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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B238656
(Los Angeles County
Super. Ct. No. CK47419)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

REBECCA R. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County.

Marguerite D. Downing, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant Rebecca R.

Thomas S. Szakall, under appointment by the Court of Appeal, for Defendant and Appellant Anthony R., Sr.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

Rebecca R. (mother) and Anthony R., Sr., (father) are the parents of five children: Ariel R. (Ariel, born Feb. 1997), Anthony R., Jr., (Anthony, born Mar. 1999), Alex R. (Alex, born Oct. 2000), Jacob R. (Jacob, born Dec. 2001), and A. R. (A., born June 2005). On appeal, they challenge the juvenile court's December 9, 2011, orders (1) denying father's Welfare and Institution Code section 388¹ petition, and (2) terminating the children's extended visit with mother. Because we find no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

Detention and Section 300 Petition

“On April 7, 2008, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging general neglect and emotional abuse of the children. DCFS and the juvenile court had previously supervised the children from 2002 through 2007, after the [juvenile] court sustained a section 300 petition alleging inappropriate physical discipline and neglect of the children, domestic violence between the parents, and substance abuse by the father.

“When the DCFS social worker arrived at the family home in April [8], 2008, the home ‘appeared dirty but organized.’ Although there was food in the home, there were no beds for anyone and no toiletries for the family's hygiene. The front and bathroom windows were broken and covered with wood. Mother denied all the allegations in the referral and claimed the family's landlord (mother's aunt) was trying to evict the family. Father stated he did not work because he was blind in one eye and received SSI. Father cared for the youngest child (then age two) while mother worked at McDonalds. Father

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

² Mother previously sought extraordinary writ review of a juvenile court order terminating reunification services with her five children and setting a hearing pursuant to section 366.26. On June 1, 2011, this court denied mother's petition. (*Rebecca R. v. Superior Court* (June 1, 2011, B231240) [nonpub. opn.] (*Rebecca R.*.) We take much of the procedural history and statement of facts from *Rebecca R., supra*, B231240.

admitted he drank beer 'every so often,' but not to the point of intoxication. He also denied any domestic violence or inappropriate discipline of the children.

"Both parents agreed to submit to a drug test. Father tested positive for cocaine on April 14, 2008; mother's test was negative.

"On April 22, 2008, DCFS conducted a 'Team Decision Making' (TDM) meeting that included the parents. Father admitted using cocaine every other weekend, but said his real problem was alcohol. Father said that after the children were returned to the family in November 2007, he relapsed because one of his friends was incarcerated, another friend died, and 'the children changed and he was overwhelmed by having to parent them.' Father denied consuming any substance in front of his children; rather, he waited until mother came home from work and then 'consume[d] elsewhere.' Father described himself as a good father who just made bad choices.

"Mother admitted she knew father had relapsed six months earlier, but she nonetheless allowed father to be the primary caregiver for her two-year-old daughter. Mother stated she was a good mother and her care of the children balanced father's mistakes.

"DCFS determined the children were at risk and detained them in foster care. On April 25, 2008, DCFS filed a section 300 petition alleging that father's substance abuse had rendered the father periodically unable to provide the children with regular care and supervision. It was further alleged that mother knew father was abusing cocaine and alcohol and failed to take action to protect the children by allowing the father to reside in the home and have unlimited contact with the children.

"On April 25, 2008, the juvenile court found DCFS had made a prima facie case for detaining the children. DCFS thereafter conducted a prerelease investigation. Father confirmed that he had relapsed, but told DCFS he had moved out of the home and had entered an outpatient drug program. DCFS confirmed that father had moved out of mother's home and concluded that the home was adequate for the children and mother was in the process of obtaining child care. Upon the recommendation of DCFS, the

juvenile court ordered the children released to mother on May 13, 2008.” (*Rebecca R., supra*, B231240.)

Jurisdiction

“On May 22, 2008, the juvenile court sustained the section 300 petition. Following the recommendation of DCFS, the court ordered family maintenance services for mother and family reunification services for father. The children were removed from father’s custody and released to mother. DCFS had the discretion to allow father to return to the family home and to allow mother to monitor his visits with the children. However, DCFS did not allow father to move back into the home and did not liberalize his visits.

