

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B236126  
(Los Angeles County  
Super. Ct. No. CK06484)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of Los Angeles County.  
Veronica McBeth, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County  
Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

---

T.J. (mother) challenges two juvenile court orders: (1) the juvenile court's order summarily denying her petition pursuant to Welfare and Institutions Code section 388;<sup>1</sup> and (2) the juvenile court's order terminating her parental rights to C.J. (minor, born Oct. 2002) pursuant to section 366.26. Regarding the section 388 petition, mother contends that she demonstrated a change of circumstances warranting additional reunification services and that the additional reunification services were in the minor's best interests. As for the section 366.26 order, mother argues that the juvenile court erred in not applying the parent-child beneficial relationship exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).)

We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *DCFS's Prior Involvement with the Family*

Before the Department of Children and Family Services (DCFS) filed the instant section 300 petition on behalf of the minor, she and her siblings were the subjects of prior DCFS and juvenile court intervention. S.J., the minor's sibling, was declared a dependent of the juvenile court and released to her father in 1993, with jurisdiction ending in 1996. M.J., another sibling, was detained in 1994 as a result of mother's long drug abuse history and declared a dependent of the court. In 2000, M.J. was freed for adoption and was adopted in 2001.

In 2006, the minor was declared a dependent of the juvenile court after DCFS filed a section 300 petition on her behalf, alleging that mother's substance abuse and use of cocaine placed the minor at risk. The petition further alleged that mother failed to reunify with the minor's siblings. The juvenile court placed the minor in mother's custody and ordered family maintenance services. Mother was ordered to remain in her inpatient drug treatment program and continue to drug test weekly. On September 26, 2007, the juvenile court terminated jurisdiction over the minor after a year of court supervision.

---

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

### *Detention and the Current Section 300 Petition*

In the instant case, the minor came to the attention of DCFS on August 18, 2009, after DCFS received a referral that mother had been physically abused by her boyfriend, G.P.; an unknown man was in mother's home and was under the influence of drugs and alcohol; and mother was under the influence of marijuana and had been drinking beer in the home. The referral also indicated that mother did not seek a restraining order against G.P., who had physically assaulted her.

When the social worker arrived to investigate, she was greeted at the door by an unknown man who appeared to be under the influence of alcohol. The home was in disarray, and the unknown man left the home, taking a large bottle of vodka with him.

Mother admitted that she and G.P. had been involved in a domestic violence dispute, but she denied that he had returned to the home after his arrest. She indicated that she did not have time to get a restraining order against him. She denied using drugs that day. During the interview, mother appeared restless and was continually going to the kitchen for drinks of water. She eventually admitted to smoking marijuana that day.

The minor was interviewed as well. She reported that she heard mother and G.P. yelling at each other, but she did not see him hit mother. She stated that G.P. always gets mad when he does not get his way. She also stated that she was a little scared during their fight.

DCFS conducted a Team Decision Making (TDM) meeting. In attendance were mother, the social worker, supervising social workers, and mother's service providers. All participants agreed that mother smelled of alcohol prior to the meeting. During the meeting, mother admitted to using cocaine on August 17, 2009. It was also discovered that mother was not taking her medication (Abilify and Wellbutrin) as prescribed. Mother stated that she smoked marijuana once in a while for insomnia and depression, and that she drank occasionally. She agreed to do an on-demand drug test after the meeting, and she tested positive for marijuana and cocaine metabolite.

DCFS placed the minor in foster care and recommended that she remain detained.

On August 24, 2009, DCFS filed a section 300 petition on behalf of the minor pursuant to subdivisions (a), (b), (g), and (j). At the detention hearing, the juvenile court found a prima facie case for detaining the minor and ordered her detained. Mother was allowed monitored visits

On September 8, 2009, the juvenile court ordered the minor placed with a nonrelated extended family member, Yvonne H. (Yvonne).

#### *Jurisdiction/Disposition*

According to DCFS's October 2009, jurisdiction/disposition report, mother had an extensive criminal history, going back to 1987, and included numerous convictions, both misdemeanor and felony, for drug-related crimes. When the dependency investigator interviewed mother for the report, mother appeared to be intoxicated. She admitted to drinking five beers on the day of the interview and reported using cocaine four days earlier. She revealed that she started smoking marijuana at age six and drinking alcohol at age 10.

