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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ESTHER O., a Person Coming Under
the Juvenile Court Law.

B243084

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK74921)

Respondent,

v.

LORENA G.,

Petitioner and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Stephen Marpet, Juvenile Court Commissioner. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Respondent and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Petitioner and Respondent.

SUMMARY

Lorena G. (“Mother”), the mother of now four-year-old Esther O. (“Esther”), appeals from the juvenile court’s order of June 27, 2012, summarily denying her petition filed the same day under Welfare and Institutions Code¹ section 388, seeking to have her reunification services reinstated, to vacate the section 366.26 hearing, and to be granted custody of Esther. We affirm.

STATEMENT OF FACTS AND PROCEDURE

On October 8, 2008, the Los Angeles Department of Children and Family Services (“DCFS”) filed a section 300 petition (“Petition”) on behalf of Esther, Mother’s then one-week-old daughter. In count b-1, the Petition alleged that at Esther’s birth on October 1, 2008, both Esther and Mother tested positive for amphetamine and methamphetamine and that Esther’s father, Ruben O. (“Father”), failed to protect Esther when he knew of Mother’s drug use. In count b-2, the Petition alleged that Mother had a history of drug abuse and was a current user of cocaine, amphetamine and methamphetamine, having tested positive in May and August 2008.

DCFS filed a Detention Report on October 8, 2008 (“Detention Report”), showing that Esther was placed with foster parents. The Detention Report stated that a DCFS social worker interviewed Mother who said that she had a tooth ache, was given cocaine by a friend, and only used a small amount on her tooth to numb the pain. Mother stated that she never used drugs prior to her pregnancy and admitted to using cocaine five times during her pregnancy—once before she knew she was pregnant and four times after she knew she was pregnant to treat her tooth pain. Mother stated that she was not an addict and that she would do anything DCFS asked to regain custody of Esther.

According to the Detention Report, Mother was offered inpatient drug rehabilitation services but refused, stating that she needed to work to provide for her four other children who resided in Mexico with maternal grandmother. The report also stated

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

that Mother and Father resided in the same home. Mother stated that if DCFS was not willing to return Esther to her, Esther should be given to Father and Mother would leave the home, and Father likewise stated that Mother could leave the home and Esther could be given to him.

At the October 8, 2008 detention hearing, the juvenile court found that a prima facie showing for detention had been made. The court ordered monitored visitation and reunification services for Mother and Father once they contacted DCFS.

On November 10, 2008, DCFS filed a First Amended Petition, adding an allegation that Father had a prior arrest for possession of a controlled substance resembling methamphetamine.

At a Pretrial Resolution Conference on December 8, 2008, the juvenile court sustained the First Amended Petition as amended and declared Esther a dependent of the court under section 300, subdivision (b). The court ordered monitored visitation and reunification services for Mother, including drug and alcohol programs and individual counseling. The juvenile court scheduled a six-month review hearing under section 266.21, subdivision (e) in June 2009.

In January, February and March 2009, the juvenile court in its minute orders acknowledged that Mother had three months of sobriety and participation in a drug court program. In April 2009, the juvenile court in its minute order noted that Mother was terminated from the drug court program.

On June 8, 2009, DCFS filed a Status Review Report, noting that Mother enrolled in the drug court program on October 14, 2008 but was discharged on April 2, 2009 after testing positive for narcotics. Mother then enrolled in another substance abuse treatment program on May 4, 2009 and had tested negative for drugs at the new program. According to the Status Review Report, Mother visited Esther on a weekly basis and acted in an appropriate manner during the visits.

At the six-month review hearing on June 8, 2009, the juvenile court found Mother in partial compliance and set the matter for a 12-month review.

On September 14, 2009, DCFS filed an Interim Review Report, stating that mother was testing negative for drugs and was continuing to receive services at the second drug abuse treatment program. The report noted that because of Esther's spica cast,² Mother and Father preferred visitation only once a week while Esther was in foster placement in order to not move or transport Esther needlessly and that Mother and Father agreed to visit Esther at her placement, once she was placed with a relative, to alleviate the need to transport Esther.