“As part of the family maintenance plan, DCFS, assisted by Los Angeles Child Guidance, helped mother find a new apartment and provided her with money to pay the first and last month’s rent. However, mother was evicted because of damage to the apartment and because the landlord was not comfortable with mother and her five children living in a one-bedroom apartment. Mother and the children moved to a studio apartment behind the home of the paternal grandparents. That living arrangement also proved unsatisfactory, as the grandparents had domestic violence issues and had failed to pay their rent.

“DCFS continued to provide mother with family maintenance services and father with family reunification services. The juvenile court again ordered that mother not monitor father’s visits.

“The children remained with mother until September 1, 2009, when she told DCFS she might no longer be able to provide for the children’s basic needs. Mother admitted she was ‘overwhelmed’ by the children’s behaviors and her inability to care for them. Mother was not able to work and keep up with her own therapy, parenting and anger management appointments, as well as the children’s follow-up medical and dental appointments. Mother said she needed some time to ‘get herself together, and work on getting the father some help,’ before she could reunite with the children.

“Father’s drug counselor reported that the children were having contact with their father while he was under the influence of drugs and/or alcohol, and that mother had allowed this in contravention of the juvenile court’s orders. Social workers concluded that it was in the children’s best interests to be removed from the home, and mother released the children for placement on September 3, 2009.” (*Rebecca R., supra*, B231240.)

DCFS’s Supplemental Petition

“On September 9, 2009, DCFS filed a supplemental petition (§ 387). In a report prepared for the disposition hearing on the supplemental petition, DCFS alleged that mother ‘was overwhelmed and could no longer care for the children at this time.’ DCFS interviewed all the children except for the youngest. All reported that they were happy in their foster care placements, understood that their mother could not provide a home for them at that time, and hoped eventually to reunite with both parents. Mother told DCFS that after the children were detained, she and father came together and she was ‘trying to work on getting the father sober and back with the family so their whole family can be together.’ Mother and father were residing in various motels with father’s parents. The juvenile court sustained the section 387 petition, as amended, on October 15, 2009.”

(*Rebecca R., supra*, B231240.)

Termination of Father’s Reunification Services

“The juvenile court terminated father’s reunification services on January 5, 2010, for failure to comply with the case plan.” (*Rebecca R., supra*, B231240.)

Status Review Report

“In April 2010, DCFS reported that the parents were living together in a rented room. Both parents admitted that their current circumstances prevented them from providing for their children’s needs. DCFS social worker Caprishia Smyles reported that she had ‘referred [m]other to every program known to worker and [m]other has in the past, exhausted all of the resources and funding available to her including through DCFS, Family Preservation, STOP funds; DPSS Homeless assistance and funding; Hotel vouchers; Linkages; and all other community resources researched by parents,

community workers and this CSW.’ Ms. Smyles had placed the family on a waiting list for Section 8 housing in 2009, but learned that the wait could be up to eight years. Mother had not been able to find suitable housing that she could afford, and ‘renting has been difficult for [the] parents due to previous evictions and the behaviors of the children who reportedly [have] in the past damaged the properties rented.’

“Mother and father continued to reside together, although they moved several times. The parents visited with the children weekly at various locations, with the visits monitored by foster family agency social workers. Although DCFS told mother on numerous occasions that she could have unmonitored visitation with the children as long as father remained drug and alcohol free and agreed to submit to random drug tests, father was not willing to do so. Mother preferred to have weekly monitored visits so father could participate. Meanwhile, the children continued in foster placement and were doing well.” (*Rebecca R., supra*, B231240.)

12-month Status Review

“A few days before her 12-month status review hearing on November 16, 2010, mother claimed she had ‘had a revelation’ and decided she was going to separate from father and his addiction so she could have unmonitored visits with the children and work towards reunification. However, DCFS doubted mother’s sincerity because she had shown ‘no interest in increasing to unmonitored visitation, until the last minute, days before the last court date.’ (Boldface omitted.) Ms. Smyles had also observed text messages mother had sent to her 13-year-old daughter asking to borrow money and coaching her to withhold information from DCFS. After seeing the text messages, DCFS declined to liberalize mother’s visitation ‘due to mother continuing to show signs of past behaviors of influencing the children to keep secrets, lie about different things, and saying case related things that are inappropriate and may further confuse and emotionally traumatize them.’ Mother admitted she had done these things in the past, but said she was ‘trying to change.’