Yvonne advised that mother had gone "downhill." In fact, she had witnessed mother talking to people who were not there.

It was further reported that mother appeared to be under the influence of drugs or alcohol during her monitored visits with the minor, and showed up with a male friend during one of the visits. On one visit, mother asked the minor if she missed her (mother) and the minor replied, "Not [r]eally."

DCFS recommended that the juvenile court sustain the section 300 petition and order suitable placement for the minor. It also recommended against providing mother with reunification services.

#### *Information for Court Officer*

Also in October 2009, DCFS reported that on September 30, 2009, mother had been arrested for prostitution and would remain in custody until October 23, 2009.

#### *Adjudication Hearing*

The adjudication hearing commenced on November 24, 2009. After entering DCFS's reports into evidence and entertaining oral argument, the juvenile court amended

and sustained the section 300 petition against mother pursuant to subdivision (b).<sup>2</sup> The matter was continued for disposition.

*Interim Review Report*

In its interim review report, DCFS advised that mother had enrolled in a substance abuse program on December 4, 2009. It also reported that mother tested positive for cocaine on October 19, 2009, and subsequently had two negative drug tests. On two other occasions, mother failed to appear for random drug tests.

A social worker made a home call on November 4, 2009. When she arrived, she observed that mother's home appeared to have been ransacked, and mother was yelling, angry, and incoherent. The social worker reported that mother smelled like alcohol, and

---

<sup>2</sup> Count b-1 alleges that mother "has a history of substance abuse and is a current abuser of cocaine, marijuana and alcohol, which renders the mother incapable of providing the child with regular care and supervision. Remedial services have failed to resolve the family problems in that the mother continues to abuse illicit drugs and alcohol. The mother allowed an unrelated adult male to abuse illicit drugs in the child's home in the child's presence. On 08/19/09, the mother had a positive toxicology screen for cocaine and marijuana. The child and the child's sibling[s] . . . are former dependent children of the Juvenile Court due to the mother's abuse of illicit drugs. The child's sibling [M.J.] received Permanent Placement of Adoption Services due to the mother's abuse of illicit drugs. The mother has an extensive criminal history including convictions [for] possession of [a] control[led] substance, under the influence of controlled substance and possession of hypodermic needle/syringe. The mother's substance abuse endangers the child's physical and emotional health and safety, creates a detrimental home environment and places the child at risk of physical harm, damage and danger."

Count b-2 alleges that mother "has mental and emotional problems including a diagnosis of BI Polar Disorder, which renders the mother incapable of providing the child with regular care and supervision. The mother has failed to take the mother's psychotropic medication as prescribed. The mother's mental and emotional condition endangers the child's physical and emotional health and safety and places the child at risk of physical harm, damage and danger."

Count b-3 alleges that the minor was exposed to altercations between mother and G.P. and that mother has a criminal history including two convictions for child cruelty. "Such domestic violence . . . and the mother's failure to take action to protect the child endangers the child's physical and emotional health and safety, creates a detrimental home environment and places the child at risk of physical harm, damage, danger, physical abuse and failure to protect."

mother advised the social worker that she (mother) was “under spiritual warfare and demon possession.” She also told the social worker that she was going to drug treatment. Mother stated that she was planning on having another baby and told the social worker that she could not have that baby.

DCFS also reported that mother had not visited the minor for a month, but had called her on the telephone every two or three days.

#### *Disposition Hearing*

At the disposition hearing on December 15, 2009, the juvenile court ordered reunification services for mother. Mother was ordered to comply with a case plan of domestic violence counseling, parent education, drug rehabilitation with random drug testing, individual counseling to address case issues, and an Evidence Code section 730 evaluation. Her visits were to remain monitored.

#### *Six-month Status Review Report and Hearing*

In its June 15, 2010, status review report, DCFS reported that the minor remained placed with Yvonne. She was thriving in Yvonne’s care and was observed to be comfortable. The minor stated that she was having so much fun with Yvonne that she sometimes forgot to miss her mom.

Regarding mother’s visits, DCFS advised that mother would call and cancel the visits at the last moment. Yvonne also informed DCFS that mother would make inappropriate remarks to the minor regarding the case. Yvonne further told the social worker that mother sometimes asked the minor if she saw a “demon” in a picture of a book that the minor was reading. Mother continued to visit the minor while under the influence of alcohol and displayed symptoms of her mental health issues. Yvonne stated that mother had threatened her.

