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

**In re K.R. et al., Persons Coming Under  
the Juvenile Court Law.**

**CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,**

**Plaintiff and Respondent,**

**v.**

**DONNA D.,**

**Defendant and Appellant.**

**A145017**

**(Contra Costa County  
Super. Ct. Nos.  
J1400115, J1400116)**

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Donna D. (mother) appeals from the juvenile court's termination of her parental rights as to K.R. and S.-A.D. (S.D., collectively children) following a Welfare and Institutions Code section 366.26 hearing (.26 hearing).<sup>1</sup> Mother contends the court erred by denying her section 388 petition and by failing to apply the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). We affirm.

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<sup>1</sup> Unless noted, all further statutory references are to the Welfare and Institutions Code.

## FACTUAL AND PROCEDURAL BACKGROUND

We provide a brief procedural history, reciting only those facts relevant to the issues raised on appeal.

### *Detention, Jurisdiction, and Disposition*

K.R. was born in April 2010. S.D. was born in March 2013. In February 2014, the Contra Costa County Children and Family Services Bureau (Bureau) filed, and later amended, a petition alleging the children came within section 300, subdivisions (b) and (j) because mother left S.D. — then 10 months old — in a car with her boyfriend who “was found to have drug paraphernalia, methamphetamine and crack cocaine on his person.” Open containers of alcohol and plastic baggies were scattered throughout the car. The court detained the children and mother submitted to jurisdiction. The court ordered visitation for mother. At the conclusion of a contested disposition hearing, the court removed the children from mother’s custody, placed them in foster care, and ordered family reunification services.

### *Six-Month Review Hearing*

In its six-month review report, the Bureau recommended terminating reunification services and setting a .26 hearing. According to the report, mother: (1) was discharged from an outpatient drug treatment program for “excessive absences” and did not complete the program after being readmitted; (2) was discharged from other residential drug treatment programs; (3) tested positive for cocaine in May and June 2014 and missed numerous drug tests from July to October 2014; (4) did not take prescribed medication for bipolar disorder; and (5) missed visits with the children, was inattentive during other visits, and did not interact with S.D. in a loving manner. At the conclusion of six-month review hearing in December 2014, the court terminated reunification services and set a .26 hearing.<sup>2</sup>

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<sup>2</sup> This court summarily denied mother’s petition for extraordinary relief (§ 366.26, subd. (l)(1)(A)).

*Combined Section 388 and .26 Hearing*

In March 2015, mother filed a section 388 petition to modify the order terminating reunification services. Mother alleged she: (1) completed a residential drug treatment program and a parenting class; (2) attended domestic violence and parenting support groups; (3) received counseling; and (4) consistently visited the children and could parent them appropriately. The Bureau opposed the petition, noting mother's "long history of substance abuse, criminal activity, and involvement in negative or abusive relationships." According to the Bureau, mother — then 34 — began using methamphetamine at 14 and crack cocaine at 18. She had been arrested 80 times between 1997 and 2009 and convicted of approximately 28 crimes during that time period. Mother admitted: (1) leaving S.D. in a "high drug/crime area" with her boyfriend; (2) being resistant to drug treatment when the children were removed from her custody; and (3) relapsing in June 2014 and using drugs "until she entered treatment in October 2014." The Bureau argued mother "appear[ed] to be making changes in her life," but it was not in the children's best interest to offer her additional reunification services.

The Bureau's .26 report recommended terminating parental rights and making adoption the permanent plan for the children. According to the Bureau, the children did not have a significant parent/child relationship with mother that would outweigh the benefits of legal permanency. From February 2014 to August 2014, mother visited the children regularly; for the most part, she interacted with them in a nurturing and appropriate manner. Mother, however, struggled with good judgment and tended to focus on K.R. during the visits, not S.D. At one visit, mother gave S.D. a whole hot dog against the advice of the visit supervisor. "It was only after [S.D.] choked on the hot dog that . . . mother agreed to cut the hot dog into pieces, as was initially suggested." Mother also put S.D. barefoot on a hot surface. In September 2014 mother missed a visit,

frequently talked on her phone during visits, and favored K.R. over S.D.<sup>3</sup> The children were not upset when visits ended.