On December 7, 2009, DCFS filed a Status Review Report, reporting that Mother continued to test negative for drugs, continued to participate in services and had completed individual counseling, substance abuse treatment and parent education. It also reported that Mother's visitation had been liberalized to unmonitored visitation beginning in September 2009 and overnight visitation beginning in October 2009. The report also stated that Father had been arrested and sentenced to six months in jail for failure to appear and having an existing warrant and noted that Father faced the possibility of deportation due to his undocumented status and criminal history. DCFS recommended continued family reunification services for Father and that Esther be released to Mother's care.

At the 12-month review hearing on December 7, 2009, the juvenile court found Mother in compliance and placed Esther in Mother's home under DCFS supervision and ordered family maintenance services for them. The matter was set for a section 364 review on April 2, 2010.

On April 2, 2010, DCFS filed a Status Review Report, stating that DCFS received numerous anonymous reports regarding Mother and as a precaution DCFS home visits were unannounced. The report stated that on December 9, 2009—two days after the juvenile court's home-of-Mother order—it received an anonymous call alleging that Mother continued to use drugs and that Mother had an unidentified male drug dealer

² Esther was diagnosed with hip dislocation and her hip was repositioned and placed in a spica cast in June 2009. Esther's spica cast was removed in September 2009.

living in the home and, because the DCFS social worker informed Mother when he would be arriving at the home, the male would leave prior to the visit. In response to the referral, DCFS social worker visited the home and found a glass pipe with a white crystal like residue which Mother said belonged to a woman to whom she had rented a room for a short time but who had moved out. Mother tested negative for drugs on that day.

The report stated that Mother continued to test negative for drugs, but did have a missed test in February 2010 which Mother said was due to having her purse and testing identification stolen.

The report indicated that on December 29, 2010, DCFS received an anonymous call stating that Mother was residing with an unidentified male named "El Kikis" and Mother was selling drugs from her home, that Mother had a video camera that allowed her to see when a DCFS social work approached outside the home, and that Mother had sold drugs to caller's son. During a visit from a DCFS social worker in response to referral, Mother stated that El Kikis was a family friend and mechanic helping her with Father's car, that neither of them were drug dealers and that she was tired of neighbors and family alleging that she was engaged in illegal activity. The social worker observed that Esther looked to be clean, appropriately clothed and without any bruises.

The report stated that on February 5, 2010, DCFS received an anonymous call stating that Mother was engaged in an altercation with El Kikis in the home and the caller was concerned for Esther's safety and well-being. A DCFS social worker visited the home in response to the referral and spoke to Mother who stated she had just returned home and her stereo and other items were missing. Mother told the social worker that on February 3, 2010, she had an argument with El Kikis about use of Father's car. The social worker observed that Esther did not have any visible bruises and appeared appropriately dressed. The report noted that Mother had allowed the social worker to walk through the home on numerous occasions and the social worker had not found any reason to suspect child safety issues.

At the April 2, 2010 section 364 hearing, the juvenile court continued jurisdiction and family maintenance services and set the matter for another section 364 hearing on June 7, 2010.

On May 6, 2010, DCFS filed a section 342-Subsequent Petition, alleging that on or about May 3, 2010, Mother was arrested, methamphetamine and drug pipes were found in Esther's home, and Mother allowed an unrelated adult who engaged in drug trafficking and abused drugs to reside in Esther's home. The petition also alleged, among other things, that the home was filthy and unsanitary, with roach infestation in the home, maggot infestation in Esther's clothes, odor of sewage and rotten food.