DCFS indicated that during a scheduled visit at the DCFS office on February 12, 2010, mother appeared to be under the influence of alcohol as she was angry, disheveled, and incoherent. Mother was cursing at Yvonne in front of the minor. Mother denied drinking, but then continued to ramble, change subjects frequently, and speak loudly, slurring her words. Again on March 26, 2010, mother appeared to be under the influence

of drugs and/or alcohol during another visit at the DCFS office. At that time, she was disheveled, dirty, and delusional, reporting to the social worker that M.J. had been kidnapped.

DCFS also reported that at other times, mother had behaved appropriately during visits and those visits went well.

Mother's drug treatment counselor reported that mother attended her required sessions, but continued to use alcohol. He also reported that mother continued to be concerned about M.J. and appeared to have mental health issues. He advised that mother had tested negative for drugs and alcohol, but admitted that alcohol was difficult to test for.

Mother had appeared for her intake appointment for parenting education and domestic violence counseling while under the influence of drugs or alcohol. She reportedly told staff that she was only required to participate in a 12-week program and she refused to participate in the 52-week domestic violence program. Mother later advised that she had enrolled in another program in Long Beach.

The Evidence Code section 730 evaluator recommended that mother receive reunification services as he believed that she could meet the minor's needs as long as she remained drug/alcohol free and medication compliant. Mother received mental health services through MHA Village (the Village), but was reported to frequently attend the program high or drunk. Her case manager, Brittany Barber, stated that mother would attempt to manipulate the staff into giving her money, claiming that she needed it for housing or transportation, but would use it to buy drugs or alcohol. She also stated that mother had been kicked out of two sober living homes due to drug use and that mother had been homeless for a couple of months as a result.

Mrs. Barber further advised the social worker that mother was currently medication compliant, however, even when taking her medication, she suffered from delusions that M.J. had been kidnapped and that the kidnappers were after mother. Mrs. Barber recommended against unmonitored visits for mother with the minor.

The minor stated that she missed and loved mother and wanted to live with her someday, but did not know when that would be. Yvonne stated that she wanted to adopt the minor if mother did not reunify with her.

DCFS recommended further reunification services. At the hearing, the juvenile court followed the recommendation and continued reunification services for mother through the 12-month status review date.

#### *12-month Status Review Report and Hearing*

DCFS reported that on June 23, 2010, mother arrived at the DCFS office under the influence of drugs or alcohol. Mother admitted to smoking marijuana a few days before the meeting. Mother reportedly arrived at the DCFS office the following month also under the influence of alcohol and went to church services the day after, while still under the influence of drugs or alcohol. The church staff would not allow her in for services. Yvonne was worried that mother was “[g]etting worse.”

Mother enrolled in a drug treatment program at Choices Recovery Services on October 19, 2009. The social worker had ongoing contact with mother’s drug counselor, who advised that mother was attending the required sessions, but arriving under the influence of alcohol. Mother tested negative for the drug treatment program, but failed to appear for the DCFS random drug tests. DCFS also reported that mother subsequently had been arrested on June 8, 2010, for possession of crack cocaine and arrested on August 17, 2010, for possession of methamphetamine.

On September 24, 2010, mother had enrolled in an inpatient drug treatment program, and all of her tests at the program were negative. Her inpatient drug treatment counselor stated that mother had shown significant progress in the program. Mother reported that she had enrolled in domestic violence classes, but, upon investigation, DCFS discovered that mother had attended less than three classes.

Meanwhile, the minor was well cared for by Yvonne. The minor informed the social worker that she liked living with Yvonne “better because she does not yell at her like her mom does, and is not ‘Crazy’ like her mom.” Yvonne now stated that she was unwilling to adopt the minor, although she was committed to providing her with a safe

home. DCFS was in the process of assessing families that were interested in adopting the minor. A family was located, and she and the family had been visiting with each other. The minor was reportedly excited about the visits and open to adoption, but she was worried about mother's reaction.

DCFS recommended that the juvenile court terminate mother's reunification services and set a section 366.26 hearing. It also requested a nondisclosure order for the minor's prospective adoptive parents and the minor's school, doctors, and dentists.

