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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

In re EMILIANO H. et al., Persons Coming  
Under the Juvenile Court Law.

B245345

(Los Angeles County  
Super. Ct. No. CK82785)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Lisa H. (mother) appeals the denial of her Welfare and Institutions Code section 388<sup>1</sup> petition as it concerns her son Emiliano H., born in November 2008, and her daughter A.H., born in January 2012. Mother's petition asked the juvenile court to (1) take off calendar Emiliano's section 366.26 hearing, (2) order Emiliano placed with mother or, in the alternative, grant mother six months of reunification services, (3) order family reunification services as to A.H., and (4) grant mother unmonitored visits with both children. We conclude that the juvenile court did not abuse its discretion in denying mother's petition in its entirety, and thus we affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### **I. Detention and Petition**

Emiliano H. is the child of mother and L.F. The Department of Children and Family Services (DCFS) detained Emiliano, then 18 months old, on June 20, 2010, after mother reported to DCFS that she had been kidnapped by five men, forced to use methamphetamine, and sexually assaulted. Mother said she had been drunk at the time of the kidnapping and the men had threatened to harm Emiliano, who was with her.

DCFS filed a two-count juvenile dependency petition on June 23, 2010. It alleged that mother had a seven-year history of substance abuse and was a current abuser of methamphetamine and alcohol, which rendered her incapable of providing Emiliano with regular care and supervision, endangered his physical and emotional health, and put Emiliano at risk of physical and emotional harm (b-1); and L.F. failed to provide Emiliano with the basic necessities of life, including food, clothing, shelter, and medical care, endangering his physical and emotional health, and placing him at risk of physical and emotional harm and damage (b-2, g-1).

DCFS filed a detention report on June 23, 2010. Per the report, mother's sister, Crystal H., said mother had a history of drug and alcohol abuse. Two weeks earlier, a

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

woman had come to Crystal's apartment and asked if Crystal knew mother. When Crystal said she was mother's sister, the woman said mother was in her car. Crystal saw mother coming up the stairs, naked and barely able to walk. When Crystal asked mother where baby Emiliano was, mother could not remember. Crystal later found Emiliano with his father. Crystal reported that L.F. did not know how to care for a baby and showed little interest in him.

The maternal grandmother reported that mother had been living with L.F., but he had kicked mother and Emiliano out of his home. Maternal grandmother said L.F. had beaten mother in the past and mother had a history of methamphetamine use.

The detention report stated that mother had an extensive criminal record, having been arrested for petty theft, burglary, battery, being under the influence, and vandalism. Mother also had an extensive DCFS history as a minor. DCFS opined that Emiliano was at risk of harm if he remained in mother's care because of mother's admitted use of alcohol and possible use of drugs, her own history of abuse and neglect, and L.F.'s apparent lack of interest in the child.

The juvenile court held a detention hearing on June 23, 2010. The court found a prima facie case for detaining Emiliano and ordered him placed with DCFS. The court ordered DCFS to provide mother with referrals for drug testing and granted mother monitored visits with Emiliano.

## **II. Jurisdiction and Disposition**

The jurisdiction/disposition report, dated July 26, 2010, reported that mother said she started using methamphetamine and drinking when she was 13 years old. She said she stopped using drugs in 2008, but admitted that she continued to drink beer and tequila. She said she was drunk when she was assaulted on June 20, 2010.

L.F. reported that he began dating mother in 2007. At that time, she was already using crystal methamphetamine and drinking beer. He said mother and Emiliano had been living with him on and off for the past year, and that mother frequently left with Emiliano when she was drunk or on drugs. He believed that mother "couldn't live

without drugs, alcohol” and “she said that [she] needs to use daily.” He said mother “is a mess and that she is not all together and felt that [mother] has something wrong [in] her head and need[s] help because she has been going through a lot since she was a child.” He wanted help for mother because she had a serious problem with alcohol.

