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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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

EL DORADO COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

C069591

(Super. Ct. No.
SDP20110008)

M.C. (father) appeals from the juvenile court's orders denying his petition to modify a prior court order and terminating his parental rights as to minor A.C. (Welf. & Inst. Code, §§ 366.26, 388.)¹ Father contends only that the court erred by denying his section 388 petition. We affirm.

¹ Further undesignated section references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

On April 4, 2011, the El Dorado County Department of Human Services (the Department) filed a section 300 petition as to three-year-old A.C., alleging: Mother, with whom A.C. lived, and father had substance abuse and domestic violence histories. Both regularly used methamphetamine. Father had recently smoked marijuana and had two DUI convictions. A.C. feared returning to father because he was "mean" and spanked her painfully. The parents failed to reunify with A.C.'s older sibling (subsequently adopted) after receiving 12 months of services.²

The juvenile court ordered A.C. detained on April 6, 2011.³

The jurisdiction report noted that the Department had two prior cases with the parents. A.C.'s older sibling was detained at birth in May 2006 after testing positive for methamphetamine; after drug relapses, the parents' services were terminated in June 2007, and their parental rights were terminated in October 2007. In February 2008, when A.C. was six months old, the Department filed a section 300 petition naming her which resulted in a court-ordered voluntary maintenance plan, including outpatient substance abuse services and drug testing

² Mother's parental rights were also terminated. As she is not a party to this appeal, we omit most of the facts relating to her.

³ A half sibling, B.S. (born in June 2010), was detained along with A.C. He is not involved in this appeal.

for the parents; at the parents' request, the case was closed in June 2008.

According to the report, father had pending criminal charges for possession of drug paraphernalia and hypodermic needles. Since 2006, father had participated in practically every substance abuse treatment program the Department had to offer, yet he still struggled to maintain sobriety. As of April 15, 2011, father said he had been clean for six weeks; he had been sentenced to the Proposition 36 program and would attend a drug court program and an intensive outpatient treatment.

Father admitted a history of domestic violence with mother. There were also recent police reports of domestic violence with his present live-in girlfriend, who was arrested along with him in January 2011 for being under the influence of a controlled substance. His visitation rights with A.C. had been suspended until he completed anger management classes. He said he intended to complete the full 52-week program.

A.C. was afraid of father's physical abuse and yelling. While playing, A.C. pretended to choke herself or others. She said that when she went home this time she would be "really good" so that mother would not choke her.

Officers responding to calls at father's home called the conditions there "'deplorable and dangerous.'"

At the jurisdictional hearing on April 20, 2011, father submitted on the Department's reports. The juvenile court sustained the allegations of the section 300 petition.

The disposition report, filed May 3, 2011, recommended bypassing services to the parents (§ 361.5, subds. (b)(10), (11), (13)) and setting a section 366.26 hearing. According to the report, A.C.'s foster parents wanted to adopt her and her half sibling. Father visited A.C. regularly and was attending anger management classes and a 52-week batterers' program.

At the contested disposition hearing on May 18, 2011, the juvenile court bypassed services to the parents, set a section 366.26 hearing, and reduced visitation to once a month.

The section 366.26 report, filed August 8, 2011, recommended termination of parental rights and adoption by the present caretakers.

On August 29, 2011, father filed a section 388 petition requesting reunification services. The page of the petition form which requires the petitioner to allege what changed circumstances or new evidence exist and to explain why the proposed order would be in the child's best interest is not in the record. However, the petition attached documentation of father's substance abuse treatment, negative drug testing, and participation in mental health services after receiving diagnoses and prescribed medication for mental health problems.

The juvenile court set the section 388 petition to be heard at the section 366.26 hearing.

At the consolidated section 388/section 366.26 hearing on September 14, 2011, father testified as follows:

During the 2006 dependency proceeding, he received minimal services: he went to rehab a couple of times, did some

outpatient treatment, and attended a few AA and NA meetings, "but that was really all." He did not receive mental health services or counseling.

During the earlier case with A.C., according to father, the Department said there was no reason even to have a case open. The parents requested a voluntary plan, but the Department said that was not an option.

A.C. lived with father "[h]er whole life" until he and mother separated in December 2007. Then the parents had 50/50 custody until December 30, 2010, when the family court awarded mother full custody pending father's attendance at anger management classes. In the process of trying to regain 50/50 custody in family court, father learned that mother was homeless and was not properly caring for A.C., so he investigated and reported the matter to the Department on March 28, 2011.