A May 6, 2010 Detention Report, reported that DCFS received a referral on May 3, 2010, after Mother was arrested for severe neglect and drug-related charges. According to the report, when interviewed by a DCFS social worker, Mother denied abusing drugs. When asked about 10 empty little bags with residue of what appeared to be drugs spread around the floor of her home and other drug paraphernalia found by sheriff deputies, Mother denied that they were hers. When asked about the sheriff deputies' observations—that the home was filthy, the kitchen sink was filled with dirty dishes and rotting food piled high, there was no food for Esther in the refrigerator and what food there was was rotten, there was a roach infestation, maggots in piles of Esther's clothing, and Esther's diaper bag contained rotting food—Mother stated that she was sick and could not move, or did not respond. When asked about a male roommate, Mother stated that she did not know he was using drugs or sold drugs when he moved in. Mother cried and stated she wanted Esther back.

At the May 6, 2010 detention hearing, the juvenile court found that a prima facie showing for detention had been made. The court ordered monitored visitation at the DCFS office.

In a June 7, 2010 Jurisdiction/Disposition report, DCFS reported that Mother claimed that the drugs found by sheriff deputies did not belong to her or her male roommate, but were given to deputies by a paternal cousin of Esther's who also ransacked her home in an attempt to sabotage Mother. Mother stated that the police were

lying as to the conditions in the home, that her male roommate stated the drugs belonged to him so as not to get Mother in trouble and he did not actually live in the home but was just there often, and that Mother did not leave the male roommate alone with Esther and that she paid paternal aunt whenever she needed childcare.

Paternal cousin denied ransacking Mother's home. Paternal cousin lived next door to Mother and stated that he called law enforcement to report that Esther had been left unattended after Mother's male roommate brought Esther over and asked paternal cousin to watch her and, when paternal cousin said he could not watch her, put Esther on a chair outside of Mother's home and left.

In a Last Minute Information For the Court form filed on June 7, 2010, DCFS reported that Mother was in sheriff's custody after being arrested on May 25, 2010 for assault with a deadly weapon and for making criminal threats. According to the police report that was attached to the form, Mother told a paternal cousin that he was going to pay for having Esther taken away and physically assaulted paternal cousin's mother.

In a July 14, 2010 Interim Review Report, DCFS reported that Mother had been released from immigration custody and had attended a one-and-one-half hour orientation on proper parenting techniques and the dependency court while in custody. The report also stated that Mother had missed her initial scheduled visit with Esther on July 3, 2010.

At the July 14, 2010 hearing, the juvenile court ordered DCFS to give Mother referrals for weekly random drug testing.

In an August 11, 2010 Interim Review Report, DCFS reported that in addition to the missed initial visit on July 3, 2010, Mother had missed the next two weekly visits (scheduled for July 10 and 17), stating that she was unaware that weekly visitation was scheduled. Mother was late to her July 24th scheduled visit and arrived with friends and was informed that visitation was specifically intended for Mother to focus on child parent bonding and that the friends needed to wait elsewhere. After acting appropriately with Esther for first hour of the visit, Mother began checking her cell phone messages and calling her friends. The report indicated that Mother had missed one drug test, had one negative test, and another test had results still pending. Foster mother also reported that

Mother acted in a loving manner with Esther during visitations and medical appointments but had a habit of arriving extremely late.³

In a Last Minute Information For the Court form filed on August 11, 2010, DCFS reported that Mother's scheduled July 31st visit was cancelled because Mother was over an hour late and that Mother called and canceled her August 7th visit. DCFS recommended no reunification services for Mother.

At the August 11, 2010 hearing, the juvenile court ordered DCFS to provide Mother with referrals in individual counseling.

In an October 25, 2010 Interim Review Report, DCFS indicated that Mother was reminded to provide information on her enrollment in court ordered programs and given additional referrals. Mother stated that she had done all that had been asked and was told that it was a new detention and she needed to complete her programs. The report also indicated that foster mother reported that Mother often arrived late for visits and spent half the time on her cell phone. In terms of visitation from August 11 to October 25, 2010, Mother canceled or missed two visits, was late for or left early from five of her visits and had one full visit during which she was on her cell phone half the time.

