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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALYSSA V. et al.,

Defendants and Appellants.

B242708

(Los Angeles County
Super. Ct. No. CK85299)

APPEAL from orders of the Superior Court of Los Angeles County,
Debra L. Losnick, Judge. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant
and Appellant Alyssa V.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and
Appellant Brian C.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Alyssa V. (Mother) and Brian C. (Father) appeal from juvenile court orders denying their petitions brought pursuant to Welfare and Institutions Code section 388¹ and terminating parental rights to their child, Sarina C. We conclude that neither parent's petition met the parent's burden of showing a change of circumstances or that returning custody to either parent or granting further reunification services was in Sarina's best interests. Denial of the petitions was not an abuse of discretion, and we affirm the orders.

FACTUAL AND PROCEDURAL HISTORY

Detention and Petition: On November 19, 2010, the DCFS received an immediate response referral alleging neglect of two-month old Sarina C. Mother had given birth to Sarina prematurely. Sarina was being monitored for poor weight gain at discharge. Hospital staff observed Sarina giving cues that she wanted to be fed, but Mother stated Sarina was not hungry and refused to feed her. At 13 weeks old, Sarina weighed five and three-fourth pounds and was considered a failure-to-thrive baby. The referral raised concerns regarding Mother's ability to adequately care for Sarina.

Mother denied neglecting Sarina's medical needs and denied refusing to feed her. Mother had rejected an in-home nurse because the nurse was "unorganized and had dirty hands." Mother did not like a second in-home nurse assigned to her, who Mother said was "very rude and would come to her home without even calling her first." Mother said she missed a November 16, 2010, appointment because she was unhappy with services she received at the hospital, Olive View Clinic. Sarina was very small. The DCFS took Sarina into protective custody.

On October 20, 2010, while Sarina was present, Mother hit Father on more than one occasion. Father responded by holding her arms. The parents admitted they often had arguments that led to Mother trying to hit Father. Sarina could not be placed with Father, who was being evicted from his residence and had no stable home.

¹ Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

Mother, who was 17 years old, had 18 prior referrals as a minor, three of which were substantiated for maternal grandmother's neglect and physical abuse of Mother. Father was 20 years old.

Based on Mother's inability to attend to Sarina's medical needs, Father's lack of permanent home, and unresolved domestic violence issues, the DCFS assessed the family as at high risk for future neglect and abuse and recommended continued detention from Mother as necessary to protect Sarina's safety.

On November 24, 2010, the juvenile court found that a prima facie case was established for detaining Sarina as a person described by section 300, subdivisions (a) and (b) and ordered Sarina detained in shelter care. The parents were to have monitored visits of a minimum of three times or three hours per week.

On November 24, 2010, the DCFS filed a section 300 petition alleging that Sarina was a person described by subdivision (a) [serious physical harm] and (b) [failure to protect].

On January 18, 2011, the DCFS filed a first amended section 300 petition, alleging that Sarina was a person described by subdivisions (a) (later dismissed) and (b). Count 1 alleged that Sarina was born premature and was diagnosed with poor weight gain. Mother, a minor, and Father had limited ability to deal with Sarina's medical needs, and Mother failed to accept medical services to assist her with care of Sarina. The parents' limited ability endangered Sarina's physical and emotional health and safety and placed her at risk of physical and emotional harm, damage, danger and medical neglect. Count 2 alleged that Mother and Father had a history of engaging in physical altercations in Sarina's presence, and on prior occasions Mother struck Father, who grabbed Mother's arms. Count 3 alleged that Father's history of drug abuse created a detrimental home environment. The amended petition alleged that the parents' conduct and Father's drug abuse endangered Sarina's physical and emotional health and safety and placed her at risk of physical and emotional harm, damage, and danger.

Adjudication and Disposition: Sarina was placed in the licensed foster home of Mrs. B. Mother said she was in anger management class and individual counseling. She stated she loved Father, they had a good relationship, but they argued over little things and sometimes it escalated to yelling. Mother stated that she did not throw things and did not hit Father. She said once she slapped him, but did it playfully. Mother admitted she became angry, but when she was angry she went for a walk. Mother said Father was not a violent person and she denied that he shook the baby's bassinet. She said they were arguing about money and Father's drug use.

