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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re C.S., a Person Coming Under the
Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

S.H. ,

Defendant and Appellant.

A141448

(Sonoma County
Super. Ct. No. 2224-DEP)

S.H., the mother of C.S. and H.C., (Mother) appeals from the denial of her Welfare and Institutions Code section 388¹ petition and termination of parental rights as to C.S.² She maintains the juvenile court erred in denying her section 388 petition without holding a hearing. She further contends that because of that asserted error, the order terminating her parental rights must also be reversed. We conclude Mother failed to make the prima facie showing necessary to trigger a hearing on her section 388 petition, and therefore affirm both the denial and termination orders.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Mother previously appealed from an order terminating parental rights as to H.C. We affirmed that order. (*In re H.C.* (Nov. 5, 2014, A141220) [nonpub.opn].)

PROCEDURAL AND FACTUAL BACKGROUND

One day after C.S. was born in 2005, she was referred to the Family and Children's Services division of the San Francisco Department of Human Services (Department) because she tested positive for amphetamine. Mother admitted using methamphetamine the day before giving birth to C.S. C.S.'s father also had a substance abuse problem.³ C.S. was initially placed with her parents under a plan of family maintenance. A little over a year later, the Department filed a section 387 petition based on Mother's positive test for methamphetamine and marijuana, and the court detained C.S. Mother ultimately completed a substance abuse program and other reunification services and obtained full-time employment. In December 2007, the court dismissed the dependency proceedings and gave legal and physical custody of C.S. to Mother, with supervised visitation for C.S.'s father.

About four and one-half years later, a second dependency proceeding was initiated regarding C.S. and her half brother, H.C. We recited the salient facts of this proceeding in our opinion in case No. A141220 involving H.C.,⁴ and quote from that opinion as follows:

"H.C., born in 2012, was detained when he was about four months old. The Sonoma County Human Services Department (Department) filed a section 300 petition alleging H.C. was at risk of physical harm due to domestic violence between Mother and [H.C.'s father] and Mother's substance abuse.

"The petition alleged three incidents of domestic violence between [Mother and H.C.'s father], on March 27 and 29, and June 29, 2012, that led to police intervention. The petition also alleged Mother had substance abuse issues and alleged [H.C.'s father] was unable to support H.C. because he was incarcerated.

³ Because C.S.'s father is not a party to this appeal, we set forth facts regarding him only as relevant to the issues on appeal.

⁴ We take judicial notice of our opinion in case No. A141220. (Evid. Code, §§ 451, subd. (a), 452, subd. (a) & 459.)

“The Department submitted an additional report at the detention hearing. [H.C.’s father] had an active warrant from the state of Oregon. He had a prior Oregon conviction for forcible sodomy and was a registered sex offender who had failed to register in California. Mother had a previous dependency case involving . . . C.S., in which the minor was successfully returned to Mother’s care after 18 months of services. The previous case was the result of Mother’s methamphetamine use. Mother and C.S.’s father had also been involved in incidents of domestic violence.

“The court found the Department established a prima facie case under section 319 and detained H.C. and C.S. It subsequently sustained the allegations of the petition and ordered reunification services for Mother. [H.C.’s father] filed a written waiver of reunification services.

“The Department submitted a status review report in March 2013, in which it indicated Mother was complying with her case plan requirements. She had had no contact with [H.C.’s father] and had completed 26 weeks of a 52-week anger management program, and was participating in outpatient substance abuse groups, parent education, and individual counseling. She also had found suitable housing, had unsupervised visits with the minors, and had complied with the visitation schedule.

“The Department recommended additional reunification services for Mother, as well as a trial home visit for the minors beginning March 21, 2013. The court adopted the Department’s recommended findings and orders, and scheduled the 12-month review hearing for September 12, 2013.

