

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant.

C067974/C068345

(Super. Ct. No. JD225003)

M.H. (mother) has filed separate appeals from the juvenile court's orders denying her petition to change an existing order and terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 388.)¹ We consolidated the appeals on our own motion for argument and decision only. The juvenile court did not abuse its discretion in denying mother's petition. Mother's

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

petition did not state a prima facie case that her circumstances had changed sufficiently to justify modifying the juvenile court's existing orders. With respect to mother's appeal of the order terminating parental rights, mother does not address this order in her brief. Therefore, mother has shown no possible ground for reversal. Accordingly, we affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second dependency proceeding involving the minor, Shawn C. In the first proceeding, the minor was detained in October 2006 (shortly after his birth) because mother, who had previously been diagnosed with aphasia and bipolar disorder, became acutely psychotic. In December 2007, the juvenile court returned the minor to the custody of mother and father (J.C.) and terminated jurisdiction.

On May 8, 2009, the Sacramento County Department of Health and Human Services (Department) filed a section 300 petition alleging: (1) the minor had suffered repeated bruising that mother was unwilling or unable to explain; (2) mother's psychiatric or psychological problems placed the minor at substantial risk of physical harm, abuse, or neglect; and (3) mother had received informal supervision services since December 2008 but had failed to benefit from them.²

² The juvenile court dismissed the first allegation at the jurisdiction/disposition hearing.

An amended petition was filed on July 2, 2009, that included allegations father had ceased to participate in treatment for long-term alcohol and marijuana addictions, and his whereabouts were unknown.

The May 2009 detention report stated: Mother was placed on a "5150 hold"³ on September 25, 2008, for "out of control behavior, paranoia and for being a danger to herself."⁴ She was not taking her prescribed medication. She had a prior 5150 hold in August 2008. The minor was placed temporarily with a former foster parent because father was not a reliable caretaker and used drugs. The parents agreed to family maintenance services.

From November 25 to December 12, 2008, mother voluntarily stayed at a residential mental health facility. She and father subsequently signed an informal supervision case plan.

In April 2009, mother displayed confusion and bizarre behavior. Her home was filthy and disorderly, and she could not explain the minor's old and new bruises.

The juvenile court ordered the minor detained on May 20, 2009.

³ A "5150 hold" is an involuntary 72-hour commitment for treatment and evaluation, conducted when a person is determined to be a danger to self or others due to mental disorder. (§ 5150.)

⁴ Mother had had a mental health case manager and psychiatrist since 2002, but was referred for more intensive case management services after her September 2008 hospitalization.

The jurisdiction/disposition report, filed June 22, 2009, recommended foster care with reunification services for the parents. The report stated:

The informal supervision social worker advised against returning the minor to mother's care due to her ongoing mental health problems, which jeopardized the minor's safety.

A mental health assessment of mother and the minor showed "financial stressors, exposure to paternal substance use, parental conflict, father currently in substance abuse residential treatment . . . [,] a limited support system due to family history of mental health problems . . . , domestic violence, and substance use." Mother, a former special education student, had learning disabilities and reading difficulties. Father said he had also been in special education and had been diagnosed with ADHD (Attention Deficit Hyperactivity Disorder). The minor exhibited disobedience, low frustration tolerance, sleep disturbance, difficulty in sharing, and disruptive behavior.

Mother denied substance abuse and domestic violence. She had never held a job and thought her reading difficulties would make it hard to get or keep one.

The minor was doing well in foster care. He had a speech impairment or disability for which he was receiving services.

Mother had visited the minor consistently. The visits were positive, and the minor appeared bonded to her.

At a contested jurisdiction/disposition hearing on August 31, 2009, the juvenile court declared the minor a

dependent of the court, ordered him placed in foster care, and ordered reunification services for the parents.

The six-month report recommended continued services for the parents, although their participation had been erratic. The juvenile court so ordered. Mother was ordered to attend dependency drug court and a dual diagnosis treatment program.

The 12-month report recommended that the parents receive further services and unsupervised visitation.

Mother had fully engaged in services, made significant progress in all areas, and visited consistently with the minor. Her mental health issues remained, but she appeared to be taking her medications and was more focused in communicating with others. She would still need to demonstrate that her mental health had stabilized and that she could obtain suitable housing for the minor.

On July 8, 2010, the juvenile court made the recommended findings and orders for further services and unsupervised visitation with the return of the minor to the parents as the permanent plan.

The 18-month report, filed October 18, 2010, recommended a 30-day continuance of the impending hearing (set for November 4, 2010), with the plan of returning the minor to the parents under dependent supervision. The minor was scheduled to begin unsupervised visits on October 13, 2010, and overnight visits on October 22, 2010.

The parents had just moved into a one-bedroom apartment. They received cash assistance and father worked part-time. They

were drug testing negative. Mother had completed all services; father had completed all but anger management.