Maternal grandmother said mother had used drugs in the past but had been clean since she got pregnant. She said she had never seen mother drunk, although she admitted mother had been drinking on June 20. Grandmother said she took care of Emiliano when mother went out.

Mother said she had been in foster care from age 11 to age 18. She met L.F. when she was 17. Mother dropped out of high school, but could not remember in what year. She admitted she had been using crystal methamphetamine and alcohol for seven years and currently had a problem with alcohol. She also admitted that she had been arrested for being under the influence of drugs or alcohol in 2006 and 2009, and that she had been hospitalized for three days in June 2010 for an overdose. Mother said she currently did not have a stable place to live and had been living on an irregular basis with her mother and sister. Mother said she was planning to stay with maternal grandmother because she did not have another place to live. She denied being on probation, but admitted she had two outstanding bench warrants.

The children’s social worker (CSW) reported that mother had been granted visits with Emiliano three times per week. Mother cancelled the visit scheduled for June 30 and failed to show up for visits scheduled for July 2 and 7, 2010. She visited Emiliano on July 4, 2010. Mother tested negative for drugs or alcohol use on June 29, 2010. DCFS recommended that mother be provided with reunification services, complete a substance abuse treatment program, drug test weekly, attend weekly 12-step meetings, and attend individual counseling.

The court held a jurisdiction and disposition hearing on July 26, 2010. Mother waived her right to contest the allegations of the petition. The court found by a preponderance of the evidence that counts b-1, b-2, and g-1 of the petition were true as alleged and declared Emiliano a dependent child under section 300, subdivisions (b) and

(g). It ordered Emiliano placed with DCFS, granted mother monitored visitation, and ordered mother to attend DCFS-approved programs of parent education, drug rehabilitation with random testing, and individual counseling to address case issues.

### **III. Mother's First Termination of Services**

DCFS reported on October 25, 2010, that mother attended all scheduled visits with Emiliano in July, and missed visits in August only during a brief period during which she was incarcerated. However, mother missed four visits in September and three visits in October. Mother completed a parenting program in July 2010, but did not receive a certificate of completion because she did not complete the post-test. Mother had two negative drug tests in June and September, but missed six scheduled tests during the same period.

On October 18, 2010, the foster mother reported that grandmother had informed her that mother had left her home a few weeks earlier. Mother reportedly called grandmother on October 17 to say she was using drugs and prostituting herself, did not want anyone to know her whereabouts or to look for her, and would not make any further efforts to reunify with Emiliano.

In a January 24, 2011 status review report, DCFS reported that since October 2010, mother had visited Emiliano only once. Mother told her CSW that she missed visits with Emiliano because she was homeless and felt ashamed to visit her child. Mother said that in the past she had not been sure she wanted Emiliano returned to her because she felt she could not overcome her drug addiction, but she currently wanted to comply with court orders and get her son back. Mother said she had been enrolled in an inpatient program, but was asked to leave after being accused of using alcohol during an outing. Mother provided verification that she had enrolled in a new inpatient program on December 22, 2010, and said she was motivated to follow through with the program.

DCFS stated that although mother appeared motivated to follow through with court orders, given her lengthy drug history it was not clear she could stay sober. Further, mother continued to engage in the same lifestyle that required Emiliano's

detention. In view of Emiliano's young age and mother's failure to comply with court programs, DCFS recommended that the court discontinue mother's family reunification services.

On January 24, 2011, the court found no substantial probability that Emiliano would be returned to mother by the next court date, terminated her reunification services, and set a section 366.26 hearing.

DCFS reported on February 28, 2011, that since the January hearing, mother had visited Emiliano once. According to the CSW, mother "expresses remorse for her actions of not following through with the case plan and court orders but does not appear sufficiently motivated to try and reunite with the child."