At the December 14, 2010, hearing, the juvenile court ordered a "strict non-disclosure order" as requested by DCFS. Visits were to remain monitored. The matter was continued for a contested hearing.

*Information for the Court (January 31, 2011)*

DCFS advised the juvenile court that during a monitored visit on January 31, 2011, mother appeared to be displaying symptoms of her mental illness. The minor appeared frustrated with mother's behavior and yelled at mother to quit touching her hair. On January 24, 2011, DCFS learned that mother no longer resided at her sober living home. The social worker was informed that mother had relapsed, was drunk, and was discharged from the home as a result. Because mother appeared sober several days later, she was placed in a different sober living home.

The social worker then spoke with the manager of mother's new sober living home. She indicated that mother was not there over the weekend, but was scheduled to return. The manager suspected that mother was using drugs and alcohol and planned to have her drug tested when she returned. She also reported that mother was very hyperactive and often talked to herself. She suspected that mother was not taking her prescribed medication.

Mother's drug test on January 19, 2011 at the sober living house were negative, however, she was a "[n]o show" for the DCFS tests scheduled for January 10, 2011, and January 20, 2011.

*Information for the Court (March 8, 2011)*

DCFS reported that the social worker received a voicemail from mother on February 21, 2011. Mother appeared incoherent as she slurred her words and continued to switch back and forth from subject to subject. Mother stated that the minor's foster father would not allow her to talk to the minor. When she confronted the foster father, he was "covered by the blood of Jesus" and she had a government claim to investigate this. Mother also called the minor's current caregivers and Yvonne. She threatened to find the current caregivers, and she was drunk when she called Yvonne.

Mother's visits with the minor were inappropriate. She asked the minor where she was currently living. She missed two visits and failed to appear for random drug testing. And, she was arrested on February 23, 2011, for prostitution.

DCFS indicated that mother was no longer participating in her inpatient drug treatment program.

*Contested 12-month Status Review Hearing*

The hearing commenced on March 8, 2011. After receiving various documents into evidence and entertaining oral argument, the juvenile court terminated mother's reunification services and set a section 366.26 hearing. Mother's visits were then limited to once a week for two hours.

*Section 366.26 Report and July 19, 2011, Hearing*

In July 2011, DCFS reported regarding Indian Child Welfare Act (ICWA) status. Apparently mother now claimed Blackfeet or Cherokee heritage. While the maternal grandparents confirmed some Cherokee heritage, mother's relatives concurred that mother was just using the claim to delay the minor's adoption. ICWA notices were sent, but no responses had been received.

The minor's maternal grandmother stated that mother should not have contact with the minor. The maternal grandfather stated that he could not be more pleased with the home that the minor was living in.

The minor, who was now eight years old, was meeting her developmental milestones. She did not suffer from any illnesses. Moreover, she had been discharged from therapy at the end of May 2010, having met her treatment goals.

The prospective adoptive parents had an approved adoptive home study. The minor had a smooth transition into their home and was thriving in their care. She said that she was very happy living with her prospective adoptive parents and wanted to stay there. When asked about adoption, she would not answer, stating: “can’t you guys just decide for me?”

Regarding visitation, DCFS reported that mother did not visit with the minor in July 2011, had two visits in June 2011, but cancelled the rest or failed to show for others. In May 2011, mother appeared for a visit while under the influence of drugs or alcohol and was unable to visit on other occasions because she had been arrested and was in custody.

DCFS reminded the juvenile court that mother had a 23-year history of criminal activity and drug use and had failed to reunify with the minor’s siblings. DCFS also advised that mother had been enrolled in an inpatient drug treatment program on two separate occasions. The first time occurred in 2006, during the minor’s prior juvenile court case; less than two years later, the minor had to be removed from mother’s custody due to her resumed use of drugs.

DCFS noted that it was highly likely that the minor would be adopted if parental rights were terminated.

At the hearing, the juvenile court found that ICWA did not apply. The case was continued for a contested hearing.

*Information for the Court (August 3, 2011)*

DCFS reported that mother was not enrolled in any treatment programs, was not appearing for random drug tests, and continued to cancel scheduled visits with the minor. Mother’s mental health symptoms continued. On July 28, 2011, mother called the adoption worker, asking for information about M.J. She was convinced that M.J. was being abused, had never been adopted, and was not “receiving [the] benefits of sunshine

or fresh air.” She believed that she (mother) was in danger because of her inquiries and stated that she was going through spiritual warfare.