Mother said maternal grandmother made her move out of maternal grandmother's home when she found out Mother was pregnant. Mother stated that because she was diabetic, Sarina was not growing and was born prematurely. Mother said she was compliant with the doctors, although the doctor's notes showed otherwise. Mother said she could not comply with the nurses assigned by Olive View to help her with Sarina's care; Mother felt the nurses gave her wrong advice to feed Sarina when she was not hungry, the nurse had dirty fingernails and was clumsy with her papers.

Father, however, stated that he and Mother did not get along, did not understand each other, and they "had DV [domestic violence] and everything. She used to hit me. I would grab her to calm her down." When Mother hit Father, his mother was in the room with one-month-old Sarina. Father and Mother were in anger management class. Because Father had no money, he attended the program through maternal grandmother's insurance.

Father stated that he did not have a good childhood and his stepfather abused his mother, who later divorced the stepfather. Father said that he met Mother when she was 17 and their relationship started when maternal grandmother forced Mother to move out of her home. Mother had many problems with her parents. Father stated that maternal grandmother was very abusive, and he had seen maternal grandmother drag Mother by pulling her hair. Mother came to live with Father when she became pregnant, but they had arguments. After Sarina was born, Mother slapped Father. He said, "She always

does that. I don't do anything. I grab her arms and tell her to calm down. . . . She would throw things at me. . . . The fights were about my drug use.”

Father stated that Mother knew about his drug use, which he had begun when he was 11 years old. Father's drug of choice was methamphetamine, and he had abused drugs so intensely that he hallucinated and lost weight. Father said that Mother moved in with him because maternal grandmother forced her to leave her home when she became pregnant with Sarina. Father attended a drug rehabilitation program for three months. The program helped him although he left the nine-month program early after three months because maternal grandmother could not pay for him to continue. Father got a job after he finished. Father tested negative on October 19, 2010, but Father's phone number was inoperative and the DCFS could not refer him for drug testing.

Father said that due to Mother's diabetes Sarina was born prematurely at 32 weeks, but Sarina was above-average weight at her last checkup.

Paternal grandmother Gladys D. stated that Mother lived in her home for two years after maternal grandmother forced her out of her home. Paternal grandmother said Father and Mother argued too much. Father was “hyper,” but not physical. After Sarina was born, Mother burned Father with a curling iron, and paternal grandmother got between them and stopped them. Mother and Father fought on numerous occasions and hit each other. Paternal grandmother described Mother as temperamental, hyper, and edgy. Mother had been aggressive, had slapped Father, and had scratched him and left marks on him.

Mother had begun counseling on November 11, 2010, and by February 28, 2011, had completed 10 sessions. She had completed 13 sessions of anger management education and five parent education sessions.

On March 4, 2011, the juvenile court adjudicated that matter, found that Sarina was a person described by section 300, subdivision (b), declared Sarina a dependent child of the juvenile court, and ordered custody taken from the parents and placed with the DCFS for suitable placement. The juvenile court ordered family reunification services for Mother and Father, and ordered monitored visits for the parents a minimum of three

times or three hours per week. Father was ordered to participate in individual counseling to address case issues, anger management, parenting education, and to have six clean, random, witnessed, on demand, weekly, consecutive drug tests, and if there was a missed or “dirty” test to complete a drug program. Mother was ordered to participate in parenting education and individual counseling to address case issues.

Six-Month Review Hearing: Mother and Father rented a room or lived with maternal grandmother for the first four months of 2011. In August 2011 Mother reported she had broken up with Father because she was working and needed to focus on Sarina. Mother and Father agreed to come to couples therapy at El Nido Family Center, but Mother cancelled the appointment and neither parent appeared for a re-scheduled appointment. Father missed five of six random drug tests from April to August 2011.