#### **IV. Mother's First and Second Section 388 Petitions**

DCFS filed a section 366.26 report on May 23, 2011. It stated that since February, mother had maintained only sporadic contact with Emiliano and had visited him only three times. Although mother told her CSW she wanted Emiliano returned to her and wanted to comply with the court's orders, she "has not shown any progress in the area of drug rehabilitation. She has not completed a drug program, has not complied with random testing and continues to disappear for weeks at a time. . . . Although mother states she is going to change her behavior and wants the child returned to her care she does not appear to understand how important it is for her to visit the child more frequently and to complete a drug program." Mother had reenrolled in a drug rehabilitation program on May 16, 2011, but "[w]hether mother will follow through and complete the program is unknown. However, given mother's drug history and the fact that she has not followed through with completing two prior programs it is unlikely she will complete this program. Given the child's young age [DCFS] continues to recommend that mother's parental rights be terminated and that the child be legally freed for adoption."

Mother filed a section 388 petition on May 27, 2011. It stated that on May 16, mother had enrolled in an inpatient drug rehabilitation program where she could reside

with her child. Mother requested that Emiliano be placed with her on the condition that she continue to reside in the inpatient program or, alternatively, that family reunification services be reinstated.

DCFS's response to the petition noted that mother had a long history of methamphetamine use. Since Emiliano's detention, mother had enrolled in three drug rehabilitation programs but had not successfully completed any of them. DCFS urged that mother's enrollment in a program was too recent for mother to demonstrate that she was committed to completing the program and remaining drug-free. Further, mother's current placement could not guarantee that mother would not leave the premises with Emiliano. Thus, DCFS recommended that all prior orders remain in effect and the matter be continued to the permanent review hearing on July 25.

The court held a section 388 hearing on June 27, 2011. The court denied the petition, noting that mother had not demonstrated either a change of circumstances or that a different order would be in Emiliano's best interests. However, the court encouraged mother to remain in her drug rehabilitation program, noting that the section 366.26 hearing was not scheduled until September, and mother had time to demonstrate success in conquering her drug and alcohol addiction before her parental rights were terminated. The court further ordered DCFS to facilitate visits between mother and Emiliano.

In a status review report filed July 25, 2011, DCFS reported that mother remained enrolled in a drug rehabilitation program. Further, Emiliano's foster parents appeared to be experiencing marital strain after the foster father's loss of his job, and the foster mother stated that Emiliano's adoption was not currently a priority for her.

On July 25, 2011, the court ordered DCFS to facilitate visits between mother and Emiliano and continued the section 366.26 hearing.

Mother filed a second section 388 petition on August 16, 2011. It asserted that mother had been enrolled in a residential drug treatment program since May 16, 2011, and had maintained regular telephone contact with Emiliano. Mother asked the court to take the section 366.26 hearing off calendar, reinstate her family reunification services, and allow her unmonitored visits with Emiliano at the residential facility.

DCFS filed a response to the petition on September 22, 2011. It stated that the CSW met with mother on September 9. Mother appeared upset and said she “was having issues at the drug program particularly with her counselor whom she feels is being unfair. Mother stated that since she is almost 16 weeks pregnant she wants to be given more privileges such as more food and extra time to sleep at the facility. [Mother] asked this CSW several times how long she needs to stay in the program since she has heard that it is not necessary to stay at the program for the entire program length of 9 months. The CSW illustrated to mother that given her long drug history (7 years) she needs to complete the entire 9 months of the program. Additionally, the CSW reminded mother that she lacks stable housing and is unemployed so it is beneficial for mother to stay at the program as long as possible as this program is meeting all of her needs. The CSW also discussed with mother that she needs to focus on completing the program and trying to reunite with her child and needs to not become distracted with other issues. The CSW reminded mother that mother previously left two other programs because mother was having issues with staff and other residents and she needs to take a more mature attitude and not become entangled in arguments. Mother stated she is committed to completing the program and appeared more calm and collected after this meeting.”

