

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.H., a Person Coming Under the
Juvenile Court Law.

CONTRA COSTA COUNTY BUREAU
OF CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

A140216

(Contra Costa County
Super. Ct. No. J12001170)

In this juvenile dependency case, J.C. (Father), father of two-year-old J.H., appeals from the juvenile court’s order denying his petition for modification and terminating his parental rights to J.H. He contends the juvenile court should have granted his petition for modification because he showed a change of circumstances and because reunification services would have been in J.H.’s best interest. We reject his contention and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On August 8, 2012, the Contra Costa County Bureau of Children and Family Services (the Bureau) filed a dependency petition on behalf of then-three-day-old J.H.,

alleging that Mother had a serious substance abuse problem and that J.H. tested positive for methamphetamines and THC shortly after birth.¹

According to the detention/jurisdiction report, Mother admitted she did not receive adequate prenatal care and used methamphetamine during her pregnancy with J.H. J.H. was in the neonatal intensive care unit “due to low oxygen saturation.” Father had been deported from the United States twice—once for dealing drugs, and once after being arrested while riding in a friend’s stolen car. He said he knew Mother was using methamphetamine but that he could not “watch [her] all the time because he is at work everyday.” The juvenile court detained J.H. and took jurisdiction over him.

The Bureau’s disposition report, dated October 30, 2012, reported that Mother entered a substance abuse treatment program on September 6, 2012, but left after five days, stating it “was causing her too much anxiety.” Mother reported that she and Father no longer lived together because he wanted nothing to do with her after she failed her substance abuse program. At the time of the report, Mother was staying with a neighbor in the same apartment complex. Both parents visited J.H. regularly and behaved appropriately during visits. J.H. was experiencing some withdrawal symptoms but was adjusting well to his caregivers and was eating and sleeping well. The juvenile court ordered Mother to address her substance abuse problem through drug testing, a treatment program, 12-step meetings, and counseling, and ordered Father to attend a parenting program and six months of random drug testing.

On February 28, 2013, the Bureau filed a subsequent petition, alleging domestic violence between Mother and Father and substance abuse by Father. Father had been arrested for battering Mother on January 5, 2013, and was carrying drug paraphernalia (a methamphetamine pipe) at the time of his arrest. The juvenile court sustained the allegations in the subsequent petition relating to domestic violence and substance abuse, and Mother agreed to complete a domestic violence program.

¹Mother has two other minor children who are in her sister in law’s custody and are not parties to these proceedings.

According to a disposition/status review report of June 5, 2013, the parents' circumstances continued to be unstable. Mother entered a drug treatment program in January 2013 but left the program in March 2013 after relapsing on methamphetamines in February 2013. By April 2013, Mother was no longer communicating with the Bureau. Father entered an inpatient drug treatment program in February 2013 and began taking a parenting class in the program, but was discharged from the program after testing positive for alcohol. Neither Mother nor Father had completed a parenting class or domestic violence education, and they continued to see each other regularly. Following a contested disposition hearing, the juvenile court terminated the parents' family reunification services and set a permanency planning hearing under Welfare and Institutions Code section 366.26 (366.26 hearing).²

On September 26, 2013, Father filed a petition for modification under section 388 (388 petition), seeking more visits with J.H. and an order "transition[ing] [J.H.] to [Father's] home in a family maintenance plan." Father asserted that his circumstances had changed because he completed courses in anger management and parenting, participated in the Proud Fathers program, attended weekly 12-step meetings for over two months, and had achieved 99 days of sobriety. He argued, "It is always in the child's best interest to reunify with a parent who has successfully completed a case plan and can raise the child to majority."

The combined section 388 and section 366.26 hearing began on October 25, 2013. The Bureau filed a memorandum explaining its opposition to Father's 388 petition. The Bureau acknowledged Father's 99 days of sobriety and his "changing" circumstances, but pointed out that it was a short period of sobriety given that it followed years of substance abuse and a failed attempt at an inpatient program. The Bureau noted that Father had yet to complete a domestic violence program and that he had appeared with Mother at the Bureau to attend a visit with J.H. on September 18, 2013, in violation of an April 16, 2013 order prohibiting the parents from visiting together. When the Bureau told Father

²All further statutory references are to the Welfare and Institutions Code.

he could not join Mother for the visit, he waited for her in the reception area and they left the Bureau together after the visit. Father's contact with Mother was concerning because the juvenile court terminated Mother's reunification services in June 2013, after she relapsed on methamphetamine, left her treatment program, and failed to keep in touch with the Bureau.

