about mother's candor. Although she contended her relapse was over just two weeks and ended on June 14, she referred to her relapse as being "between May and June" of 2012, thereby exhibiting a vagueness about when this critical event occurred. She also claimed for the first time that the invalid tests from April to June 2012 were because she drank a lot of water, in part because her doctor advised her to do so after her gall stones were removed in *July* 2012, which was, of course, well after her relapse by her own account. This does not make sense, and suggests dissembling.

Mother, rather than address the juvenile court's concern about her candor, emphasizes her recovery efforts after the court set the section 366.26 hearing and argues they established changed circumstances. This does nothing to establish that the court was unreasonable to rely on its concern about mother's candor.

Mother also argues the court abused its discretion because it was in minor's best interest for the court to grant her petition in light of her bond with minor, as well as that of the maternal grandmother and half sibling. We disagree with this as well. While the evidence indicates mother had a good bond with minor, and the evidence suggested minor had a lesser connection with his maternal grandmother and half sibling, the court could reasonably conclude from the evidence that minor had a stronger bond with his caregivers, who had begun the process of adopting him, with whom he had lived longer, and with whom all accounts indicated he had a stable, secure and loving bond. For example, minor did not become upset when departing from his visits with mother, readily embraced his caregivers, including after departing mother, and called his male caregiver, "Papa." In addition the bureau reported that minor, about two years old at the time, was a sensitive and somewhat fragile child who was more affected by his life circumstances than many other dependent children of a similar age, and would have an extremely

difficult time reestablishing such connections someplace new. Nothing mother contends indicates the court was unreasonable to conclude a permanent plan for minor was in his best interest in light of this evidence.

As stated by the *Casey D.* court, a case cited by mother, “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. [Citation.] ‘ “[C]hildhood does not wait for the parent to become adequate” ’ ” (*Casey D.*, *supra*, 78 Cal.App.4th at p. 47, quoting *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) This best describes the circumstances surrounding mother’s petition. Also, her contentions essentially ask that we reweigh the evidence, which we cannot do, rather than indicate any abuse of discretion by the juvenile court. In short, mother did not meet her burden of showing changed circumstances or that the best interests of minor would be served by the court granting her petition. Her appellate claim is without merit.

II. The Beneficial Parent/Child Relationship Exception

Mother and father also argue the trial court should not have terminated parental rights because the evidence indicated that mother and minor had a bond significant enough to qualify for one of the statutory exceptions to termination found in section 366.26. Again, we disagree.

Pursuant to section 366.26, subdivision (c)(1), the juvenile court, upon making the appropriate findings, shall terminate parental rights unless certain exceptions apply. One such exception is if the court “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§366.26, subd. (c)(1)(B)(i).)

The contours of this beneficial parent/child relationship exception have been well-summarized in *In re Autumn H.* (1994) 27 Cal.App.4th 567 (*Autumn H.*). “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*Id.* at p. 573.)

Thus, “[i]n the context of the dependency scheme prescribed by the Legislature, we interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean that the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Id.* at p. 575.) “The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*Id.* at pp. 575-576.)

Also, “[b]y the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*)). Accordingly, “[t]he [beneficial parent/child relationship] exception provided in section 366.26 . . . must be considered in view of the legislative preference for adoption when reunification efforts have failed. [Citation.] So viewed, the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. The . . . exception is not a mechanism for the parent to escape the consequences of having failed to reunify. That opportunity is provided by section 388[.]” (*Id.* at p. 1348.)

Finally, “[t]he Legislature emphasized the exceptional nature of all the circumstances identified in section 366.26, subdivision (c)(1) by revising the statute in 1998 to require the court to find not only that one of the listed circumstances exists, but

also that it provide ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citation.] This . . . makes it plain that a parent may not claim entitlement to the exception . . . simply by demonstrating some benefit to the child from a continuing relationship with the parent, or some detriment from termination of parental rights.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349; § 366.26, subd. (c)(1)(b).)

Mother points out that appellate courts are split on whether we review a juvenile court’s consideration of the statutory exceptions contained in section 366.26 pursuant to an abuse of discretion standard (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 297-299) or a substantial evidence standard (e.g., *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351). However, as she also points out, “the practical differences between” the two when reviewing a ruling on one of these exceptions “are not significant.” (*Ibid.*) Therefore, we evaluate the court’s ruling under both standards.

We also note that, generally, “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Furthermore, “[i]t is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by trier of fact.” (*Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.)

Given these standards, we reject mother’s and father’s arguments that the juvenile court should have found the beneficial parent/child relationship exception applied here, whether we evaluate the court’s ruling under an abuse of discretion or substantial evidence standard of review. We do so for the same reasons as those we discuss above regarding mother’s section 388 arguments.

DISPOSITION

The judgment is affirmed.

Brick, J.*

We concur:

Kline, P.J.

Richman, J.

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