DCFS further reported that mother’s level in the program had been lowered to “orientation” because mother had “difficulty engaging in the recovery process.” Mother had two monitored visits with Emiliano in August; during both visits mother interacted well with him. DCFS concluded: “[I]t appears that mother is committed to completing her inpatient drug rehabilitation program. Mother is demonstrating that she is willing to remain sober and comply with the court orders. [DCFS] is recommending that the court grant mother . . . additional Family Reunification Services with discretion for [DCFS] to liberalize visits to include weekend overnights at the facility where mother is residing. . . . Mother also needs to visit the child on a weekly basis including some visits in the child’s current area so the child can become accustomed to her presence which will help transition the child back to the mother’s care.”

The court granted the section 388 petition on September 28, 2011, finding a change in circumstances in that mother had enrolled in a residential drug treatment program and was in compliance with the program's terms and conditions. The court therefore vacated the section 366.26 hearing and ordered that mother be granted an additional six months of family reunification services.

#### **V. Mother's Second Termination of Services**

A status review report filed January 23, 2012, stated mother had been discharged from the residential treatment facility because she had not followed the facility's guidelines, although the facility believed mother remained sober. In December 2011, mother enrolled in an outpatient drug rehabilitation program and began living in a sober living facility. Mother had seven negative drug tests between September and January. Mother visited Emiliano weekly, and visits were reported to go well. Emiliano appeared comfortable in mother's presence and sought her help when he was with her. Mother was appropriate with Emiliano and interacted well with him. DCFS recommended that the case remain open and that mother have additional unmonitored visits.

On January 23, 2012, the court granted mother an additional three months of reunification services and gave DCFS discretion to liberalize mother's visits with Emiliano. Mother gave birth to her second child, A.H., in January 2012.

Per an April 23, 2012 status review report, on April 3, 2012, the house manager at the sober living facility where mother was living reported that mother and Emiliano had not spent the weekend of March 30, 2012, at the home. The manager had not been able to reach mother and there were rumors in the home that mother had relapsed. The CSW tried to contact mother on April 3, but mother did not return the calls. Emiliano's foster mother reported that when mother returned Emiliano on April 2, she arrived in a car driven by an unknown male, and Emiliano was not riding in a car seat. When confronted, mother said she had spent the weekend with maternal grandmother. However, maternal grandmother said mother had not been with her. Mother was told that future visits with Emiliano would be supervised because she was not complying with visitation guidelines.

Although mother was allowed to return to the sober living facility on April 3, she was terminated on April 9 because she left the facility April 7 and did not inform the manager of her plans to spend the night elsewhere. The manager told the CSW that mother was not following the house rules and had not been honest about where she went when she left the home. The manager said she did not feel mother was committed to living in the sober living facility and she questioned mother's sobriety.

On April 10, a friend of mother's, Sunny M., called the sober living manager and said mother was on the corner of Roscoe Boulevard and Van Nuys Boulevard with baby A.H., who was wearing only a diaper. She appeared to be under the influence of drugs or alcohol. Sunny M. said mother stated she could not care for A.H. and was looking for a pimp. Mother got into Sunny M.'s car, but then called another friend, Virginia R. Virginia R. "showed up in a white truck, a man got out of the car[,] grabbed baby [A.H.] from mother and mother jumped in the truck and they left." Sunny M. said that both mother and Virginia R. appeared to be using drugs.

The CSW located mother near maternal grandmother's former apartment on April 12. Mother said she was homeless and had left A.H. with the child's father, Kenny R. Mother could not provide Kenny's date of birth, address, or telephone number. Mother denied using drugs and tested negative on April 10. Mother said she would contact the CSW to provide her with Kenny R.'s address, but as of April 23 she had not done so.

DCFS recommended that Emiliano not be returned to mother as she appeared to be struggling with maintaining a drug-free lifestyle, and had not been forthcoming about her whereabouts when Emiliano was in her care.

On April 23, 2012, the court terminated mother's family reunification services for Emiliano and set a section 366.26 hearing. Thereafter, Emiliano was placed with new prospective adoptive parents.