The minor, now four years old, had improved significantly in his speech and did not need mental or emotional therapy. He was doing well in his foster placement. The foster parents were willing to adopt, but supported reunification if possible.

In an addendum filed November 6, 2010, the Department changed its position and recommended terminating the parents' services and setting a section 366.26 hearing. The addendum stated:

The foster parents reported that on October 29, 2010, mother panicked during the minor's visit at the parents' home and took him to the emergency room unnecessarily. At the hospital, father appeared under the influence of a substance, and mother appeared under the influence or off her medication.

On November 1, 2010, mother told the social worker she did not want custody of the minor because she wanted to travel around the country with the maternal grandmother and to "travel to her reservation and to learn her tribal language." She claimed father was tired of dealing with the Department.

When father was told of mother's statement, he said this was all news to him and mother must have "gone bonkers." He wanted custody of the minor, but had no job and no place to live except the apartment mother was paying for.

The foster parents wanted to adopt the minor as soon as they had finished adopting two other children in their care.

A second addendum, filed November 16, 2010, stated: The foster mother said that the minor did not ask about visits or talk about his parents at all. He did not seem anxious or concerned about not seeing them.

On November 4, 2010, after making repeated threats to kill father, mother was placed on a 5150 hold and admitted to a psychiatric center.

The maternal grandmother told the social worker on November 5, 2010, that mother had been off her medication for weeks, supposedly because father had thrown the medication away. After the October 29 visit with the minor, mother had not slept for days. Mother had been afraid to report going off her medication because she thought she would not be allowed to visit the minor. The maternal grandmother also said father often took off by himself, often going to his father's home "where there is alcohol and drug abuse going on."

On November 9, 2010, father called the foster mother, sounding "hyper" and rambling on about many subjects. He thought mother had been off her medication for a while.

On November 10, 2010, mother (apparently released from the psychiatric center) contacted the social worker and asked about visitation, but her conversation was unfocused. The social worker notified mother of the court hearing now scheduled for November 18.

On November 12, 2010, mother contacted the social worker, who said she might not be able to see the parents before the

court hearing on the 18th. Mother began yelling, "What court hearing?"

On November 15, 2010, mother called the social worker, very upset and "verbally jumping from subject to subject." Among other things, she said father had been drinking again and had disappeared two and a half days ago; he had been approved for Section 8 housing and she did not want him coming back to the apartment because she was afraid he was "using" again; she had lost the foster family agency's phone number; and she did not know what to do or where father was.

STARS (Specialized Treatment and Recovery Services) reported that mother was noncompliant for the period October 15 to October 31, 2010, for failure to attend the required number of support groups. Mother had tested once during this period and tested negative. Father was compliant during this reporting period.

A third addendum filed December 20, 2010, recommended termination of parental rights and adoption.

According to the addendum, mother reported on December 2, 2010, that her psychiatrist had increased the dosage of one of her three daily medications. She knew she was not well enough to have the minor reside with her, but wanted to continue visiting him.

Father entered a residential drug treatment facility, from which he was transported to a mental health facility. After his release on December 15, 2010, he went back to his and mother's apartment. On December 16, 2010, he contacted the social worker

and said that he and mother were together but not doing well; he could not be around her much because doing so made him want to drink.

At a contested permanency hearing on December 22, 2010, the juvenile court terminated the parents' services and set a section 366.26 hearing for April 14, 2011.

On March 22, 2011, mother filed a section 388 petition requesting the return of the minor to her custody under a plan of dependent supervision, or the reinstatement of reunification services. She alleged that since the order terminating her services, adjustments to her medication had succeeded in managing her mental health symptoms, "which allow[ed] her to provide a safe home environment for [the minor]." She alleged that the order she requested would be in the minor's best interests because he and his parents had "a strong nurturing relationship" and only four months ago it was recommended that he return to the parents "instead of a stranger."

Father filed a section 388 petition requesting the same relief, alleging that he was clean and sober and attending AA/NA meetings, both parents were more stable now, and they continued to have stable housing.

The juvenile court set the parents' section 388 petitions for hearing along with the section 366.26 proceeding.

The section 366.26 report recommended termination of parental rights and adoption.

According to the report, the minor was generally adoptable.

The parents regularly and consistently visited him (most recently twice a month) and their conduct was appropriate, but they no longer had "the primary bond" with him. Neither parent was ready to take him into their home.

On March 18, 2011, the minor was ordered placed in a new foster home. The minor immediately began to call his new caregivers "Mom and Dad." He appeared "very happy and emotionally secure" in his new placement. He sought out his caretakers to meet his needs and hugged and kissed them. They wanted to adopt him.

In the minor's prior foster home, there had been a large number of dependent children. He and the others had been placed in school programs, where he had significant behavior problems. He had had early intervention services for language, speech, and hearing difficulties.