Mother missed some of Esther's medical appointments and foster mother expressed concern that when Mother did attend Esther's medical appointments, she arrived late and did not wait so that she could ask the doctor about Esther's medical status. When asked about missing Esther's medical appointments, Mother responded that she had to work but that if Esther was in her care she would make it, stating that "if I had Esther I would be getting aid from the state and might not need to work anyways."

In terms of drug testing, Mother did not show up for testing on five dates and tested negative on two dates. A DCFS social worker spoke with Mother's therapist to

³ In April 2010, an orthopedic specialist informed Mother and DCFS social worker that Esther needed surgery to correct her hip dysplasia and the surgery was performed in May 2010. Esther had several follow-up medical visits and a second surgery in July 2010 to remove the pins from the first surgery and a procedure to change and reinforce her spica cast.

verify her compliance with court-ordered individual counseling and was told that Mother had not told her therapist that Esther's second detention was due to her altercation with her sister-in-law and had not provided her therapist with police or DCFS reports.

In a Last Minute Information For the Court form filed on October 25, 2010, DCFS reported that Mother had called DCFS social worker very upset, stating that the social worker had no right to tell Mother's therapist why Esther was detained and that Mother's therapist had asked Mother why she was untruthful.

In a second Last Minute Information For the Court form filed on October 25, 2010, DCFS reported that Mother claimed to have missed drug tests due to dental appointments but provided documentation showing a conflict for only one missed test. The form also stated that Mother had missed another scheduled visit, explaining that the person who drove her was sick. The form also stated that when asked why Mother leaves visits early, she responded because it costs too much. The DCFS social worker asked Mother why she used a driver when DCFS provides her with a bus pass and Mother stated that she only recently learned how to get around Los Angeles and did not know how to get to Norwalk from Los Angeles.

At the October 25, 2010 contested section 342 hearing, the juvenile court after hearing testimony from Mother concerning the May 3, 2010 incident sustained after modification the 342 petition as to the counts alleging Mother was arrested, methamphetamine and drug pipes were found in Esther's home, and Mother allowed an unrelated adult who engaged in drug trafficking and abused drugs to reside in Esther's home, and dismissed the count alleging the home was unsanitary. The court declared Esther a dependent of the court under section 300, subdivision (b), and terminated reunification services for the parents as 18 months of services had elapsed and neither parent was ready to resume custody of Esther. The court urged Mother to continue drug testing, complete her programs, consistently visit Esther and attend Esther's medical appointments, and ordered DCFS to provide her referrals and to provide Father a referral for Esther's possible placement with him in Mexico.

In a December 15, 2010 Interim Review Report, DCFS stated that foster mother reported that during visits Mother mostly sits and watches Esther or is on her cell phone and does not interact with Esther. Foster mother also reported that Mother had been visiting Esther but would often leave early or arrive late and that Mother asked foster mother to falsely report that Mother visited twice a week for two hours. The report also noted that Father was “willing to have custody of his daughter but was not sure of the services they have for her in Mexico” and therefore “he would prefer that mother got custody of Esther and that she would benefit from the services out in the United States.” The report stated that Esther had been matched with two possible adoptive families and home studies had been initiated.

At the December 15, 2010 hearing, the juvenile court ordered DCFS to initiate an international home study request on Father.

In a February 23, 2011 section 366.26 WIC Report, DCFS reported that “although mother has made slight progress in her interactions and attentiveness with Esther; this change has only been within the last month.” Mother was reported as staying for the full two hours and playing with Esther 90 percent of the time during several visits. The report also indicated that Father continued to state that he preferred Esther be returned to Mother but that he would take Esther if the court ordered her returned to him.

On April 4, 2011, Mother filed her first of three section 388 petitions. In her April 4, 2011 section 388 petition, Mother requested the court take the section 366.26 hearing off calendar and return Esther to Mother’s custody or, alternatively, to reinstate Mother’s reunification services and set a section 360.22 hearing. Mother alleged that she continued to comply with her case plan, attended A.A. meetings two to three times a week and had a sponsor, completed a 26-week anger management program and individual counseling, visited Esther twice a week for two hours, attended Esther’s medical appointments, was working full-time, and had secured a new home where she lived alone. The petition also alleged that Mother was now able to provide a safe, stable, permanent home and Esther recognized Mother and called her “ma” and looked to Mother for comfort and support.

