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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Sacramento)**

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

C069282

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD231233)

Plaintiff and Respondent,

v.

G.J. et al.,

Defendants and Appellants.

Appellants G.J., mother, and T.C., father of the minor J.J., appeal from the juvenile court's orders denying mother's petition for modification and terminating their parental rights. (Welf. & Inst. Code, §§ 395, 388, 366.26.)<sup>1</sup> Mother contends the juvenile court abused its discretion in denying her petition for modification, and improper limits on visitation compromised the

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

order terminating her parental rights. Father joins in mother's brief. We shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In January 2011, mother arranged to leave the one-year-old minor (born January 2010) at the South Sacramento Crisis Nursery for two weeks because she was homeless. The minor was placed in protective custody after he was found to have multiple semicircular red marks on his buttocks and back areas. When asked about the injuries, mother said she needed a babysitter at the last minute and left the minor with a person referred by a friend. The minor remained with this person for several hours, and was retrieved by mother's friend. After seeing a couple of bruises when she bathed the minor a few hours later, mother called the caretaker, who said they "'whooped'" the minor because he was playing with a plug socket. Mother did not know the name of the caretaker and refused to supply the name of her friend. Mother later told the police that she inflicted the injuries by striking the minor three times on the back with a belt. Mother was arrested for felony child endangerment. (Pen. Code, § 273a, subd. (a).)

The Sacramento County Department of Health and Human Services (DHHS) filed a dependency petition in January 2011, alleging mother inflicted serious physical abuse on the minor and abuse of a half sibling. (§ 300, subds. (a), (j).) The juvenile court detained the minor and found father was the presumed father.

The social worker could not find mother after she was released from jail in late January 2011. Mother's listed cell phone number was disconnected; she later called the social worker from another number and asked about the status of her case. Mother did not ask about the minor or how to get him back.

Mother lived with her aunt (the minor's maternal great-aunt) in a guardianship from the time she was 13 until the guardianship was terminated at age 15. Mother had her first child when she was 13 or 14. This first child was removed from mother's care after mother was arrested in June 2008 for battery on another resident of her group home. Reunification services and parental rights were eventually terminated as to the first child.

Father appeared to be under the influence of a controlled substance or was otherwise mentally impaired when he was interviewed in January 2011. He did not sign a declaration of paternity and never held the minor out as his own. He wanted a paternity test to see if the minor was his child. Father did not want to get upset about the minor's injuries if the child was not his. Paternity testing later established he was the minor's father.

In a February 2011 interview, mother said she struck the minor several times on the buttocks and the back after she caught him licking electrical sockets. Mother said she preferred to discipline the minor so he would not die from

electrocution, and explained that she told the minor why he was being disciplined while hitting him.

Mother was now pregnant with her third child. She attended a domestic violence group, was planning to enroll in a physical abuse perpetrator class, and was attending parenting anger management classes. She told the social worker that she entered foster care when she was 13 and was recently emancipated from the foster care system, having just turned 18. Her support system is her fiancé, B.W., who was 37 years old.

In March 2011, the juvenile court sustained the petition and denied services to the parents.

The July 2011 selection and implementation report noted mother consistently visited the minor one hour a week between February 8 and May 3, 2011. Mother cancelled only two visits and was engaging and appropriate with the minor during her visits. Mother brought her new child, the minor's half sibling, G.W., on a May 10, 2011 visit. She tried to pay attention to both children during the visit, but the minor was tired and not very interested in engaging with his mother. The social worker reduced mother's visitation to twice monthly after this visit.<sup>2</sup> Since then, mother missed all but one of her visits. Father had one visit with the minor; he was attentive to the minor's needs but the child did not interact with him.

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<sup>2</sup> Mother testified the visits were reduced to one time per month.

The minor sought out his current caretakers for comfort, calling them "'mama'" and "'dada.'" The caretakers expressed interest in adoption and had completed their home study.

Mother filed a petition to modify (§ 388) in July 2011, seeking the minor's return to her custody or reunification services. The petition alleged changed circumstances of mother participating in reunification services for the minor's half sibling, G.W., and having completed domestic violence, anger management, and parenting programs. In addition, mother was participating in a general counseling program and a program specializing in physical abuse treatment. Mother's counselors felt positive about her active participation in the programs and the fact that she was addressing the issues which led to the dependency.

At a combined section 388 and 366.26 hearing, mother testified that she lost custody of the minor because she spanked him when he was playing with electrical sockets at home. Spanking him was wrong because it got the minor removed from her custody. If the same incident happened today, mother would remove the minor from the socket and give him a toy to play with. Her services have taught her how to deal with stress and that it is not right to physically abuse a child.

Mother last visited the minor for an hour on the Friday before the trial. He was crying when she arrived, but stopped after mother held and comforted him. They played together and she fed him graham crackers during the visit. The minor did not

call her "mom" or "mommy" as he does not talk to her during visits. Before the social worker reduced visits, mother had visited the minor once a week.

Mother testified that she spanked the minor with a cord used to hang your cell phone on. She denied telling the social worker that she had hit the minor with a belt. She could not remember what she told the police about the incident because they interrogated her for about three hours.