“In a report prepared for the 12-month status review hearing, DCFS noted that the parents had been given ample time to reunify with the children; father had not overcome

his addiction, and mother ‘seems to struggle through maintaining the basic needs of her family.’ Although the children had reunified with mother twice before, mother had not been successful at maintaining the children in her home and the children ‘end up right back in foster care.’ Mother had moved into a shelter home with five other families. DCFS reported that the home was ‘extremely chaotic,’ and the children would not be best served by placing them in such an environment. Meanwhile, the children were ‘finally in stable permanent homes and have reported they are happy and want to be adopted by current caregivers. The caregivers are willing to maintain an ongoing relationship with the parents, and both caregivers are willing to provide stable and permanent homes for the children.’ DCFS recommended that mother’s reunification services be terminated.

“A contested 12-month hearing was held on February 17, 2011. In a report prepared for that hearing, DCFS noted that mother had complied with the court’s order for drug testing (in which all test results were negative), had completed parenting and anger management programs, and was undergoing individual therapy. Mother was living in a shelter home and was having unmonitored visits with the children for three hours per week. The children were transported to the shelter home by their caregivers or DCFS staff.

“Mother testified at the hearing that she had been living in a shelter home for three months, and had just moved to a new shelter home the day before the hearing. Mother testified that she had separated from father three months prior, ‘for my children to try to save them and try to save myself.’ Mother said that by separating from her husband, she was able to be ‘better getting my head together focusing on myself and my children better.’ Although she was sharing a room for the present, the shelter was willing to give her ‘a room for me and my children, a whole room,’ and would let her stay as long as she needed to. Mother considered this to be a stable residence. The children visited mother once a week, although the children did not all visit at the same time.[³]

³ At the time of the hearing, the three boys were placed in one home and the two girls were placed in another. Both placements were prospective adoptive homes.

“The juvenile court found by a preponderance of the evidence that returning the children to mother’s custody at that time would create a substantial risk of detriment to their safety, protection, physical and emotional well-being. . . . The court acknowledged [that] mother had complied with certain aspects of the case plan, including parenting and anger management classes, drug testing, counseling and visitation. As to those issues, mother had made significant progress toward resolving some of the issues that led to the children’s removal. However, mother had ‘not shown the capacity or the ability to complete the [case plan] objectives and provide for the children’s safety, protection, physical and emotional well-being.’ The court emphasized that its concern was ‘not just the housing’ but what it believed to be mother’s codependent relationship with the father. The court also referred to DCFS reports stating that mother was ‘overwhelmed and cannot provide by herself for all five children,’ and the court noted that ‘mother still had not visited with all five children at one time.’ The court was also concerned that returning the children to mother at that time ‘would just set them up to be removed again,’ and all the children had indicated that they would rather stay where they are and did not believe mother could provide for them. Further, the court ‘has not been presented with anything to show that mother has truly separated herself from [father] and made the children her permanent focus.’” (*Rebecca R., supra*, B231240.) Thus, mother’s reunification services were terminated.⁴ The matter was set for a June 15, 2011, hearing to select a permanent plan.

Interim Review Report

On March 21, 2011, DCFS reported that the children were very happy in their current placements. Mother continued to have unmonitored day visits, which the children enjoyed. When Ms. Smyles attempted to assess mother’s new residence, mother notified the social worker that she was relocating, again, to another shelter living home.

⁴ As noted above, mother filed a writ petition challenging this juvenile court order. Mother’s petition was denied. (*Rebecca R., supra*, B231240.)

Ms. Smyles agreed to liberalize visits to one overnight, twice a month, after mother moved to a space where she could accommodate the children. Meanwhile, father continued monitored bi-weekly visits, each for one hour and a half.

Interim Review Report

On June 15, 2011, DCFS reported that mother was having two overnight visits with the children per month. The children were enjoying the visits. Father's visitation remained unchanged.

Status Review Report

In its August 16, 2011, DCFS advised that mother was living in one room in an apartment that she shared with another family at a shelter. The four youngest children had consistent bi-monthly unmonitored visits with mother; Ariel's visitation was sporadic by her choice.⁵ The boys and A. indicated that they enjoyed the visits with mother and wanted to return home.

Father continued his bi-weekly visits. The visits were going well; the children enjoyed their visits with him very much. But, father had not maintained contact with the social worker.

Mother's Section 388 Petition

Also on August 16, 2011, mother filed a section 388 petition, asking the juvenile court to issue a home of parent (mother) order or, alternatively, to reinstate family reunification services.