By February 2015, the children's relationship with mother, particularly S.D., "seemed to be fading" and the children had "some difficulties" adjusting to their foster home after visits. K.R. — then almost five years old — stated "she would like to stay with" her foster family if "she can't be with" mother. K.R. was developing a bond with her foster parents, sought affection from them, and sometimes called them "'mama' and 'daddy.'" S.D. was also affectionate with the foster parents and called them "'Mama or Dada.'" "

The court combined the .26 hearing with the hearing on mother's section 388 petition. At the outset of the combined hearing, the court noted it had a "caregiver information forms for each of the two children." Mother's counsel also had the forms. The social worker testified mother became cooperative and engaged in her case plan starting in October 2014 and that K.R. had an "attachment" to mother. Mother testified she had completed a residential drug treatment program and was testing negative for drugs. She attended domestic violence support groups, received individual counseling, had completed a parenting class, and was taking prescribed medication for bipolar disorder and seizures. Mother testified her circumstances had changed since December 2014 because she was sober, "more aware" of her actions, and accountable for her behavior. Mother wanted additional time to reunify with the children and thought they would benefit because she could "love and protect them" and be a "good mother."

Mother's counsel argued there had been a change in circumstances and the beneficial relationship exception applied, at least with respect to K.R. Counsel for the children urged the court to review the caregiver information forms, which described K.R.'s "severe behavioral regression" after a March 2015 visit with mother. Counsel also

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<sup>3</sup> Mother "appeared to have trouble interacting with" S.D. and he "did not appear to have much interest in interacting" with her. At visits, S.D. often "ignored" mother, "walked directly" by her, and "went straight to the food" or the toys. S.D. seemed more attached to his foster mother than mother, "going to the foster mother happily at the end of the visits."

argued K.R. “desperately” needed a stable, permanent home. The Bureau’s counsel urged the court to adopt the recommendations in the .26 report. At the conclusion of the combined hearing, the court denied mother’s section 388 petition, concluding there was not a sufficient change in circumstances to continue reunification services. The court commended mother for “finally getting engaged in services and participating” but noted mother waited “until the eleventh hour to truly address the issues that brought her and her two children before the Court, which is a longstanding chronic substance abuse problem, and a complete lack of awareness of how that affected her children and placed them at substantial risk of harm.” The court determined the children needed stability and permanency and terminated mother’s parental rights.

## DISCUSSION

### I.

#### *The Denial of Mother’s Section 388 Petition Was Not an Abuse of Discretion*

Mother contends the court erred by denying her section 388 petition. “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 Zachary G.* (1999) 77 Cal.App.4th 799, 806; § 388, subs. (a)(1), (c)(1)(A).) It is well-settled that “[u]p until the time the section 366.26 hearing is set, the parent’s interest in reunification is given precedence over a child’s need for stability and permanency.’ [Citation.] ‘Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ [Citation.] ‘The burden thereafter is on the parent to prove changed circumstances pursuant to section 388 to revive the reunification issue.’” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) We will not reverse a denial of a section 388 petition “‘unless an abuse of discretion is clearly established.’ [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

The court properly denied mother’s section 388 petition because she did not demonstrate a change in circumstances. *In re Clifton B.* (2000) 81 Cal.App.4th 415

(*Clifton B.*) is on point. There, the father claimed he demonstrated change circumstances because had fully complied with his case plan and had seven months of negative drug tests. (*Id.* at p. 423.) The juvenile court denied father’s section 388 petition and the appellate court affirmed, concluding father’s “seven months of sobriety since his relapse . . . while commendable, was nothing new. He had a history of drug use dating back to his college days, and since then his periods of sobriety alternated with recurring drug use. Even after the initial detention of his children, it took [father] six months before he was able to stay sober for any length of time. Then, after eight months of sobriety, he still succumbed to the temptation of illegal drugs. . . . [R]elapses are all too common for a recovering drug user. ‘It is the nature of addiction that one must be “clean” for a much longer period than 120 days to show real reform.’ [Citation.] In [father’s] case, 200 days was not enough to reassure the juvenile court that the most recent relapse would be his last.” (*Id.* at pp. 423-424.)