On April 7, 2011, the juvenile court summarily denied the section 388 petition without hearing, finding it was not in Esther's best interest and the petition did not state a sufficient change in circumstances.

In a June 22, 2011 section 366.36 WIC Report, DCFS reported that Mother had cancelled every Friday visit and foster mother stated that Mother does not cancel the Sunday visits because it is convenient for Mother as Esther is brought to her. Foster mother stated that during the Sunday visits at Mother's place of employment, Mother is often working and her focus is not on Esther.

In a July 26, 2011 Interim Review Report, DCFS reported that the potential adoptive parents, Mr. and Mrs. A, had begun the transition process by visiting Esther. The report also noted that Mother was in regular contact with the DCFS social worker and stated that she had re-enrolled in her court ordered programs and understood that her workplace was not an appropriate environment for visits.

On July 26, 2011 Mother filed her second section 388 petition. Like her first petition, Mother's second petition requested the court take the section 366.26 hearing off calendar and return Esther to Mother's custody or, alternatively, to reinstate Mother's reunification services and set a section 360.22 hearing. As in the first petition, Mother alleged in her second petition that she continued to comply with her case plan, attended A.A. meetings two to three times a week and had a sponsor, completed a 26-week anger management program and individual counseling, attended Esther's medical appointments, was working full-time, and had secured a new home where she lived alone. Unlike the first petition, the second petition alleged simply that she visited Esther but no longer alleged that she visited twice a week for two hours. The second petition also alleged that Esther was no longer in an adoptive home and needed greater permanency which Mother could provide. Attached to Mother's Petition was documentation showing Mother had completed a 26-week anger management program in February 2011, had completed five sessions of individual counseling as of September 2010 and attended A.A. meetings from mid-2010 to early 2011.

At the July 26, 2011 hearing, the juvenile court set Mother's second section 388 petition for a contested hearing on September 15, 2011 and ordered DCFS to investigate and prepare a report. The juvenile court noted that Mother was progressing in some programs but had been very inconsistent in her visits with Esther.

In a September 15, 2011 Interim Review Report, DCFS reported that as of July 28, 2011 Esther had been placed in the potential adoptive home of Mr. And Mrs. A. The report indicated that documentation showed Mother had attended A.A. meetings from June 23, 2011 to July 2, 2011. The report also stated that there were no visits scheduled from July 11, 2011 to August 2, 2011 due to placement issues and once visits resumed, Mother canceled two visits. The report also noted that Esther on her own had begun calling Mr. and Mrs. A "papi" and "mami." The report recommended that the juvenile court deny mother's second petition and that Mother's monitored visits be reduced to twice per month.

In a Last Minute Information For the Court form filed on September 15, 2011, DCFS reported that Mother had canceled two more visits.

Documentation filed with the court on September 15, 2011 showed that as of September 12, 2011, Mother had completed six sessions of individual counseling, ten sessions of parenting classes and ten sessions on substance abuse since enrolling in June 2011. Documentation also showed Mother had three negative drugs tests from August to September 2011.

At the September 15, 2011 hearing on Mother's second section 388 petition, after hearing argument, the juvenile court denied the petition, finding only partial compliance with the case plan which was insufficient change of circumstance, and Mother's contact with daughter to be infrequent which indicated that it was not in Esther's best interest to grant the petition.

In a section 366.26 WIC Report filed on October 27, 2011, DCFS reported that on the afternoon of September 15, 2011, Mother called the DCFS social worker and stated that she "saw no point" in continuing to visit Esther as the juvenile court had denied her section 388 petition and she was not going to regain custody of Esther. Mother stated

that her scheduled visit for September 20, 2011 would be her final visit and that she would entrust Esther's care to Mr. and Mrs. A and God. Mother reiterated that the September 20, 2011 visit would be her final visit in a call the day before to confirm the visit. During the September 20, 2011 visit, Mother provided a photograph of herself to be given to Esther, took pictures of Esther, and stated to the DCFS social worker that Mother's employer was going to help her with legal assistance to get Esther back.