Mother and Father did not visit Sarina consistently. Between November 19, 2010 and June 2011, Mother visited six times but did not show for 13 visits. Father had a total of two visits. Neither parent attempted to arrange visits in March and June 2011. A social worker observed that Sarina did not recognize her mother. Because of lack of visitation, neither parent had established a bond with Sarina.

Mother testified at the October 27, 2011, review hearing. Mother said she completed a parenting class on March 17, 2011, at El Nido Family Center, and had received 20 sessions of individual counseling. Mother testified that she saw Sarina every two weeks, although she had not visited Sarina during October 2011 because she did not have transportation. Mother testified that she had visited Sarina twice each month in April, May, July, August, and September 2011. She could not remember if she visited Sarina in June 2011. Mother said that the social worker’s report that she had visited Sarina only six times in the previous 10 months was incorrect. Mother testified that she canceled only two visits between November 2010 and September 2011.

The DCFS CSW, Lori Feldman, however, testified that she had been assigned to Sarina's case since December, 2010. Feldman testified that Father had more than 10 consecutive missed drug tests, had not attended any inpatient facilities, and visited Sarina only three times in the previous 10 months. Feldman was present during Mother's visits, and said that Mother had testified untruthfully concerning the number of her visits during the previous 10 months. Feldman testified that Mother had a total of six visits from November 2010 through August 2011. Mother was reported as appropriate, but the social worker monitoring the visits observed no bonding between Sarina and Mother. The social worker reported, and Feldman herself observed, that when the parents left, Sarina did not look distressed or have any kind of "tracking" that babies do when looking for their parents. Sarina also cried a lot when the social worker handed her to Mother. Feldman testified that Mother's therapist's report stated that Mother had six individual counseling sessions as of August 2011, but also stated that Mother had missed counseling sessions. Feldman had no certificate that Mother had completed individual counseling. In August 2011, Feldman spoke with Mother and Father about possible additional visitation with Sarina, but did not hear anything further from them about additional visits. In mid-September, Mother asked for more visitation, and suggested maternal grandmother as monitor. Feldman told Mother that maternal grandmother would not be a viable choice, as her live-in boyfriend had criminal convictions for DUI. Feldman was prepared to monitor visits herself, but was unable to reach Mother during September and October 2011.

On October 27, 2011, the juvenile court found that Mother and Father were not in compliance with their case plans, that there was no substantial probability Sarina would be returned to the parents' physical custody within six months, ordered family reunification services terminated for Mother and Father, and set a section 366.26 termination of parental rights hearing on February 23, 2012.

Parents' Section 388 Petitions and Termination of Parental Rights: Mother and Father did not have consistent visits with Sarina because they failed to keep scheduled dates. Neither parent had visited Sarina after February 23, 2011, until Mother resumed visits on August 11, 2011. From November 19, 2010, to August 19, 2011, Mother had six visits and Father had two visits. A social worker, Shelly B., arranged and monitored visits, but reported that Sarina did not recognize Mother and when Mother brought Sarina near to Shelly B., Sarina reached out to Shelly B. to be taken from Mother. During visits Sarina seemed to be more interested in playing with toys than in spending time with Mother, although at times Sarina showed interest in what Mother was doing. Mother was observed to handle Sarina like a baby doll. Mother had missed her weekly monitored visitation in September 2011. CSW Feldman talked to Father, who said that his work schedule made additional visitation difficult for him.

The parents visited Sarina on November 3, 2011, but offered no reason why they had not visited since September 21, 2011. The parents missed their next scheduled visit on November 17, 2011, and as of December 8, 2011, Mother had not called to schedule visits. The parents were 30 minutes late for a January 5, 2012, visit.

Sarina was observed to be bonded with her caregiver, as evidenced by Sarina's desire to be held by, ability to reach for, and making of frequent eye contact with the caregiver. Sarina had been placed with her caregivers and prospective adoptive parents, Mr. and Mrs. B., since very early in Sarina's life. Sarina reacted to Mr. and Mrs. B. as her mother and father.