The minor's new foster mother was trained as a special education instructor. She stayed at home with the minor full time and worked with him on his communication skills, which had improved already in one month, though his speech was still delayed. The family had not seen any of the behavior problems reported by the minor's prior school.

On April 13, 2011, the maternal grandmother filed a section 388 petition seeking the minor's removal from his current foster home and his return to his prior foster home. The maternal grandmother also claimed Indian ancestry.

On April 14, 2011, after hearing argument on the section 388 petitions, the juvenile court denied them, finding

that they did not state new evidence or changed circumstances and did not show that the proposed orders would be in the minor's best interest. The court then set trial on the section 366.26 hearing and the new Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)) issue raised by the maternal grandmother.

The matter came on for hearing as to section 366.26 and ICWA on May 25, 2011. After finding that ICWA did not apply and hearing testimony from father and the adoptions social worker, the juvenile court ordered the parents' rights terminated and the placement of the minor for adoption.

DISCUSSION

I

The Section 388 Order (Case No. C067974)

In case No. C067974, mother contends the juvenile court abused its discretion by summarily denying her section 388 petition. We disagree.

A parent petitioning the juvenile court under section 388 for a modification of a court order must allege facts showing that new evidence or changed circumstances exist and that the proposed modification would be in the child's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The parent has the burden of proof by a preponderance of the evidence on both points. (Cal. Rules of Court, rule 5.570(h)(1).)⁵ The court may consider the entire history of the case in assessing

⁵ References to rules are to the California Rules of Court.

the petition. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

To decide whether a parent has met his or her burden, the juvenile court must consider such factors as the seriousness of the problem that led to the dependency, and the reason for the problem's continuation; the degree to which the problem may be and has been removed or ameliorated; and the strength of the relative bonds between the dependent child and the child's parents. The court may also consider any other factors that apply in a given case. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1229; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

When a parent brings a section 388 petition after the termination of reunification services, the best interests of the child are of paramount importance. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Therefore, the juvenile court looks not to the parent's interest in reunification but to the child's need for permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

The petition must be liberally construed in favor of its sufficiency. (Rule 5.570(a).) However, if the court finds that even so construed the petition fails to make a prima facie case as to either or both tests under section 388, the court may deny the petition without an evidentiary hearing. (§ 388, subd. (d); rule 5.570(d), (h)(2); *In re Justice P.*, *supra*, 123 Cal.App.4th at p. 189.)

We review the juvenile court's ruling denying a section 388 petition for abuse of discretion. (*In re S.R.* (2009)

173 Cal.App.4th 864, 866.) We reverse only if the ruling exceeded the scope of the court's discretion, or if under all the evidence (including reasonable inferences from the evidence), viewed most favorably to the ruling, no reasonable judge could have made that ruling. (*Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1459; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

Here, the juvenile court found that mother had not alleged a prima facie case as to either changed circumstances or the child's best interests. This finding was well within the court's discretion.

As to new evidence or changed circumstances, mother alleged only that due to a change in her medications she was now managing her mental health problems. But this allegation is not new. Again and again, mother had appeared to stabilize, sometimes after changing prescriptions or dosages. But eventually she destabilized again, either because she stopped taking her medications or because they stopped working. Thus, the bare allegation of mother's petition, when viewed in light of the history of the case (*In re Justice P., supra*, 123 Cal.App.4th at p. 189), did not state a prima facie case that her circumstances had changed sufficiently to justify modifying the juvenile court's existing orders. In sum, mother's allegation did not state a prima facie case that her grave mental disorder, the main cause leading to the dependency, had been permanently removed or ameliorated, such that the minor could safely be returned to her or that it would serve a useful

purpose to reinstate her services. (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1259; *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.)

Based on the lack of changed circumstances, the juvenile court did not abuse its discretion by denying mother's section 388 petition without an evidentiary hearing.

II

The Order Terminating Parental Rights (Case No. C068345)

In case No. C068345, mother purports to appeal from the juvenile court's order terminating her parental rights. However, her brief does not cite that order or make any argument against it. Instead, even though the complete record through the termination of parental rights and mother's notice of appeal from that order was prepared for case No. C068345 before mother filed her brief herein, mother discusses only the section 388 order and earlier matters in the proceeding, and cites only the notice of appeal from the section 388 order.⁶

Because mother has shown no possible ground for reversal of the order terminating her parental rights, we affirm that order summarily.

⁶ The appeal in case No. C067974 was filed by appointed counsel. However, after the order terminating mother's parental rights was filed, mother retained separate counsel to pursue the appeal in case No. C068345.

DISPOSITION

The orders denying mother's Welfare and Institutions Code section 388 petition and terminating her parental rights are affirmed.

_____ HOCH _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ ROBIE _____, J.