At the hearing on his 388 petition, Father testified that he attended anger management classes at Pueblo Del Sol, completed an outpatient program, attended AA and NA meetings, participated in the Proud Fathers parenting program, and had been clean and sober for six months. He denied going to the September 18, 2013 visit with Mother, waiting for her during her visit with J.H., or leaving with her. He said he saw her at the visit, but did not talk to her. He acknowledged he should have had 28 visits with J.H. because he was supposed to be visiting with J.H. twice per month, for the 14-month-period since visitation had been ordered. When asked, "Can you explain to this Court why it is you've only visited with your son eight times in 14 months?" Father responded he believed he had had more than eight visits. Father acknowledged he was incarcerated from January 5, 2013 to February 11, 2013 and that he had no visits with J.H. during that time, and that thereafter he had only one visit with J.H. between February 2013 and April 2013. Father further testified that he had found a place to live with three other people and that he planned to move to the apartment in a week. At the end of the hearing, the trial court remarked that Father appeared to be "pretty straightforward."

The juvenile court stated it was "sad" that Father appeared to have "finally come to grips with his problem," but that "he didn't really get started until some seven months after this child was removed . . . actually, 10 months" The court noted that J.H. had been with other caregivers since shortly after his birth and that Father had "only just started his anger management, which was one of the main components of his case plan." The court stated that Father appeared to be "pretty straightforward" but that it did not find him credible when he testified that he did not attend a visit with Mother. The court stated, "That bothers me a lot because [M]other is dangerous to this child." The court also stated that Father "doesn't have a home yet" and that circumstances were "changing"

but had not “changed.” The court then proceeded with the 366.26 hearing and terminated Mother’s and Father’s parental rights to J.H.

DISCUSSION

Father contends the juvenile court should have granted his petition for modification because he showed a change of circumstances and because reunification services would have been in J.H.’s best interest. We disagree.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child.” (*In re A.A.* (2012) 203 Cal.App.4th 597, 611.) “The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child.” (*Id.* at pp. 611–612.) The fact that the parent “makes relatively last-minute (albeit genuine) changes” does not automatically tip the scale in the parent’s favor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530.) A petition under section 388 “is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion.” (*In re A.A., supra*, 203 Cal.App.4th at p. 612.)

Here, there was evidence that Father made progress in his case plan, including completing a substance abuse treatment program, attending 12-step meetings and parenting programs regularly, and attaining six months of sobriety. However, he had only just begun to address the domestic violence and anger management issues, which the juvenile court noted “was one of the main components of his case plan.” His domestic violence educator, for example, stated that while Father was “learning about self awareness as it relates to anger and violence[,]” and had been “introduced to education material,” Father had attended only five sessions, and the educator expected him to attend another 30 sessions. There was evidence that Father continued to have a relationship with Mother despite the fact that Mother was a danger to J.H. Father had not yet secured stable housing. In light of these circumstances, the juvenile court could reasonably

determine that Father's circumstances were merely "changing," and had not yet "changed." There was no abuse of discretion.

Father attempts to minimize his history of domestic violence and the seriousness of his substance abuse issues, stating the domestic violence incident that occurred in January 2013 was "out of character" for him. According to the police report, however, Mother's hair had been pulled out and she had redness on the right side of her face. A witness saw Father throwing Mother to the ground and police saw Father discarding a methamphetamine pipe as police approached him. At the time of the battery, Mother had both wrists in casts. Given these facts, it is difficult to believe that Father's abuse of Mother was "out of character" or that he did not have an ongoing substance abuse problem before January 2013. Father also claims he had "successfully secured housing" by the time of the hearing, but there was no evidence that he was already living in the apartment, or that the Bureau had approved the housing.

Moreover, even if Father had established changed circumstances, there was no abuse of discretion in the juvenile court's finding that granting the 388 petition was not in J.H.'s best interests. Although Father had had semi-regular and appropriate visits with J.H., by the time the court ruled on the 388 petition, J.H. was living with his prospective adoptive parents, who had visited him almost daily for three weeks, and had had him in their care for an additional three weeks. J.H. was detained at the time of his birth, and during the 14-month-period between his detention and the hearing on the 388 petition and the 366.26 hearing, he had never lived with either Mother or Father. Further, as noted, Father had not yet secured stable housing, and there was no evidence his home would be an appropriate place in which J.H. could live. A parent who files a 388 petition after reunification services have been terminated must overcome a rebuttable presumption that the continued care of the child outside the parent's custody is in the child's best interests (*In re Marilyn C.* (1993) 5 Cal.4th 295, 308–310), because by then, the focus has shifted from "the parents' interest in the care, custody and companionship of the child" to the child's needs for permanency and stability (*In re Stephanie M.* (1994) 7 Cal.4th 295,

317). There was ample evidence to support the juvenile court's determination that Father had failed to overcome that presumption.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.