The report also indicated that Father agreed that it would be in Esther's best interest to be adopted as opposed to being kept in the foster care system.

At the October 27, 2011 hearing, the juvenile court ordered Mother to provide 24 hours' notice to cancel a visit; otherwise visits would be limited to twice a month.

In a January 11, 2012 Interim Review Report, DCFS reported that Mother had not visited Esther and had not contacted DCFS to try to schedule a visit since the September 20, 2011 visit. The report noted that Esther had bonded with prospective adoptive parents, Mr. and Mrs. A, and referred to them as "mommy and daddy." The report recommended that Esther be placed for adoption.

In a Last Minute Information For the Court form filed on January 11, 2012, DCFS summarized the findings of the home study of Mr. and Mrs. A and the recommendation that the court terminate parental rights.

On March 29, 2012, Father filed a section 388 petition, seeking placement of Esther with Father in Mexico.⁴ The juvenile court set Father's section 388 petition for a hearing.

In a Status Review Report filed on April 26, 2012, DCFS reported that on March 12, 2012, Mother called to request information on whether Esther was placed with Father, and Mother was told that Esther was with Mr. and Mrs. A. Mother requested visits with Esther. Visits were scheduled to begin after the April 26, 2012 hearing, and DCFS recommended that visits be limited to once a month.

⁴ Father had filed an earlier section 388 petition on October 7, 2011 but then withdrawn the petition in order to file a new one that would include a declaration.

In an Interim Review Report filed on April 26, 2012, DCFS recommended that Father's section 388 petition be denied.

On June 14, 2012, the court received from Mr. and Mrs. A, a De Facto Parent Request, that included letters of recommendation from co-workers, friends, and Esther's service providers.

In an Interim Review Report filed on June 27, 2012, DCFS reported that on May 25, 2012 Mother called and asked if Esther was placed with Father and was informed that Esther continued to reside with Mr. and Mrs. A. The report indicated that Esther was continuing to flourish and progress in the environment provided by Mr. and Mrs. A and had bonded with the entire family. Mrs. A stated that Mother's last visit with Esther was over six months earlier.

On June 27, 2012, Mother filed her third section 388 petition requesting the court take the section 366.26 hearing off calendar and return Esther to Mother's custody. The petition alleged that Mother had continued with her programs, and obtained housing and a stable lifestyle. The petition also alleged that Esther would "have a better future here in the United States rather than in Mexico." Attached to the petition was documentation, showing Mother had completed a 26-week anger management program in February or January 2011, had completed three sessions of individual counseling as of July 2011, had completed three sessions of parenting class as of July 2011, had completed three sessions on substance abuse as of July 2011, and attended A.A. meetings from June 23, 2011 to September 3, 2011 and from mid-2010 to early 2011.

On June 27, 2012, the juvenile court denied Father's section 388 petition after considering evidentiary statements offered by Father, finding no change of circumstances and that it was not in Esther's best interest to grant the petition. The juvenile court also summarily denied Mother's third section 388 petition, finding no change of circumstances and that it was not in Esther's best interest to grant the petition. The juvenile court found it was likely that Esther would be adopted and terminated the parental rights of both Mother and Father. The court also found placement through adoption appropriate and designated Mr. and Mrs. A as the prospective adoptive parents.

On July 23, 2012, Mother filed a notice of appeal.

DISCUSSION

On appeal, Mother argues that the juvenile court abused its discretion in summarily denying her third petition for modification and terminating her parental rights because she had made a prima facie showing of changed circumstances and best interest of the child. We disagree and affirm.

A. Standard of Review

Under section 388,⁵ the dependency court should modify an order if circumstances have changed such that the modification would be in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) "A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) But, in order to obtain a hearing, the parent must show both changed circumstances and promotion of the child's best interests; failure to show either of these elements defeats the prima facie showing. (*Id.* at pp. 806–807.)