*Mother’s Section 388 Petition*

On July 27, 2011, mother filed a section 388 petition to request a change of court order. She requested that the juvenile court offer her further reunification services and cancel the section 366.26 hearing. She alleged that she was participating in mental health services at the Village, was discussing ways to increase her coping skills to maintain sobriety, would be randomly drug tested where she was receiving the mental health services, and was working on resuming domestic violence classes. She further alleged that she had a mother-daughter relationship with the minor and that it was in the minor’s “best interest to have a relationship with her Mother now that her Mother [was] actively participating in programs to address her mental health and sobriety issues.”

On August 12, 2011, the juvenile court summarily denied mother’s section 388 petition, finding that she had not completed her case plan and had not enrolled in the court-ordered treatment programs. The juvenile court found that “[t]he best interest of the minor[] would not be promoted by the proposed change of order.” Moreover, the request did not state new evidence or a change of circumstances.

*Information for the Court (August 25, 2011)*

DCFS reported about a monitored visit between mother and the minor on August 11, 2011. Although mother was appropriate in the minor’s presence, when the minor was out of the room, she talked about M.J. being locked up in an institution. She said that she feared for her life because of what she knew, and she believed that children were being sexually abused by DCFS employees. Mother cancelled the next scheduled visit, then called the social worker again, advising that she was planning on having a visit, but that M.J. was “her priority bottom line.” Mother did not call to reschedule the visit.

DCFS further informed the juvenile court that mother had been arrested.<sup>3</sup> Although DCFS requested that mother be transported from jail to the section 366.26 hearing, she was not present at the August 26, 2011, hearing. The matter was continued. *Status Review Report (September 16, 2011)*

The minor continued to thrive with her prospective adoptive parents. They provided full-time care for the minor and provided for all of her basic needs. The minor appeared to be adjusting well to the home, as she freely asked for snacks and was affectionate and loving towards the prospective adoptive parents. The minor often smiled and joked with them, and the prospective adoptive parents responded warmly and affectionately to her. The minor got along well with their 11-year-old son. She was doing well in school and was engaged in after school activities. She had made many friends. During summer vacation, the family went to Hawaii, Big Bear, and visited relatives in other parts of the country. The minor enjoyed these times with the prospective adoptive family.

The minor indicated that she sometimes missed mother, but that she was having a lot of fun and sometimes did not miss her.

Mother continued to have monitored visits with the minor at the DCFS office. However, those visits had been inconsistent, as mother cancelled visits, shown up late, or not shown up at all. When the visits did occur, both mother and the minor reported that they enjoyed the visits; mother and the minor were affectionate and loving with one another. Mother often brought snacks and games to the visit and appeared concerned about the minor's well-being.

The prospective adoptive parents advised the social worker that they loved and cared for the minor very much, and they were committed to providing her with a safe, loving, and permanent home.

---

<sup>3</sup> DCFS later reported that mother had been arrested for prostitution and being under the influence of drugs or alcohol.

### *Section 366.26 Hearing*

The contested section 366.26 hearing commenced on September 16, 2011. Various DCFS reports were admitted into evidence without objection. Mother did not offer any documentary or testimonial evidence.

Mother objected to the termination of parental rights. She argued that she cared for the minor until she was removed from her care on August 19, 2009, when the minor was eight years old. Thus, the minor had spent the majority of her life with mother.

Mother further argued that she had maintained regular and consistent visits with the minor. Both mother and daughter enjoyed the visits, and the social worker reported that they were affectionate and loving with one another.

Finally, mother asserted that parental rights should not be terminated because the minor “clearly identifie[d]” mother as her mother and they have “a beneficial, loving mother/daughter relationship.” There is a bond between them, and it would be detrimental to the minor if that bond were terminated.

The minor’s attorney argued that the juvenile court had “little choice but to terminate parental rights.” After all, mother had not been acting in a parental capacity.

After entertaining oral argument, including remarks directly from mother, the juvenile court terminated parental rights, reasoning: “I’ve read the entire file so I would know what this case is about because this is a very serious hearing, and I wanted to make sure I know everything about the case, including things that were submitted. Those were the things that I consider that were admitted into evidence.