“On March 23, two days after the trial home visit began, police arrested [H.C.’s father] at Mother’s home for domestic violence. Mother told police [H.C.’s] [f]ather ‘just got out of jail in November after serving 8 months in jail for assaulting [her].’ She allowed him to move back in ‘so he could spend more time with their son.’ Police obtained a taped statement from Mother in which she stated [H.C.’s] [f]ather was living with her. On March 30, Mother went to the police department to ‘make a correction to the statement she provided . . . the day of the incident.’ She indicated she ‘misunderstood [the] question regarding the living arrangements with her and [H.C.’s father].’ Mother

claimed she thought police were asking if she was staying at the residence, so she answered 'yes for a month now.'

"After [H.C.'s] [f]ather was released from jail, he returned to Mother's home. Mother told C.S. 'to not disclose that [H.C.'s father] lived in the home' to the Department. Both minors were removed from their Mother on March 28.

"On May 1, the Department filed a section 388 petition seeking termination of reunification services to Mother. The Department indicated '[t]wo days after the trial home visit began, the Santa Rosa Police Department received a call from [Mother] regarding a domestic disturbance. [Mother] told dispatch that [H.C.'s father] pushed her and was intoxicated inside the residence. [Mother] allowed [H.C.'s father] to move back in about a month prior so he could spend more time with their son [H.C].'

"In an interim review report, the Department indicated Mother's 'corrected' statement to police 'contradict[ed] the information she provided to the officer the day of the incident.' C.S. told the social worker Mother told her not to tell anyone [H.C.'s father] was living at the home, and C.S. thought it was her fault that she and H.C. were removed. C.S. also revealed Mother instructed her not to reveal [H.C.'s father] stayed at her grandfather's (Mother's father's) home when Mother was staying there, and C.S. and [H.]C. had overnight visits. Mother tested positive for benzodiazepines on March 14 and April 2, but provided a 'medical summary' indicating she was prescribed Lorazepam for a medical procedure. She then failed to appear for drug tests on April 30 and May 17, 2013. [H.C.'s father] told the social worker he had not been living with Mother, but had stopped by the home on March 23 to ask when he could give H.C. a birthday present. He 'denied ever being a perpetrator of domestic violence' against Mother, and said she made false accusations. A probation officer in Oregon reported to the social worker [H.C.'s father] 'has an active warrant and . . . is out of the state without permission.'

"In a July 16 addendum report, the Department reported Mother and [H.C.'s father] were involved in another incident of domestic violence on June 5, following which the court issued an emergency protective order against [H.C.'s father]. Police indicated Mother and [H.C.'s father] were both intoxicated. Mother failed to disclose the

incident to her social worker, and was dishonest about the incident and her alcohol use with her reunification service providers. The Department reiterated its recommendation to terminate reunification services. On July 23, the court granted the Department's section 388 motion, terminated reunification services to Mother, and set a section 366.26 hearing.

“A week later, [H.C.'s father] filed a section 388 petition seeking revocation of his voluntary waiver of reunification services, placement of H.C. with him with family maintenance services, or, alternatively, reunification services. The court denied that petition.

“The section 366.26 hearing date was continued six months to January 23, 2014. Two days before the hearing date, Mother filed a section 388 petition seeking placement of H.C. She alleged she had had no contact with [his] [f]ather since June 2013, and had been clean and sober since her positive benzodiazepine test in April. Mother acknowledged some of her prior decisions, such as allowing [H.C.'s father] to ‘come to her home’ and telling C.S. to lie about it, were ‘poor.’ She further alleged H.C. was attached to her. The court denied her petition.” (*In re H.C.*, *supra*, A141220.)

At the January 28, 2014 section 366.26 hearing, counsel for Mother submitted a section 388 petition seeking revocation of the order terminating reunification services and return of C.S. to her custody. The Department waived any procedural issues because Mother had made “pretty much [the] same” application the previous week regarding H.C. The court found Mother had failed to make a prima facie showing of changed circumstances, and denied the application. The court then terminated Mother's parental rights to C.S. and ordered adoption as the permanent plan.

