

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re BRODY W., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B237471
(Super. Ct. No. J067933)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

AARON W. and HOPE W.,

Defendants and Appellants.

Aaron W. (father) and Hope W. (mother), the biological parents of one-year-old Brody W., appeal from the juvenile court's order denying a petition for modification (Welf. & Inst. Code, § 388)¹ and terminating their parental rights (§ 366.26). We affirm.

Facts and Procedural History

On September 2, 2010, Ventura County Human Services Agency detained Brody at birth because father and mother had a history of domestic violence and child neglect. Three months before Brody's birth, Brody half-brother (Lyric W., age two) was found wandering in the street unsupervised. Navy Police roused Hope W. (Lyric's stepmother) who was asleep in a dirty and unsafe home. Dog urine and feces were on the

¹ All statutory references are to the Welfare and Institutions Code.

carpet, the kitchen sink was full of dishes, broken glass and liquor bottles were on the floor, holes were punched in the walls and doors, and an electrical cord was tied to Lyric's bedroom door.

When Brody was born, father and mother had four open dependency cases for domestic violence and child endangerment/neglect. Each time a domestic fight started, father used Lyric as a shield. Concerned about Brody's welfare, Human Services Agency (HSA) filed a dependency petition alleging that father and mother lacked the ability to protect, care for, and supervise Brody. (§ 300, subs. (b) & (j).)

On October 21, 2010, the trial court sustained an amended petition, removed Brody from mother's and father's custody, and ordered visitation and reunification services. A month later, father and mother were arrested for domestic violence.

On June 28, 2011, at the sixth month review hearing, HSA reported that mother had dropped out of domestic violence classes and had made little progress. Earlier that year, mother separated from father and moved to Hanford with a friend who had a history with HSA. HSA encouraged mother to stay in Ventura County where she could receive services and address her case plan needs. Mother doubted that she could complete a program and decided to stay in Hanford for three months without services before moving back to Ventura County.

HSA reported that father was not following the case plan, had missed scheduled visits, and had left threatening phone messages with the case worker. Father did not believe the domestic violence classes were helping and requested paternity testing because he doubted whether he was Brody's father.

The trial court terminated services on June 28, 2011 and set the matter for a section 366.26 permanent placement hearing. Mother filed a section 388 petition to reinstate services which was denied on October 27, 2011. Following a contested section 366.26 hearing, the trial court terminated parental rights and freed Brody for adoption.

Section 388 Petition

Mother asserts that the trial court erred in denying her petition to reinstate services. Father joins in the argument. It is settled that the grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) The parent bears the burden to show *both* a change of circumstances and that undoing the prior order would be in the best interest of the child. (*In re S. J.* (2008) 167 Cal.App.4th 953, 959) "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]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Mother argues that she completed 16 counseling sessions, was attending a domestic violence program, and had a job and housing when the section 388 petition was filed. But these were not changes. She had done these things at the time of the six month review hearing. When services were terminated on June 28, 2011, mother was attending counseling sessions and planned to start a domestic violence program. Mother had a history of dropping out of domestic violence classes and thought they were a waste of time. At the six month review hearing, mother stated that she did not need domestic violence classes and "I don't think I have bad temper. Everyone has one. I don't know what my triggers are."

That mother is continuing counseling sessions and starting domestic violence classes, as she has done in the past, does not constitute a change of circumstances. (See e.g., *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) The section 388 petition to reinstate services was properly denied. (See e.g., *In re Angel B.* (2002) 97 Cal.App.4th. 454, 461-463; *In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.)

With respect to the second prong of section 388, mother failed to make a prima facie showing that reinstatement of services was in Brody's best interests. (*In re Angel B., supra*, 97 Cal.App.4th at p 465.) Brody is bonded to his foster parents who are committed to adopting him and have provided a nurturing and stable environment.

Mother has never assumed a parental role or progressed beyond supervised visits. After each visit, Brody was "very grumpy, very upset, and very clingy" and cried constantly until he was nestled and rocked by his foster parents. The evidence clearly shows that reinstating services would be detrimental to Brody and undermine the permanency and stability of an adoptive placement that Brody so badly needs.

Order Terminating Parental Rights

Nor did the trial court err in terminating parental rights. Mother and father abdicated their role as parents, failed to comply with the case plan, and have not addressed their anger and domestic violence issues. Brody is strongly attached to his foster parents and is thriving in their home.

In the words of the trial court, Brody "has never lived with his parents" and "needs permanency." We concur. "A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.]" (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

The orders denying the section 388 petition and terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Robert R. Walmsley, under appointment by the Court of Appeal, for Aaron W., Appellant.

Marissey Coffey , under appointment by the Court of Appeal, for Hope W., Appellant.

- Leroy Smith, County Council, County of Ventura, Alison J. Harris, Assistant County Counsel. for Respondent.