We review a denial of a hearing on a section 388 petition for abuse of discretion. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

B. No Abuse Of Discretion In Summarily Denying Mother's Section 388 Petition.

On appeal, Mother argues that "her re-enrollment in the substance abuse treatment program with support services and continuing sobriety were sufficient prima facie proof of changed circumstances." Likewise Mother argues that she made a prima facie showing or promotion of Esther's best interests "because [Mother] was now in a better position to care for her daughter, had extended program support, and she loved Esther."

⁵ Section 388 provides in pertinent part that a parent "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . [¶] . . . [¶] (d) If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held"

If the allegations of the petition, even liberally construed, fail to make a prima facie showing of either changed circumstances or that the proposed modification would promote the child's best interests, the court need not order a hearing on the petition. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451.) "A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) A petition containing only general or conclusory allegations does not rise to the level of a "prima facie" showing. (*Ibid.*)

Mother did not meet her burden of demonstrating sufficiently changed circumstances in her third section 388 petition. The petition alleged that Mother had continued with her programs, and obtained housing and a stable lifestyle. Mother, however, made no allegations and provided no information about her participation in programs in the 10 months since her second section 388 petition was denied after an evidentiary hearing. Rather, Mother attached documentation to her third petition that was previously submitted to the court for her second section 388 petition or that preceded the September 15, 2011 hearing on that petition. For instance, Mother attached documentation to her third petition showing that she had attended A.A. meetings from June 23, 2011 to September 3, 2011 and from mid-2010 to early 2011, but made no allegations and provided no documentation of her attendance from September 2011 to the filing of her third petition in July 2012. Similarly, Mother's third petition attached documentation that, as of July 2011, she had completed three sessions of individual counseling, three sessions of parenting class and three sessions on substance abuse, but Mother neither made allegations nor provided documentation concerning her participation in programs between July 2011 and July 2012.

We find that the juvenile court's summary denial of Mother's third section 388 petition was not an abuse of discretion.

Likewise we find no abuse of discretion in the juvenile's court determination that Mother failed to carry her burden under section 388 to present prima facie evidence that granting the petition would promote the child's best interest. Esther had been with the

prospective adoptive parents for one year and was approximately three and a half years old at the time Mother filed her third section 388 petition. Esther had bonded with Mr. and Mrs. A and referred to them as “mami” and “papi.” In contrast, Mother’s contact with Esther during the nine months after her second petition was denied was infrequent and minimal.

Once reunification services are terminated, the focus shifts from reunification to the child’s need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) For a parent “to revive the reunification issue,” the parent must prove under section 388 that circumstances have changed such that reunification is in the child’s best interest. (*In re Marilyn H., supra*, 5 Cal.4th at pp. 309-310.) “[O]ur Supreme Court made it very clear in [*In re Jasmon O.* (1994) 8 Cal.4th 398, 408, 414-422] that the disruption of an existing psychological bond between dependent children and their caretakers is an extremely important factor bearing on any section 388 motion.” (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 531.) Moreover, time is of the essence, especially to young children; when it comes to securing a stable, permanent home for children, prolonged uncertainty is not in their best interest. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674 [“‘There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current ‘home,’ under the care of his parents or foster parents, especially when such uncertainty is prolonged.’ [Citation.]”].) “Childhood does not wait for the parent to become adequate.” (*In re Marilyn H., supra*, 5 Cal.4th at p. 310; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Construing Mother’s third section 388 petition liberally, the allegations would not have sustained a decision that granting the petition was in Esther’s best interest. Accordingly, the juvenile court did not abuse its discretion in summarily denying the petition.

Finally, although Mother makes no substantive arguments regarding the court’s ultimate decision to terminate parental rights, for the reasons discussed above, we find no

error in the juvenile court's conclusion that Esther was adoptable and that termination of parental rights was in her best interest.

DISPOSITION

The order denying mother's petition for modification and terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.