On May 31, 2012, Mother filed a section 388 petition seeking modification of the prior order terminating reunification services for Mother. Mother sought return of the child to her, or alternatively, reinstatement of reunification services for Mother and unmonitored visitation with Sarina. The petition alleged that Mother had consistently visited Sarina, who referred to Mother as "Mommy" and in the most recent visit opened her arms excitedly when she saw Mother and cried when the visit was over. Mother alleged that she had continued individual counseling, and enrolled and participated in the Victory Outreach Program.

On June 19, 2012, the juvenile court denied the petition because it had not stated new evidence or a change of circumstances, and there was no indication that Mother was benefiting from programs recently enrolled in.

On June 12, 2012, Father filed a section 388 petition seeking modification of the order terminating reunification services. Father sought return of custody of Sarina, or alternatively to provide him with additional reunification services and unmonitored visitation. The petition alleged that Father participated in Victory Outreach, where he received counseling for issues including substance abuse, and that he previously participated in counseling at El Nido, where he also completed a parenting class and a teen anger management class. Father alleged that he had visited consistently with Sarina and had developed a close bond with her, had made efforts in his counseling to work on himself to be able to be there for his daughter. Father's petition stated that he and Mother were very young parents, Father wanted to provide Sarina with love and stability, and felt it would be detrimental to her to no longer have Father in her life.

On June 19, 2012, the juvenile court denied Father's petition because it had not stated new evidence or a change of circumstances, and there was no indication that Father benefitted from the programs he had enrolled in.

A supplemental section 366.26 report stated that the parents had the opportunity for weekly visits throughout Sarina's placement. The parents had made no effort to call the caregiver, Mrs. B., to check on Sarina's welfare. Shelly B. reported that Sarina did not appear to recognize Mother and Father as her parents during visits. Although Sarina engaged in play with the parents, she did not often initiate contact. Sarina was not adversely affected at the conclusion of visits with the parents. When a visit ended on May 17, 2012, Sarina placed her hands on Mother's chest and physically pushed away while turning her head when Mother attempted to hold and hug her goodbye. During the previous three months, however, instances in which Sarina cried when handed to birth family members had decreased.

At the contested hearing on June 28, 2012, Father testified that he lived with Mother and Sarina during the first seven months of Sarina's life. Father admitted, however, that Sarina was born prematurely and was not released from the hospital until she was three months old. Father testified that in the previous six months, at first he visited one hour every other week, but since the previous court date he visited three hours every week. Father testified that he had been teaching Sarina how to eat and how to be potty trained, how to say "Daddy" and how to say her ABC's. Father stated that he had a bond with Sarina, who smiled at him and became happy when he visited and liked playing with Father and hugging him. Father testified that he was now living in a Christian rehab home, the Victory Outreach program, which was helping him to be responsible and helping with his drug problem.

Mother testified that she currently visited Sarina every other week in Northridge for three hours and every other week in Lancaster for four hours. When Mother arrived for a visit, Sarina smiled, shouted "Mommy," came to Mother and hugged her, and got her toys and played with Mother. Mother brought snacks for Sarina, and they played or watched a movie.

On June 28, 2012, the juvenile court found it was likely that Sarina would be adopted, found that it would be detrimental for Sarina to be returned to Mother and Father, and ordered parental rights of Mother and Father terminated.

Mother and Father filed timely notices of appeal from the orders denying their section 388 petitions and from the order terminating parental rights.

ISSUES

Father claims on appeal that the juvenile court abused its discretion in denying Father's section 388 petition.

Mother claims on appeal that the juvenile court failed to apply the correct legal standard in denying Mother's section 388 petition, and erroneously denied Mother's petition without a hearing because Mother had made a prima facie showing.

DISCUSSION

1. *Because the Juvenile Court Complied with Notice Requirements of Section 366.26, Subdivision (l)(3)(A), That Portion of Father's Appeal Challenging the Order Terminating Reunification Services Is Dismissed*

An order setting a section 366.26 hearing is not appealable and can only be reviewed by way of a writ petition. (*In re T.W.* (2011) 197 Cal.App.4th 723, 729.) The parent's failure to file a writ petition from the nonappealable order waives any challenge to that order. (§ 366.26, subd. (l) (2).) The juvenile court, however, is required to advise a parent of the writ petition requirement. Failure to do so ordinarily relieves the parent of the requirement of filing a writ petition and that parent can challenge the order setting the section 366.26 hearing in an appeal. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 625.)