Father's Section 388 Petition

On September 15, 2011, father filed a section 388 petition, asking that the juvenile court either issue a home of parent (father) order or reinstate his family reunification services and grant him unmonitored visitation, including overnights and weekends. According to father, he had made positive changes in his life and was an excellent role model for his children. He completed a substance abuse program that included random

⁵ Later, Ariel repeatedly informed DCFS and the juvenile court that she did not want to return home and wanted to be adopted.

drug testing, individual counseling, a parenting class, and anger management counseling. Since his completion of the program, he had participated in AA (alcoholics anonymous) and NA (narcotics anonymous), was successful in maintaining his sobriety, and was able to provide a safe and stable home for his children. Moreover, he visited his children regularly. They were bonded to him and it was therefore in their best interest to return to his care.

The juvenile court granted father a hearing on his petition.

Interim Review Report

On September 29, 2011, DCFS reported that father had not been in contact with DCFS “at all” during this and the last reporting periods. And, there was no communication between DCFS and the agency that father claimed he had enrolled in; there were no progress notes and there was no evidence of any random drug tests. Although father was placed on the random drug screening schedule, he did not commit to any test. Thus, DCFS had yet to prove father’s sobriety through a DCFS-referred program.

DCFS noted that father had reportedly been involved in various programs in the past several years. While he had been successful in obtaining sobriety before, his spurts of sobriety were short-lived. And, mother continued to be dependent upon father in spite of his addiction. Even when father was using drugs in the past, mother demonstrated poor judgment by allowing father to provide primary care for the children. Worse, mother consistently proved her inability to provide adequate care for the children by herself. By this time, Anthony, Alex, and Jacob were all taking psychotropic medications, requiring excessive amounts of time for medical, psychological, and therapeutic visits. Mother had extreme difficulty taking off so much time from work to address these medical needs. Thus, she appeared overwhelmed and depressed. And, mother was unable to produce a stable and healthy living environment for the children.

At the September 29, 2011, hearing, the juvenile court granted DCFS discretion to give mother additional days for visits with the children.

Order for an Extended Visit with Mother

On October 18, 2011, the juvenile court denied mother's request for custody in her section 388 petition, but granted her request for reunification services. It further ordered that the four youngest children have an extended visit in mother's home pending the next hearing on November 29, 2011.

Interim Review Report

In its November 17, 2011, interim review report, DCFS advised the juvenile court that father was having unmonitored contact with the children, in violation of the juvenile court's order. Mother initially denied having any contact with father, but then admitted to having contact with him just once, when he used her cell phone to call the social worker. DCFS opined that mother had a "pattern of dishonesty" regarding her contact with father, which raised a grave concern for DCFS.

Mother continued to assert her commitment to having the children returned to her custody.

DCFS assessed the risk level to the children remained high if they were returned to mother's custody. DCFS cited mother's history of noncompliance with juvenile court orders and advised that mother continued to demonstrate inadequacy as a parent. It noted that the children had missed five out of 18 days of school after the extended visit began, with three of the absences being unexcused.

DCFS had other concerns as well. Mother left the children with various caregivers, unknown to DCFS. And, the children had to get up at 4:00 a.m. to go to work with mother. The boys got themselves to school by way of the bus, and A., who was transported to school by a babysitter and picked up after school by her cheerleading coach, was finally home by 8:30 p.m., after the coach dropped her off at mother's home.⁶ Sometimes, mother called the caregiver to help her pick up the children from school.

⁶ Ms. Smyles later reported that the caregiver had notified her that A.'s school had called the caregiver several times because no one showed up to pick A. up from school after cheerleading practice was over.

DCFS advised that mother had already exhausted DCFS resources and was not eligible for financial help with housing or family preservation services.

At the hearing on November 17, 2011, over DCFS's objection, the juvenile court ordered the four youngest children to remain on their extended visit with mother.

Last Minute Information for the Court

On December 7, 2011, DCFS reported problems with mother getting two of her sons to therapy during their extended stay with her. She had only brought the boys to two sessions in the past six weeks. Mother had been calling the therapist for help, stating that she was having a difficult time controlling Alex and setting boundaries and reprimands for inappropriate behavior. Moreover, Anthony's grades showed a severe decline in his performance during the school's progress reporting period of October through November 2011. In addition, the former caregiver notified Ms. Smyles that the school continuously called her because the children were tardy or had unexcused absences from school. Also, Anthony was reportedly experiencing excessive behavior problems in the classroom and was not complying with assignments or school rules.