DISCUSSION

“Section 388 allows a parent or other person with an interest in a dependent child to petition the juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).)” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615, citing *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.) A parent who seeks to modify a previous order pursuant to section 388 must “ ‘make a prima facie showing to trigger the right to

proceed by way of a full hearing. [Citation.]’ [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.] We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Although the juvenile court must “liberally construe” the allegations in the section 388 petition in favor of granting a hearing to consider the parent’s modification request, (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806) “conclusory claims are insufficient to require a hearing. Specific descriptions of the evidence constituting changed circumstances is required. ‘Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence.’ [Citation.]” (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.) “[T]he petitioner must show *changed*, not changing, circumstances.” (*In re Mickel O., supra*, 197 Cal.App.4th at p. 615.) “ ‘The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.’ ” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) “Whether Mother made a prima facie showing entitling her to a hearing depends on the facts alleged in her petition, as well as the facts established as without dispute by the court’s own file.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.)

Mother’s section 388 petition alleged a number of “changed” circumstances. She asserted she “has had no contact with [H.C.’s father] since June 2013 and has sought a Restraining Order against him.” She admitted “she did allow [H.C.’s father] to come [¶] . . . [¶] to her home on several occasions to see [H.C. and C.S.],” and acknowledged “this was a poor decision which resulted in the ending of her Trial Home Visit with both her children.” She also acknowledged instructing C.S. to keep the visits a secret “was

harmful and wrong.” She further asserted she had been clean and sober since April 2013, and “the NOVA program she was in was geared more to perpetrators not victims.”

Mother attached no declarations or other documents supporting these claims.

Moreover, the record demonstrates some of her allegations of changed circumstances are false. Although Mother claimed she had been clean and sober since April 2013, a police report of a domestic violence incident between her and H.C.’s father on June 5, 2013 stated Mother “appeared to be intoxicated” and reported to police she and H.C.’s father had been drinking alcohol and playing pool at a local bar. Mother also claimed she now acknowledged she had made a poor decision when she allowed H.C.’s father to come “to her home on several occasions to see [H.C. and C.S.]” The record shows, however, Mother did more than allow H.C.’s father to visit—she told police he had been living with her and the children. Thus, in her section 388 petition, Mother effectively continued to deny that she allowed H.C.’s father to live in her home, in contradiction of the record evidence. Additionally, while Mother claimed the NOVA program was inappropriate for her because it was geared toward perpetrators, the record shows Mother was both a perpetrator and victim of domestic violence. Thus, Mother’s allegations in her petition, considered in light of the facts in the record, failed to demonstrate a prima facie case of changed circumstances.

Even had Mother made a prima facie showing of changed circumstances, she was also required to demonstrate the proposed modification was in C.S.’s best interests. “ ‘After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point “the focus shifts to the needs of the child for permanency and stability” [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.’ [Citation]” (*In re Brittany K.*, *supra*, 127 Cal.App.4th at p. 1505.)

Mother alleged that returning C.S. to her care was in C.S.'s best interests because then she "can be raised with her [half]sibling [H.C.] should this Petition (and a similar one regarding [H.C.]) be granted. [C.S.] should be raised by his Mother with her sister."^{5]} [C.S.] can be protected by her Mother, she has the tools and resources to do so. [C.S.] is attached to her mother per her former foster parent. . . . [C.S.] (and her sibling) 'were loved and cared for physically based on how each are responding to out-of-home placement and dealing with the confusing transitions between visitations.' (Per Social Worker report dated August 27, 2012.)"

At the outset, we noted Mother's section 388 petition regarding H.C. was denied, and the termination of Mother's parental rights to H.C. was affirmed on appeal. (*In re H.C., supra*, A141220.) Thus, contrary to Mother's allegations, C.S. would not be raised with her half sibling if returned to Mother. Additionally, Mother failed to demonstrate what "tools and resources" she now has to protect C.S. that she did not have prior to termination of reunification services. Although Mother stated she loves C.S. and C.S. is "attached" to her, that is not enough to demonstrate it would be in C.S.'s best interests to be returned to Mother.

We therefore conclude the court did not abuse its discretion in denying the petition.

DISPOSITION

The orders denying Mother's section 388 petition and terminating her parental rights are affirmed.

⁵ This sentence was apparently copied from Mother's section 388 petition regarding H.C. We infer it to mean C.S. should be raised by *her* Mother with *her half brother*.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.