The juvenile court found mother was not "credible at all in her testimony" regarding how the minor was abused. By still minimizing the behavior that led to the dependency petition, mother has not established changed circumstances. The juvenile court was also troubled by mother's lack of consistent visitation. The minor was not bonded to mother, having bonded to someone else. The juvenile court found mother had not established changed circumstances or that granting the petition was in the minor's best interests, and denied the section 388 petition.

After the parents' counsel argued it would be detrimental to the minor to terminate parental rights, the juvenile court terminated their parental rights.

## DISCUSSION

### I. The Section 388 Petition

The parents<sup>3</sup> contend that the juvenile court erred in denying mother's section 388 petition. We disagree.

A petition to modify a juvenile court order under section 388 must allege facts showing that new evidence or changed circumstances exist, and that changing the order will serve the child's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).) In assessing the petition, the court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

We review the denial of a section 388 petition after an evidentiary hearing for abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 866.) This means that we reverse only 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. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) In other words, where there is conflicting evidence, we reverse only if the evidence compels a finding for the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

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<sup>3</sup> DHHS asks us to dismiss father's appeal because he does not raise any issues of his own. Since we affirm the juvenile court's orders, we do not address this contention, which raises complex issues regarding standing and statutory interpretation.

The best interests of the child are of paramount consideration when a modification petition is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this juncture, the juvenile court looks not to the parent's interests in reunification but to the needs of the child for permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "[W]hen a child has been placed in foster care because of parental neglect or incapacity, after an extended period of foster care, it is within the court's discretion to decide that a child's interest in stability has come to outweigh the natural parent's interest in the care, custody and companionship of the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

Mother asserts that the evidence shows she grew "from an angry 17-year-old minor, herself buffeted around by the juvenile dependency system, to a far more mature 19-year-old woman, interested in taking on the responsibilities of adulthood." She notes her completion of services and "universal commendations regarding her participation and progress by the providers."

Mother also claims that reducing her visitation to an "untenable" once a month was "legally and constitutionally abhorrent."<sup>4</sup>

According to mother, the factors set forth in *In re Kimberly F.* (1997) 56 Cal.App.4th 519 for evaluating a modification request after termination of services favored reinstating services here. These factors include: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*Id.* at p. 532.)

The problem that led to the dependency is grave; mother beat her one-year-old son with a belt. She initially lied about the abuse before finally admitting what happened to the police. The bond between mother and the minor is minimal, as the minor has spent much of his life out of her care and bonded to his prospective adopted parents. Whether or not the problem can be readily ameliorated, it is clear mother has not done so. The juvenile court found she was not credible regarding the abuse and continued to minimize what she had done to the minor. When asked why it was wrong to abuse the child, mother responded that it led to her losing custody over him. That is not the answer

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<sup>4</sup> We address the contentions regarding visitation in part II of the Discussion, *post*.

of an abusing parent who has changed her circumstances. Abuse is wrong because it is wrong to injure your child; rather than addressing what she did to her son, mother focused on how *she* was hurt by beating the one-year-old minor.

At best, mother has presented no more than changing circumstances. She may have completed classes, but she has not learned the lessons. The minor has bonded to his caretakers and is on the path to being adopted by them. Ordering six months of services is not in his best interests. It was not an abuse of discretion to deny mother's petition.

## **II. Visitation and Termination of Parental Rights**

Citing *In re Hunter S.* (2006) 142 Cal.App.4th 1497 (*Hunter S.*), mother contends that the order terminating parental rights was an abuse of discretion because it was derived from an unwarranted reduction in visitation. Mother claims there was no justification for reducing visitation. Since the reduced visitation impaired mother's relationship with the minor and possibly prevented application of the beneficial parent-child relationship exception to adoption (§ 366.26, subd. (c)(1)(B)), she argues that the order terminating parental rights cannot stand.

Mother did not object to the reduction in visitation, which forfeits the contention on appeal. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)

The contention is also without merit. Mother's visits were reduced from once a week to twice monthly after the minor became

tired during a visit in which mother brought her other child, G.W. Reducing stress on the minor is a valid reason to limit visitation. If mother tires the minor by bringing another child to the visits, DHHS was well within its rights to reduce visits in order to protect the minor. Mother did not consistently visit the minor after visits were reduced, which precludes any finding that she was prejudiced by DHHS's decision.

*Hunter S.* is inapposite. In *Hunter S.*, the juvenile court ordered visitation only "as can be arranged" and then made no attempt to enforce the order when the child refused visits, but also made no finding of detriment. (*Hunter S.*, *supra*, 142 Cal.App.4th at p. 1505.) At issue was the juvenile court's failure to enforce its order, leaving the enforcement or lack of same to the child. (*Ibid.*) Here, DHHS allowed visitation, albeit in reduced number after the visits tired the minor. That decision could not have prejudiced mother, and thus did not prevent the juvenile court from terminating parental rights.

#### **DISPOSITION**

The juvenile court's orders are affirmed.

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BUTZ, J.

We concur:

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ROBIE, Acting P. J.

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MURRAY, J.