“But I also read the history of this particular case, and I have to say that I’m aware that during this period, mother has been arrested numerous times for drugs and for prostitution, and because of those arrests, she’s not always been able to visit consistently.

“Counsel quoted a statement made by her daughter about wanting to be able to sit next to her mother. At that time, she was saying that she didn’t want to visit her mother in jail, and she didn’t want to have to speak to her through a glass. She’d rather sit next to her. So I don’t doubt that there is some bond between mother and daughter, but certainly nothing significant enough.

“In fact, I see that she was in therapy for a number of problems, but she is doing so well right now that her therapy was terminated, which indicates even outside the care of her mother, she is thriving in the care, the consistent care, that she’s receiving from her current caregivers.

“Mother has not done any of the programs. [¶] . . .

“And in a past time, I know mother has also lost custody of two other children, in addition to her excessive drug, mental health and arrest history.

“But although she’s taken one substance abuse class, there are extensive reports from [DCFS] in terms of her visitation—which I would find to be inconsistent and not consistent—many late, hour, hour and a half late, not calling to say that she wasn’t coming, a long history of that, and also mother’s speech being so slurred that others weren’t able to even know what she was talking about either due to mental health issues or her use of substances.

“And I would say she was ordered to do another substance abuse program, and she didn’t do it this time. She didn’t do individual counseling. She didn’t do parenting, and she’s not—[¶] . . . in compliance with her plan. That’s why reunification services were terminated and her visits were never changed from monitored.”

The juvenile court further noted that while there were attempts “now and then” to comply with the case plan, she never completed any of the programs. “If mother had completed one of these programs or if she even was visiting regularly, there would be something on which I could say, maybe there is a bond so great that the child is not adoptable. But I’m not able to find that.” The juvenile court found the minor “highly adoptable,” disagreeing with mother’s assertion that it would be in her best interest not to terminate parental rights.

### *Appeal*

Mother’s timely appeal ensued.

## DISCUSSION

### I. *Mother's Section 388 Petition*

Mother contends that the juvenile court erred in summarily denying her section 388 petition.

#### A. Standard of Review

Section 388 provides, in relevant part: “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 circumstances or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made.” (See also *In re Brandon C.* (1993) 19 Cal.App.4th 1168, 1172; Cal. Rules of Court, rule 5.570(f).) “Section 388 provides the ‘escape mechanism’ . . . built into the process to allow the court to consider new information. [¶] . . . Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances. . . . [¶] . . . [T]he Legislature has provided the procedure pursuant to section 388 to accommodate the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

That being said, “[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529; § 388, subd. (b).) Some factors which “provide a reasoned and principled basis on which to evaluate a section 388 motion” include “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F., supra*, at p. 532.)

“[T]he burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

A section 388 petition must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) That being said, when a section 388 petition fails to allege changed circumstances or fails to explain how the proposed change in the juvenile court’s orders would serve the child’s best interests, the juvenile court may deny the petition without setting a hearing on the petition. (Cal. Rules of Court, rule 5.570(d); *In re Angel B.* (2002) 97 Cal.App.4th 454, 461; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431–432.)

“Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685; see also *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. 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.” (*In re Stephanie M., supra*, 7 Cal.4th at pp. 318–319.) Thus, we will not reverse a juvenile court’s denial of a section 388 petition “““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].””” (*In re Stephanie M., supra*, at p. 318.)

#### B. Changed Circumstances

Mother did not meet her burden in demonstrating changed circumstances. While she may have been working with staff at the Village to develop skills to maintain sobriety, she still was not drug free. In fact, despite all of the services that have been provided to mother, she continued to use illicit drugs and drink alcohol to excess, as evidenced by her arrests, positive drug tests, and contacts with the minor, social workers,

service providers, and the minor's caregivers when she was under the influence of drugs or alcohol.

Mother likewise did not demonstrate changed circumstances regarding her mental health status. Again, resuming services with the Village was not sufficient. She had been utilizing services with the Village throughout these proceedings and was never able to bring her mental health symptoms under control.

Finally, "working on resuming domestic violence classes" does not constitute changed circumstances. She never demonstrated that she understood the dynamics of violence in the family home or how to prevent it in the future.