## **VI. A.H.'s Detention**

On April 16, 2012, DCFS filed a juvenile dependency petition on behalf of A.H. It alleged that mother had an eight-year history of substance abuse, which rendered mother incapable of providing regular care for A.H. and endangered her physical health and safety (b-1); and that A.H.'s sibling, Emiliano, received permanent placement services due to mother's substance abuse, which rendered her unable to provide regular care for A.H. (j-1).

On April 16, 2012, the juvenile court found that a prima facie case existed for detaining A.H. pursuant to section 300, subdivisions (b) and (j). It vested custody of A.H. with DCFS, ordered A.H. detained, and issued a protective custody warrant. The protective custody warrant was recalled the same day when A.H. was detained from Kenny R.

The jurisdiction/disposition report, dated May 7, 2012, stated that mother denied the allegations of the petition but would not say whether she was under the influence on April 10, 2012. Kenny R. said he last saw mother on drugs on April 11, 2012. According to Kenny R., "She called me around 6:00 p.m. and told me that she was with [A.H.] I went to look for her and when I got there, [mother] was carrying [A.H.] ([A.H.] was naked) and she was with another woman (unknown name). I told her to give me the baby because she was drunk. [Mother] refused but the woman told her to give me the baby and I told her that [the] baby was naked [and] cold and I needed to take the baby with me[.] [S]he got mad at me and start to cuss me out and the woman told her again to give me the baby and she refused. I called 911 and I told the police that the baby was naked and the mother was drunk. [Mother] give me [A.H.] when she was about ready to leave, she was about to get in a car when she gave me [A.H.] [A.H.] stayed with me for about a week and then I got the call from [s]ocial worker Rodriguez and I took [A.H.] to the social worker[']s office. [Mother] used alcohol every day; she drinks hard liquor. . . . [Mother's] mom would call me when [mother] was with [A.H.] at parties and I would go pick her up. [Mother] goes out with [A.H.] and she drinks and used drugs when she is with [A.H.]"

On May 7, 2012, the court ordered A.H. released to Kenny R. On May 9, the court found Kenny R. to be the presumed father of A.H. On May 14, 2012, DCFS recommended that A.H. be declared a dependent child and placed with Kenny R., and that Kenny R. be offered family preservation services.

On May 14, 2012, the court found by a preponderance of the evidence that counts b-1 and j-1 of the petition were true as alleged, and by clear and convincing evidence that there were no reasonable means to protect A.H. without removing her from mother's custody. The court further found by clear and convincing evidence that placing A.H. with Kenny R. would not be detrimental, and it ordered A.H. placed with him. The court ordered DCFS to provide services to Kenny R. only, and it granted mother monitored visitation.

## **VII. The Denial of Mother's Third Section 388 Petition and the Termination of Her Parental Rights as to Emiliano**

DCFS filed a section 366.26 report on August 20, 2012. It stated that Emiliano began to visit with his prospective adoptive family on May 23 and immediately bonded with them. He was placed with the family on June 22. The prospective adoptive parents had completed a home study and said they were very committed to adopting Emiliano.

Mother filed a third section 388 petition on October 3, 2012. She said she had enrolled in the West Coast Drug & Alcohol Education Program on August 1, had continued to participate in services, and had maintained consistent contact with her children. She therefore requested that the court take the section 366.26 hearing off calendar and order Emiliano placed with her or, in the alternative, grant her six months of family reunification services. She also requested family reunification services for A.H. and unmonitored visits with both children. She urged that the change would be in the children's best interests because it would give them the opportunity to bond with each other and reunify with her.

DCFS filed a status review report on October 22, 2012. It stated that Emiliano appeared to have developed a loving relationship with his prospective adoptive parents

and was doing well in their home. Emiliano was attending preschool and had learned the alphabet and letter sounds. His prospective adoptive parents had taken Emiliano to an allergist, who had identified several food allergies, and had obtained prescription glasses for him. Emiliano was attending karate classes and was proud of the karate moves he had mastered. Mother had not regularly visited Emiliano and had not provided the CSW with her current address.