Here as in *Clifton B.*, mother failed to demonstrate changed circumstances. Mother had been using drugs for nearly 20 years and did not enter a drug treatment program until eight months after the children were removed. Mother’s “recent sobriety reflects ‘changing,’ not changed, circumstances. [Citation.] [Mother] . . . is in the early stages of recovery, and is still addressing a chronic substance abuse problem. [Citations.] [Mother’s] completion of a drug treatment program, at this late a date, though commendable, is not a substantial change of circumstances.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) Mother’s attempt to distinguish *Clifton B.* is not persuasive; her belated attempt to comply with her case plan shows changing circumstances, not changed circumstances, and is insufficient to warrant a modification under section 388. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 49 [denial of section 388 proper where the mother’s “circumstances were changing, rather than changed”]; see also *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642 [participation in 12-step meetings insufficient evidence of changed circumstances because father already received extensive alcoholism treatment, with no improvement].)

We conclude the court properly denied mother’s section 388 petition because she failed to establish changed circumstances. Having reached this result, we need not determine whether reinstatement of mother’s reunification services would have promoted the children’s best interests.

## II.

### *The Court Properly Declined to Apply the Beneficial Parent-Child Relationship Exception*

Mother contends the court erred by declining to apply the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). To establish the beneficial relationship exception, mother must demonstrate she “maintained regular visitation and contact” with the children and they “would benefit from continuing the relationship” with her. (§ 366.26, subd. (c)(1)(B)(i); *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) “We review a juvenile court’s order on the beneficial-relationship exception for substantial evidence” but would reach the same result applying the abuse of discretion standard of review. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 & fn. 7 [noting “some courts have applied” the abuse of discretion standard].)

The beneficial relationship exception does not apply here because mother did not establish S.D. would benefit from continuing the parental relationship.<sup>4</sup> (*In re Erik P.* (2002) 104 Cal.App.4th 395, 403.) S.D. was removed from mother’s custody at 10 months old; at the time of the .26 hearing, S.D. had lived in foster care for the majority of his life. During visits, mother had “trouble interacting with” S.D. and did not consistently interact with him in a loving manner. S.D. often “ignored” mother during visits — he “walked directly” by her, and “went straight to the food” or the toys. S.D. seemed more attached to his foster mother than mother, “going to the foster mother happily at the end of the visits.” Here, any bond or relationship between mother and S.D. “was qualitatively insufficient to constitute a compelling reason for determining that

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<sup>4</sup> The court impliedly concluded mother did not establish the exception applied when it terminated parental rights. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) We conclude mother has forfeited any objection to the caregiver information forms by failing to object in the juvenile court. (Evid. Code, § 353, subd. (a).)

termination of [mother's] parental rights would be detrimental to him.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.)

Nor did mother establish K.R. would benefit from continuing the relationship. (*In re G.B., supra*, 227 Cal.App.4th at p. 1166.) K.R. had a bond with mother and their visits generally went well. By the time of the .26 hearing, however, K.R.'s relationship with mother “seemed to be fading” and K.R. was developing a bond with her foster parents, sought affection from them, and sometimes called them “‘mama’ and ‘daddy.’” K.R. was not upset when visits with mother ended and — in at least one instance — had a “severe behavioral regression” after a visit with mother. Under the circumstances, mother failed to establish her relationship with K.R. promoted K.R.'s “well-being to such an extent that it outweighed the well-being [she] would gain in a permanent home with adoptive parents. [Citation.] Mother’s visits . . . were always supervised” and mother was only at the beginning stages of her sobriety. “By contrast, the children were in a secure placement and were bond[ing] with their current and prospective caregivers. Mother cares deeply for her children” but “she has not shown that the juvenile court erred in terminating her parental rights.” (*In re G.B., supra*, 227 Cal.App.4th at p. 1166.)

We conclude the court properly declined to apply the beneficial relationship exception to termination of parental rights. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 [appellate court will affirm juvenile court’s order if supported by substantial evidence, even if other evidence supports contrary conclusion].)

#### DISPOSITION

The juvenile court’s orders denying mother’s section 388 petition and terminating her parental rights are affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Bruiniers, J.