Father initially claimed that at the October 27, 2011, six-month review hearing, he was not provided with notice during the hearing or with written notice of his right to file a writ petition challenging the setting of the section 366.26 hearing pursuant to section 366.26, subdivision (l)(3)(A), and can therefore raise issues from that hearing in an appeal from the order in the section 366.26 hearing. (See *In re Rashad B.* (1999) 76 Cal.App.4th 442, 447-450.)

Respondent DCFS, however, moves to dismiss this part of Father's appeal because the juvenile court clerk served all parties, including Father, with notice of the requirement of filing a petition for writ review pursuant to section 366.26, subdivision (l)(3)(A).

Father did not appear at the October 27, 2011, review hearing. Section 366.26, subdivision (l)(3)(A) states that after issuing an order setting a section 366.26 hearing, the juvenile court "shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order."

The record on appeal reflects that the clerk's certificate of mailing a copy of the October 27, 2011, minute order, a "Notice of intent to File Writ Petition and Request for Records, Rule 39.1B," and an "Advisement of Rights (366.26 W.I.C.);" were mailed to Father on October 28, 2011. The juvenile court therefore complied with the requirement of written notice of the petition for extraordinary writ review. Father's failure to seek review of the October 27, 2011, order setting the section 366.26 hearing therefore waives any challenge to that order in this appeal.

Father does not oppose respondent's motion for partial dismissal of appeal, which is hereby granted. That portion of Father's appeal challenging the order terminating reunification services is dismissed.

2. The Orders Denying the Parents' Section 388 Petitions Were Not an Abuse of Discretion

Father and Mother each claim that the juvenile court erroneously denied their section 388 petitions without a hearing.

A Standard of Review

"Under section 388, a parent may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that [1] there is a change of circumstances or new evidence, and [2] the proposed modification is in the minor's best interests." (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.) The parent must show both a genuine change of circumstances and that setting aside or modifying the prior order would be in the child's best interests. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.) The parent seeking modification must make a prima facie showing sufficient to trigger the right to a full hearing. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) To make a prima facie case, the parent must allege facts that will sustain a favorable decision if the evidence submitted in support of the parent's allegations is credited. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 673.) In determining whether the petition makes the necessary showing, the juvenile court may consider the factual and procedural history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) "The prima facie requirement is not

met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.’ ” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) This court reviews a summary denial of a section 388 petition for abuse of discretion. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

B. Denial of Father’s Section 388 Petition Was Not an Abuse of Discretion

1. Father Did Not Show Changed Circumstances

Father’s showing of changed circumstances was that he visited consistently and participated in Victory Outreach, where he received counseling for issues including substance abuse. Father’s petition also stated that he previously participated in counseling at El Nido Family Center and completed a parenting class and an anger management class. Father’s petition, however, did not show changed circumstances.

With regard to visitation, Father had two visits with Sarina between November 19, 2010 and August 19, 2011. Father did not visit between September 21 and November 3, 2011. Father was 30 minutes late for a January 5, 2012, visit. In the period preceding April 25, 2012, Father had only “infrequent monthly visits.” Father provided no further evidence of his visitation with Sarina. The evidence does not show that Father visited Sarina consistently.

Father lived in the Victory Outreach Home since January 22, 2012. Although he was described as having “actively participated” in the program and had “shown significant progress,” the nature of the program he participated in was not described and Father had not yet finished or completed the program. Information from El Nido Family Centers showed that Father had attended 8 of 12 sessions of a parenting class, but he had missed sessions 9 through 12 and had not completed that parenting class. A section 388 petition requires changed circumstances; evidence of “changing” circumstances is not sufficient. “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The change of circumstances “ ‘must be of such

significant nature that it requires a setting aside or modification of the challenged prior order.’ ” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) Father’s evidence did not show changed circumstances, and denial of the petition was not an abuse of discretion.