Ms. Smyles also received a report from A.'s school showing excessive absences and tardies over the past several weeks.

Contested Hearing on Father's Section 388 Petition and Extended Visit with Mother

On December 9, 2011, the juvenile court conducted a contested hearing on father's section 388 petition, the extended visit with mother, and the issues relating to the section 366.26 hearing. After hearing testimony from father and closing arguments, the juvenile court denied father's section 388 petition, finding that there was not a change in circumstances and that it was not in the children's best interest to return them to father or to reinstate his services.

Next, the juvenile court considered the extended visit for the four youngest children with mother.⁷ Mother submitted into evidence various letters in support of her request, including (1) a November 21, 2011, letter from the case manager at her shelter, stating that the shelter was trying to help mother find permanent housing suitable for her and her children, and indicating mother's full cooperation with program requirements; (2) a letter from the owner of the children's day care provider, verifying that the children all attended there and were always well-groomed, prepared for school, and in good spirits; (3) a November 18, 2011, letter from Jacob's therapist, confirming mother's cooperation in Jacob's therapy; and (4) a handwritten letter from mother, explaining some of her absences, issues with childcare, and employment, and pledging to care for her children. The juvenile court noted that these documents were already in the court file.

Then, the juvenile court heard testimony from mother. She explained that certain therapy appointments had been missed due to transportation problems, one family emergency, and, at one point, the therapist was on vacation.

When the children were put in her custody on October 18, 2010, she did not receive any transportation assistance. It took about an hour for the children to get to school; they took the bus.

Regarding school, mother stated that the children had missed once because they were sick. She talked to the school about the children's performance in school. She assisted them with their homework and they were completing their assignments. She said that the children were confused and sad, and she wanted them to remain in her care. It would help if she had transportation funds and day care assistance, and it would assist her if the children were enrolled in a school closer to home.

After hearing from counsel, the juvenile court was apparently conflicted about what its order should be regarding the extended visit. The juvenile court stated: "What

⁷ The juvenile court terminated parental rights to Ariel and freed her for adoption. Although mother originally challenged this order, she later withdrew this argument on appeal.

to do. What to do. What to do.” Then, it explained that it had ordered the extended visit to see if mother could handle all of the children, noting that it was ready to return the children to her custody under a home of parent order and already had them partway there. But, there had been struggles, and now it did not believe that it was in the children’s best interests “to work through it.” Thus, the juvenile court ordered that the extended visit be terminated, but stayed the order until the school winter break had ended (after Jan. 3, 2012).

Appeals

Mother and father’s timely appeals ensued.

DISCUSSION

I. Father’s section 388 petition

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.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion.” (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 522.)

The juvenile court did not abuse its discretion when it denied father’s section 388 petition. While father’s circumstances may have been changing, they had not yet

changed. As the appellate record indicates, father had a history of substance abuse that spanned over decades, beginning when he was young. In 2002, the children were removed from the parents' custody due to his substance abuse and they were given years of reunification services with the children's eventual return to father and mother, and jurisdiction was terminated in 2007.

One year later, the children were again removed from the parents' custody as father had resumed drug use and was drinking to excess. DCFS again recommended reunification services for father. He enrolled in an outpatient drug treatment program, but was unable to consistently attend counseling; he continued to drink alcohol to excess and he would not drug test during the entire year that reunification services were provided to him.

Reunification services for father were terminated on January 5, 2010, but continued for mother. Instead of taking advantage of this extra time to achieve sobriety, he continued to drink and showed up at treatment while drunk. Father's drug counselor of 10 years reported that he was unable to overcome his substance abuse issues. When his section 388 petition was heard by the juvenile court on November 17, 2011, father's treatment program could only report that his goal was to obtain sobriety, not that he had achieved his goal.

Moreover, father's own testimony demonstrated how far he was from being able to demonstrate changed circumstances. He testified that he had been in drug treatment for two years, on and off. He claimed to have tested for drugs for two years, but he admitted to using drugs for four months and drinking alcohol 60 days prior to the hearing. And, despite all his years of drug treatment, father was still on step one of his 12-step program.

Given father's long history of drug use and relapses after periods of sobriety, the juvenile court rightly determined that father had not shown changed circumstances. (See, e.g., *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423; *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531, fn. 9.)