At most, mother may have shown changing circumstances; but that is not enough to prevail on a section 388 request. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 49.) Thus, the juvenile court rightly denied mother's section 388 petition without a hearing.

### C. Best Interests of the Minor

In light of our conclusion that mother did not meet her burden in demonstrating changed circumstances, we need not address mother's claim that a modification was in the minor's best interest. For the sake of completeness, we note the following: The appellate record does not support mother's assertion that she and the minor had a long-term parent-child bond. The minor said on more than one occasion that she did not miss mother. While some of their visits may have been affectionate and loving, mother did not establish that further reunification services would promote the minor's best interests.

## II. *Section 366.26 Order Terminating Mother's Parental Rights*

Mother contends that the juvenile court committed reversible error by terminating her parental rights to the minor because substantial evidence does not support the juvenile court's finding that the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)) did not apply.

### A. Standard of Review

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

## B. Analysis

At the section 366.26 hearing, the juvenile court's task is to select and implement a permanent plan for the dependent child. When there is no probability of reunification with a parent, adoption is the preferred permanent plan. (§ 366.26, subd. (b)(1); *In re Marina S.* (2005) 132 Cal.App.4th 158, 164.) If the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the juvenile court must terminate parental rights, unless one of several statutory exceptions applies. (§ 366.26, subd. (c)(1); *In re Marina S.*, *supra*, at p. 164.)

To satisfy the parent-child exception to termination of parental rights in section 366.26, subdivision (c)(1)(B)(i), a parent must prove he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i); see *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [“parent has the burden to show that the statutory exception applies”].) The “benefit” prong of the exception requires the parent to prove his or her relationship with the child “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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“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”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) The relationship that gives rise to this exception to the statutory preference for adoption “characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

A court may consider the relationship between a parent and a child in the context of a dependency setting, e.g., amount of visitation permitted, whether the parent was ever the child’s primary caretaker. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537–1538.) But the overriding concern is whether the benefit gained by continuing the relationship between the biological parent and the child outweighs the benefit conferred by adoption. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1155–1156; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Ample evidence supports the juvenile court’s finding that this exception to termination of parental rights did not apply. Mother did not demonstrate, nor does the record reflect, that she maintained regular contact with the minor. She often failed to take advantage of the opportunities for visits by cancelling visits, arriving late, or simply failing to show for the visits. Under these circumstances, it was not possible for “a significant, positive, emotional attachment from child to parent” to continue or develop. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 50; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Moreover, we are mindful of the fact that mother’s visits with the minor never progressed passed monitored visits. This failure to progress beyond monitored visits with her daughter and to fulfill a “meaningful and significant parental role” justifies the juvenile court’s order terminating the parents’ parental rights. (*In re Andrea R.*, *supra*, 75 Cal.App.4th at p. 1109.)

Furthermore, there was no evidence that the relationship between mother and the minor would promote 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 re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) At best, some of the visits between mother and the minor were described as loving and affectionate. That is insufficient to justify

application of the parental-benefit exception. Although “[i]nteraction between [a] natural parent and child will always confer some incidental benefit to the child” (*In re Autumn H.*, *supra*, at p. 575), there is no indication that mother filled the role of parent for the minor. It follows that the minor’s need for a permanent adoptive home outweighs any benefit of continuing a relationship with mother. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) This is particularly true here given the fact that the prospective adoptive parents have continuously met the minor’s needs and she is thriving in their care.

Finally, there is no evidence that terminating parental rights would be detrimental to the minor.<sup>4</sup> The minor had been continuously out of mother’s custody for over two years, and, during that time, she often forgot to miss her mother. As noted above, mother still had not overcome her drug and alcohol addiction, and she had not been able to control her mental health symptoms, notwithstanding the years of treatment and services. In contrast, the minor had become a cherished member of her prospective adoptive family and was receiving the benefits of living in a stable, permanent, loving, and safe home.

**DISPOSITION**

The juvenile court’s findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, Acting P. J.  
DOI TODD

\_\_\_\_\_, J.  
CHAVEZ

---

<sup>4</sup> Notably, unlike the grandparents in *In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1533, the maternal grandmother in the instant case said that mother should not have contact with the minor and the maternal grandfather could not have been more pleased with the minor’s prospective adoptive parents.