2. *Father Did Not Show That the Proposed Modification Was in Sarina’s Best Interests*

Father’s petition alleged that he visited consistently with Sarina and they had developed a close bond; that Father had made efforts in counseling to work on himself to be able to be there for Sarina; and that Father and Mother were very young parents and Father wanted to be able to provide Sarina with love and stability and felt it would be detrimental to Sarina to no longer have Father in his life.

As stated, section 388 requires not only the parent’s showing of a genuine change of circumstances. It also requires a parent to show that setting aside the prior order would promote the child’s best interests. (§ 388, subd. (a), (d); *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) The child’s best interests involve a consideration of the following factors: “(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.*, at p. 532.)

One of the problems that led to the dependency was Father’s history of drug abuse. During the dependency proceeding Father missed five of six drug tests from April to August 2011, and as of the October 27, 2011, review hearing, Father had more than ten consecutive missed drug tests. Father’s petition provided no new information about Father’s participation in or completion of a drug rehabilitation program or Father’s random drug test results. Father did not show that the history of drug abuse had actually been ameliorated.

A second problem that led to the dependency was domestic violence between Father and Mother. Except for a certificate of participation in a teen anger management group dated February 28, 2011, more than 15 months before he filed his section 388 petition, Father provided no evidence that this problem was removed or ameliorated.

Father's lack of visitation—only two visits between September 19, 2010 and August 19, 2011, had caused there to be no bond established between Sarina and Father. As of the October 27, 2011, review hearing, it was observed that Sarina did not look distressed when the parents left after a visit and had no “tracking” or looking for her parents. In the June 28, 2012, section 366.26 report, it was observed that Sarina did not appear to recognize birth parents during visits, did not often initiate contact with them, and was not adversely affected at the conclusion of the visits. It was noted that the parents had not made any effort to call the caregiver to check on Sarina's welfare. By contrast, Sarina had been placed with her prospective adoptive parents, Mr. and Mrs. B., since she was four months old. By April 25, 2012, Sarina was eighteen months old, and had lived with Mr. and Mrs. B. most of her life, and was bonded to Mrs. B, as evidenced by Sarina's ability to reach for Mrs. B., desire to be held by her, and Sarina's frequent eye contact with Mrs. B. Sarina reacted to Mrs. B. as her mother and to Mr. B. as her father. Father did not show that his bond with Sarina outweighed Sarina's interest in living in a safe, stable home provided by her prospective adoptive parents.

Father's section 388 petition did not meet his burden of rebutting the presumption that continued care was in the child's best interests by showing that changed circumstances warranted further consideration of reunification. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) Father did not show he was able to offer Sarina a stable, safe environment free from the risk of exposure to drug use or domestic violence. (See *In re B.D.* (2008) 159 Cal.App.4th 1218, 1230.) Even if Father was progressing in programs, counseling, and treatment, he did not demonstrate that returning Sarah to his custody or resuming reunification services would be in Sarina's best interests. (See *In re Amber M.* (2002) 103 Cal.App.4th 681, 687.) Denial of Father's section 388 petition was not an abuse of discretion.

C. *Denial of Mother's Section 388 Petition Was Not an Abuse of Discretion*

1. *Mother Did Not Show Changed Circumstances*

Mother's showing of changed circumstances was that she had consistently visited Sarina, had continued individual counseling, and enrolled and participated in the Victory Outreach Program. Mother's petition was not sufficient to show changed circumstances.

With regard to visitation, Mother visited Sarina six times between November 19, 2010 and June 2011, but did not show for 13 visits. Mother did not attempt to arrange any visits in March and June 2011. Mother had no visits with Sarina from February 23 to August 11, 2011, and between November 19, 2010 and August 19, 2011, Mother had only six visits. Mother missed visits between September 21 and November 3, 2011, and missed their November 17, 2011, visit. The parents were 30 minutes late for a January 5, 2012, visit. Mother's petition provided no evidence of further visitation with Sarina. The evidence does not show that Mother visited Sarina consistently.