In addition, father failed to demonstrate that it would be in the children's best interest to grant his section 388 petition. Father's claim notwithstanding, he was anything but a good role model to his children. They had witnessed years of father's substance abuse, treatment attempts and relapses, domestic violence, and his failure to follow juvenile court orders. Also, father's so-called positive changes had all occurred several times before. By his own account, father had participated in three drug treatment programs during his adult life, including a residential treatment program, and yet he was still only on step one of his 12-step program and had only been drug and alcohol free for 60 days. Whatever positive changes father may have made in his life did not include sustained sobriety. Finally, although father visited the children regularly and there may have been a connection between them, those facts alone did not warrant a change of order without evidence that father would be able to provide them with a safe, stable, and drug-free home. (§ 300.2 ["The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child"].) Under these circumstances, it was not in the children's best interest to grant father's section 388 petition.

II. *Order terminating the children's extended visit with mother*

Section 362.1 provides for juvenile court ordered visitation between a parent and dependent child "[i]n order to maintain ties between the parent . . . and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent." (§ 362.1, subd. (a).) The juvenile court has broad discretion in fashioning visitation orders and its determination should not be disturbed on appeal absent a clear abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

In this case, the juvenile court was faced with alternative requests by mother, pursuant to her section 388 petition, to place the children with her or to reinstate family reunification services. The juvenile court granted mother's request for further reunification services, but did not immediately grant her request for a home of parent order, choosing instead to allow an extended visit. The purpose of the extended visit was

to give mother the opportunity to show whether she could handle all of the children. Thus, as authorized by section 362.1, subdivision (a), the juvenile court used the extended visit to see if it was feasible to place the children with mother on a permanent basis.

Mother did not challenge the juvenile court's decision for an extended visit, and the reasons for the juvenile court's decision were obvious. On the one hand, mother had complied with her case plan, had steady employment, was attending AA, had obtained a sponsor, and was looking for more permanent housing through the accelerated Section 8 housing program. But, there were still significant issues affecting the children's placement with her that mother had not overcome. She had a history of being overwhelmed when she cared for the children, and she turned to father for help even though his ongoing drug use made him an unfit caregiver. The parents' drug counselor of 10 years believed that mother would never give up her relationship with father. Further, mother's situation was less than stable as she was still living in a shelter home. And, the challenges of taking care of the children were even greater as all three boys were now displaying behavior issues and taking psychotropic medications for their conditions.

After the extended visit commenced, mother still faced significant issues in providing appropriate care for the children. The behavior of Anthony and Alex escalated and mother had to call their therapist because she was unable to control Alex. The school called the caregiver regarding Anthony's behavior; his grades had declined and he was not completing assignments. Mother was not ensuring that the children attended school on time and regularly, and Anthony and Alex missed therapy sessions. The school called the caregiver several times because no one had picked A. up after school. Finally, mother had, once again, allowed unauthorized contact between father and the children.

Given these problems, the juvenile court acted well within its discretion in determining that the extended visit was not in the children's best interest. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 838–839; *In re John W.* (1996) 41 Cal.App.4th 961, 973–974.)

On appeal, mother argues that DCFS exacerbated her challenges in caring for the children. But, she does not describe how DCFS added to mother's problems; rather, she only indicates what DCFS needed to do differently to help her succeed. While it is true that DCFS recommended against the extended visit, it is also true that there was little more DCFS could have done. Mother had already exhausted every resource for housing and funding through DCFS and the Los Angeles County Department of Social Services. She was no longer eligible for family preservation services to help with the children's behavior, and she had already been given STOP funds to help get her into a home. DCFS could not rerefer her for such services.

Finally, mother claims that the juvenile court issued inconsistent orders: (1) The juvenile court removed the children from mother's custody, yet later placed them with her for an extended visit. (2) The juvenile court terminated the extended visit, yet stayed the order for a couple of weeks, until the children's school winter break ended. We see no reversible error. Regarding the first point, the juvenile court made the disposition findings and removal orders on October 15, 2009, but did not order the extended visit until October 18, 2011, two years later. Ordering mother to have a trial visit after two years of reunification services was not only lawful, but it was an appropriate order for the juvenile court to make to gage whether mother was ready to have custody returned to her.

As for the second point, allowing the children to remain on the visit until the end of the school break was an appropriate exercise of discretion. The juvenile court was rightly concerned about mother's inability to get the children to school on a regular basis, but allowing them to spend the holidays together before returning them to their prior caregivers was in their best interests.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