Father had attended weekly anger management classes since November 2010; he was also about halfway through a voluntary 52-week program. He began mental health services in April 2011; he saw a clinician every two weeks and a psychiatrist once a month. Once he had finished his Proposition 36 classes (which also began in April 2011), he intended to start going to classes on anxiety and depression.

Father's Proposition 36 program required drug counseling twice a week, random drug testing plus weekly testing by probation, at least three AA or NA meetings a week, and "one-on-one counseling at different stages through the classes with [his] counselor there." He had been diagnosed with mental

disorders ("manic depression," "bipolar," and "rapid cycling")⁴ and had been prescribed medications for them (Abilify for depression and Depakote for mania) for the first time in his life.

Father had tested negative for all controlled substances since he began his Proposition 36 program. Although he was required to attend only three AA or NA meetings per week, he sometimes attended five. He had also been through the 12 steps with his counselor, and now was going back through the fourth step. His sobriety date was April 1, 2011.

Father had consistently visited A.C. once a month for an hour. She always ran up to him, hugged him, and told him she missed him. She would always apologize profusely to him (because she thought it was her fault that she had been removed from her parents) and ask if she could come home. During the visits, he read to her and they played games. He had never been interrupted or redirected during a visit.

Father felt that he and A.C. had a "very close" bond. If he could stabilize on his medications, he would feel able to assume full responsibility for her; he was "not quite there yet." He believed he could stay clean and sober and take proper

⁴ The documentation attached to father's section 388 petition listed his diagnoses as bipolar, rapid cycling, and posttraumatic stress disorder. The term "manic depression" is not used in the most recent edition of Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR (4th Ed. 2000)), which prefers "bipolar disorder." (*Id.* at pp. 382-397.)

care of her this time because he had "a clearer picture of [him]self and [his] problems."

After hearing argument, the juvenile court summarily denied father's section 388 petition and ordered the termination of parental rights and the implementation of a permanent plan of adoption.

DISCUSSION

Father contends the juvenile court erred by denying his section 388 petition. We disagree.

A petition to modify a juvenile court order under section 388 must factually allege new evidence or changed circumstances, and that the minor's best interests will be served by modifying the existing order. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof on both points 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.)

To decide whether father met his burden, the juvenile court had to 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 her parents or caretakers. However, this list is not exhaustive. (*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 a section 366.26 hearing has been set, the best interests of the child are of paramount importance. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 [petition brought after termination of reunification services].) 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.)

When a section 388 petition has been denied after an evidentiary hearing, we review for abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 870.) We reverse only if the ruling exceeded the scope of the court's discretion or, if under all 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.) Where the evidence conflicts, 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, 1527-1529.)

Because the juvenile court did not make express findings as to the two prongs of the section 388 test, we presume the court impliedly found father had not satisfied either prong. That was within the court's discretion.

As to changed circumstances, father showed that he had undertaken substance abuse and mental health treatment, but not that he had overcome his addiction or the mental problems that caused his chronic anger. By his own account, he had been clean

and sober for only five months by the time of the section 388/section 366.26 hearing, after years of substance abuse. (See *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423 [seven months of drug rehabilitation did not outweigh long history of addiction].) He admitted that he would not feel ready to take care of A.C. before he had stabilized on his medications, which he had also just started to receive five months ago. Though he knew the names of the mental disorders with which he had been diagnosed at that time, his testimony did not show any deep understanding of those conditions or how he would deal with them in the future, aside from medication. Finally, he presented no supporting testimony from any substance abuse or mental health professionals who had worked with him. Thus, though his circumstances may be changing, he did not establish by a preponderance of the evidence that changed circumstances existed within the meaning of section 388.

But even if father showed changed circumstances, he did not show that granting him reunification services would be in A.C.'s best interests. When a child is adoptable, and her caretakers, with whom she has bonded, want to adopt her, the court's objective must be to provide her with stability and permanence as soon as possible through adoption. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) This was A.C.'s situation. Granting services to father would have frustrated that objective.

The juvenile court did not err by denying father's section 388 petition.

DISPOSITION

The orders denying father's section 388 petition and terminating his parental rights are affirmed.

NICHOLSON, J.

We concur:

RAYE, P. J.

DUARTE, J.