With regard to individual counseling and enrollment in the Victory Outreach Program, as of April 25, 2012, Mother was reported as "currently enrolled into the classes that she is required to complete such as Individual Therapy and Domestic Violence Therapy." Thus Mother had begun attending classes, but had not completed them, and there was no indication when Mother would complete those classes. (A previous letter from Victory Outreach Church indicated that Mother had entered its home on February 23, 2012, and the program consisted of a one-year commitment, suggesting that Mother would not complete that program until February 23, 2013, some nine months after she filed her petition.) At best, the evidence showed that Mother was beginning the process of changing, but did not show "changed" circumstances. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 49.) The change of circumstances " 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.' " (*In re Mickel O.*, *supra*, 197 Cal.App.4th at p. 615.) Mother's evidence did not show changed circumstances, and denial of the petition was not an abuse of discretion.

2. *Mother Did Not Show That the Proposed Modification Was in Sarina's Best Interests*

Mother's petition alleged that she had consistently visited Sarina, who referred to her as "mommy," and in the most recent visit Sarina opened her arms excitedly when she saw Mother at the visit and cried when the visit was over.

Even if Mother had shown changed circumstances, she also had to show that setting aside the prior order and returning Sarina to Mother or granting Mother further reunification services would be in Sarina's best interests. (§ 388, subs. (a), (d); *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 529.) As stated, a child's best interests involve a consideration of the following factors: "(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.*, at p. 532.)

One of the problems that led to the dependency was Mother's limited ability to deal with Sarina's medical needs and failure to accept medical services to assist with the care of Sarina. Mother provided no evidence that this problem could be or was removed or ameliorated.

A second problem that led to the dependency was Mother and Father's history of engaging in physical altercations in Sarina's presence. Mother provided evidence that as of April 25, 2012, she was enrolled in a Domestic Violence Therapy class, but there was no indication when Mother would complete that class. Except for a certificate of participation in a teen anger management group dated February 28, 2011, more than 15 months before she filed her section 388 petition, Mother provided no evidence that this problem as removed or ameliorated.

Mother's inconsistent visitation, and lengthy periods in which there was no visitation, had attenuated the bond between her and Sarina. As of September 1, 2011, a social worker who assisted the parents with visitation reported that Sarina did not recognize Mother, and when Mother brought the child near the social worker, Sarina

reached to the social worker to be taken from Mother. During visits Sarina was observed to be more interested in playing with toys than spending time with Mother, who handled Sarina like a “baby doll.” A June 28, 2012, section 366.26 report observed that Sarina did not appear to recognize birth parents during visits, did not often initiate contact with them, and was not adversely affected at the conclusion of the visits. It was noted that the parents had not made any effort to call the caregiver to check on Sarina’s welfare. By contrast, Sarina had been placed with her prospective adoptive parents, Mr. and Mrs. B., since she was four months old. By April 25, 2012, Sarina was 18 months old, and had lived with Mr. and Mrs. B. most of her life, and was bonded to Mrs. B., as evidenced by Sarina’s ability to reach for Mrs. B., desire to be held by her, and Sarina’s frequent eye contact with Mrs. B. Sarina reacted to Mrs. B. as her mother and to Mr. B. as her father. Mother did not show that her bond with Sarina outweighed Sarina’s interest in living in a safe, stable home provided by her prospective adoptive parents.

Mother’s section 388 petition did not meet her burden of rebutting the presumption that continued care was in the child’s best interests by showing that changed circumstances warranted further consideration of reunification. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) Mother did not show she was able to offer Sarina a stable, safe environment free from the risk of exposure to drug use or domestic violence. (See *In re B.D.*, *supra*, 159 Cal.App.4th at p. 1230.) Even if Mother was progressing in counseling, and treatment, she did not show she was ready to have Sarina returned to her or that resuming reunification services would be in Sarina’s best interests. (See *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 687.) Denial of Mother’s section 388 petition was not an abuse of discretion.

DISPOSITION

The motion for partial dismissal of that portion of Father's appeal seeking review of the October 27, 2011, order terminating reunification services is granted and that portion of Father's appeal is ordered dismissed. The orders denying section 388 petitions and the order terminating parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.