DCFS filed a section 388 report on November 7. Per the report, mother told the CSW on October 30 that she was enrolled in the West Coast Drug & Alcohol Education Program and was attending a substance abuse program, individual counseling, and a life skills class. Mother tested negative for drug or alcohol use on August 1, October 11, and October 24. Mother reported that she was five months pregnant with her third child, with a due date of February 2013. She was living with her mother and receiving CAL-WORK benefits, but she was not working. She said she currently was on probation due to a warrant, but said her probation would conclude at the end of 2013.

Mother had visited A.H. regularly, missing only two visits, and seemed to appropriately bond with her. Mother had had two visits with Emiliano, in August and September, but had failed to show up for a scheduled visit in October. Emiliano was reported to be thriving in the home of his prospective adoptive parents. DCFS recommended that the section 388 petition be denied, mother be denied family reunification services, and visits between mother and Emiliano be terminated. Further, DCFS said it could not recommend unmonitored visits between mother and A.H. because mother “is yet to demonstrate her sobriety.”

The court held a hearing on November 7, 2012. It denied the section 388 petition with regard to A.H., finding no change of circumstances. The court noted that while mother claimed to have been attending drug rehabilitation, DCFS had never been provided mother’s drug test results, and therefore it could not verify that mother had submitted to weekly drug tests. The court also found that a change of order was not in A.H.’s best interests, noting that A.H. was currently residing with her father in a “safe and stable environment.”

The court also denied mother's section 388 petition with regard to Emiliano, finding no change of circumstances and that a change of order was not in Emiliano's best interests. It stated: "[W]e have a very young child who is in a stable home. The child is deserving of permanency. There's no showing that the mother would be able to provide the child with permanency at this time, in light of her long history of drug usage as well as her history of dropping in and out of programs."

Finally, the court terminated mother's parental rights as to Emiliano, finding by clear and convincing evidence that Emiliano was adoptable, that it would be detrimental for him to be returned to his parents, and that no exception to adoption applied. The court found mother had not maintained regular visitation with Emiliano despite ample opportunity to do so, and mother had not acted in a parental role that would outweigh the permanency offered Emiliano through an adoptive home. The court therefore terminated mother's and L.F.'s parental rights.

On November 7, 2012, mother filed a notice of appeal from the termination of her parental rights to Emiliano and the denial of her third section 388 petition as to both children.

## DISCUSSION

Mother contends the court abused its discretion by denying her section 388 petition because the evidence showed she was making a serious effort to remedy her substance abuse and other problems that led to the children's detention.<sup>2</sup> She notes that she had been enrolled in an outpatient substance abuse program for four months, was regularly drug testing, had obtained stable housing by moving in with her mother, and

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<sup>2</sup> Although mother appealed from both the denial of her section 388 petition and the termination of her parental rights, her appellant's opening brief discusses only the petition. Therefore, any claims of error with regard to the termination of her parental rights are forfeited. (E.g., *Lui v. City and County of San Francisco* (2012) 211 Cal.App.4th 962, 970, fn. 7 ["Because plaintiff has not provided reasoned argument with citations to authority on the issue, that claim is . . . forfeited."].)

had begun to receive government assistance. Thus, she says, the court erred in concluding that her circumstances had not changed and that modification was not in her children's best interests. For the following reasons, mother is incorrect.

To prevail on a section 388 petition, the moving party must establish that new evidence or changed circumstances exist so that the proposed change in the court's order would promote the best interests of the child. (§ 388, subd. (a), (b); *In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) The determination of whether to change an existing order is “committed to the sound discretion of the juvenile court, and [its] ruling should not be disturbed on appeal unless an abuse of discretion is clearly established.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination. (*Ibid.*)” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

Here, the juvenile court did not abuse its discretion in concluding that mother failed to establish changed circumstances. Although we applaud mother's continued attempts to conquer her drug and alcohol addiction, her four-month period in substance abuse rehabilitation and four months of sobriety do not constitute changed circumstances. During these proceedings, mother has enrolled in four different alcohol and drug rehabilitation programs and obtained residence at a sober living facility. Mother has not successfully completed any of the programs, nor was she able to continue her residence in the sober living facility because she was unwilling to abide by its rules. Further, during these proceedings, mother has achieved periods of sobriety, one apparently as long as 10 months, followed by returns to substance use. During her most recent relapse in April 2012, mother was seen wandering on the street with her newborn daughter, reportedly seeking a pimp. In light of this history, especially when viewed in the context of mother's nearly 10-year history of drug and alcohol addiction, we cannot say the trial court erred in concluding that her four months of sobriety and participation in a fifth rehabilitation program constitute a change of circumstances within the meaning of section 388.

Nor can we find the juvenile court abused its discretion in concluding that the proposed change in the court's order would not promote her children's best interests. Emiliano lived with mother for the first year and a half of his life, but has been in foster care since June 2010. Since Emiliano entered foster care, mother has not visited him regularly and there is no evidence of a strong bond between them. A.H. lived with mother for the first several months of her life, but has lived with her father since she was three months old. Mother does not have a job and does not have a stable living situation. Although she is no longer homeless, she is currently living with maternal grandmother, with whom she has had a troubled relationship and from whose home she was removed by DCFS during her teenage years. Further, Emiliano appears to be thriving in the home of a couple with whom he has bonded and who wish to adopt him, and A.H. appears to have a stable placement with her biological father and his girlfriend. On these facts, the juvenile court properly found that mother's choice to return to treatment is not sufficient to suggest that mother will achieve or maintain the sobriety required for her to be a parent to Emiliano and A.H. There was no abuse of discretion.

We find the case of *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*) instructive and reject Mother's assertion that the present case is distinguishable. In that case, Deborah M. (mother) had a history of drug use that led to the removal of her three children from her home in August 1999. Mother relapsed in October 1999 and again around October 2000. She then entered residential treatment, left after two months, and then reentered the program in January 2001. In August 2001, she filed a section 388 petition, urging that she had obtained suitable housing, maintained 338 days of sobriety, graduated from domestic violence and drug treatment programs, completed a parenting program, and participated in therapy with her two oldest children. (*Id.* at pp. 684-685.) The juvenile court denied the section 388 motion, and the Court of Appeal affirmed. It noted that despite the lengthy reunification period, mother's serious parenting deficiencies had not been fully remedied. Further, while by the time of the section 388 hearing Mother had completed the residential portion of her substance abuse program, "for most of the dependency her visitation with the children remained supervised. Her

substance abuse had begun more than 17 years earlier and while she had been clean for 372 days, she had previously relapsed twice during the course of this case, once after more than 300 days of sobriety. . . . [¶] The children had been out of Mother’s care for more than two years, with the exception of Samuel’s approximately two-month trial visit. Although the children enjoyed visits and Amber and Samuel loved and missed Mother and called her ‘mom,’ the children were attached to [their caregivers].” (*Id.* at p. 686.)

The same situation is present here. Although mother has had a recent period of sobriety, as in *Amber M.*, her substance and alcohol abuse are long-standing, and mother has suffered at least one relapse during the course of these proceedings. Mother has completed a parenting course but has not demonstrated an ability to overcome the deficiencies that led to Emiliano’s and A.H.’s dependency. Further, A.H. lived with mother during only the first two months of her life, and Emiliano has been out of mother’s care for more than two years. While Emiliano appears to enjoy visits with mother, he has demonstrated an attachment to his current caregivers, who wish to adopt him. Thus, *Amber M.* supports our conclusion that the juvenile court’s denial of mother’s section 388 petition was not an abuse of discretion.

### **DISPOSITION**

The orders terminating mother’s parental rights to Emiliano and denying mother’s section 388 petition are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.