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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

DANIELLE W.,

Defendant and Appellant.

C069785

(Super. Ct. No.  
JD230881)

Danielle W. (mother) appeals from the juvenile court's orders denying her petition to change court order and terminating her parental rights as to minor Brianna M. (Welf. & Inst. Code, §§ 366.26, 388.)<sup>1</sup> Mother contends the court abused its discretion by refusing to grant her reunification services and by finding that the beneficial parental relationship exception to adoption did not apply. We affirm.

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

## FACTUAL AND PROCEDURAL BACKGROUND

On July 15, 2010, the El Dorado County Department of Human Services filed a section 300 petition as to the 11-month-old minor, alleging: On or about July 12, 2010, El Dorado County law enforcement found methamphetamine paraphernalia in the vehicle in which mother, father (Thomas M.), and the minor were residing. The parents stored the minor's baby food in a baggie containing 15 to 20 live TNT fireworks, easily accessible to the minor. Mother tested positive for methamphetamine. She was arrested for child endangerment, possession of drug paraphernalia, being under the influence of a controlled substance, possession of a stolen checkbook, possession of a blank checkbook with intent to defraud, providing false information to a peace officer, and impersonating her sister. Father, who was also arrested, was aware of mother's methamphetamine abuse and failed to provide adequate care to the minor.

According to the detention report, an infant was removed from mother's custody in 2006 due to substance abuse and physical abuse. She was pregnant. She and father, both incarcerated in the county jail, had long criminal histories.

The jurisdiction report stated mother, who was on active parole for identity theft, admitted a methamphetamine habit dating back to age 20, for which she had previously been treated. The report recommended transferring the case to Sacramento County, where the parents had always lived. The juvenile court did so.

According to the transfer-in/disposition report by Sacramento County Department of Health and Human Services (the Department), mother hoped to obtain a plea bargain including residential drug treatment. She claimed she broke up with father. She was currently pregnant with twins. The minor was doing well in foster placement, and the foster parents were willing to provide permanence.

The Department recommended granting reunification services to father, but denying them to mother because she did not benefit from prior court-ordered substance abuse treatment. (§ 361.5, subd. (b)(13).)<sup>2</sup>

At the contested disposition hearing on December 28, 2010, the juvenile court denied services to mother.

On April 8, 2011, mother filed a section 388 petition seeking services. She alleged, with supporting documentation: On release from incarceration, she completed an alcohol and drug assessment. She entered a residential drug treatment program on March 18, 2011. She was drug testing negative and following the program's rules. Her recently born infant, Daniel W., was in her custody, under a six-month informal supervision agreement.<sup>3</sup> She and Daniel W. maintained good supervised visits with Brianna

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<sup>2</sup> The juvenile court granted services to father, but ultimately terminated them. Both his and mother's parental rights were terminated. Because he is not a party to this appeal, we omit further details pertaining to him.

<sup>3</sup> The other twin did not survive childbirth.

M. She maintained close contact with the social worker. She wanted to recover from substance abuse and reunify with the minor.

The Department's pre-permanency review report recommended that the minor (now almost two years old) be adopted by her present caretakers. The minor had been in their care since July 2010. She was doing well in their home and was strongly attached to them and their children.

Supervised visitation began at the end of March 2011. The supervising social worker thought the visits went "OK," but the foster mother felt mother displayed a poor attitude toward the minor and the foster mother.

On June 22, 2011, the juvenile court denied mother's section 388 petition, finding she did not prove the requested order was in the child's best interest.

On August 18, 2011, mother filed another section 388 petition, requesting return of the minor to mother's custody or a grant of reunification services. She alleged she completed the dependency drug court program on July 20, 2011; she became an "officer" in her substance abuse treatment program; she entered an outpatient drug program; she completed her parenting course on June 15, 2011; she maintained stable housing since June 16, 2011, when she entered a transitional housing program; she complied with all informal supervision requirements as to Daniel W.; and she faithfully continued to visit the minor.

The Department declared mother had not progressed as to relationships and anger management. She wanted to have Daniel

W.'s alleged father, who was incarcerated on a drug-related conviction, live with them after his release. The foster mother felt threatened by mother's conduct. Furthermore, mother had not shown why granting her services would be in the minor's best interests: the minor spent longer out of mother's custody than in it, was never upset when her visits ended, and appeared to see her as a friendly visitor, not a parent.

The Department's section 366.26 report recommended proceeding with termination of parental rights and adoption. Subsequent reports stated mother was discharged from her treatment program and evicted from her transitional housing due to disruptive and abusive behavior, and described the criminal history of Daniel W.'s alleged father.

At the consolidated section 366.26/388 hearing, which began on November 17, 2011, mother testified on her own behalf. Transitional housing case manager Dedra Russell and adoptions social worker Kristina Silva also testified.

Mother testified as follows:

She completed her informal supervision program for Daniel W., which included substance abuse treatment.

Mother remained clean and sober for 16 months. She was now going to meetings and being taught how to prevent relapses, which she had not done before.

Mother believed she was dismissed from her previous substance abuse program (NCADD) for "disrespecting staff," but ascribed it to a personality clash with one counselor. She did not speak in group discussions because she feared other group

members would not keep disclosures confidential, but felt she benefited from the discussions simply by listening. She saw a psychiatrist for depression on her own after failing to get a referral through the program, but the psychiatrist declined to prescribe medication because she was going through treatment for a "tumor."

Mother admitted a staffer at her transitional housing program placed a "behavior alert" on her, but claimed she did not know any other staffer had seen a problem. She and the staffer had an altercation because the staffer did something with Daniel W. that mother thought was "out of line." She and counselor Dedra Russell, with whom she got along well, talked about the incident, and mother now knew better ways of dealing with such a situation. Mother admitted she was "opinionated and headstrong," but saw it as a positive trait because it would help her stay grounded and determined in her recovery.

After mother was discharged from NCADD, she enrolled in another program, Strategies for Change, which she expected to complete in April 2012. She preferred that program because it used a "choice-theory based" model of treatment, rather than a "disease theory" model.

Mother denied she had been in residential or outpatient substance abuse treatment before the current dependency began. In the past, she ran from her problems rather than try to solve them. Now she knew how to change her life and is dedicated to doing so. She enrolled at American River College recently, intending to train to become a substance abuse counselor.

Mother did not intend to have Daniel W.'s father move in with her, although she considered it because she felt he needed someone to believe in him after his release from incarceration. After talking to Russell, the social worker, and her support people about it, she concluded it was not a good idea.<sup>4</sup>

Mother visited the minor once a month for an hour since July 2011, usually taking Daniel W. -- previously it had been once a week. The minor played with her and Daniel W. The minor called her "mommy" at every visit. Mother felt it would be in the minor's best interest to reunite with her because "my baby is meant to be with us," and mother knew she would never revert to the person she used to be.

Dedra Russell testified she worked closely with mother as a counselor in transitional housing. Russell observed mother's behavior with Daniel W., which was appropriate, but Russell did not observe mother's visits with the minor. The transitional housing program had two months to go when mother was dismissed from it and NCADD. A multi-disciplinary team meeting, at which Russell was present, concluded mother had to leave because she engaged in "inappropriate outbursts, disrespect and [being]

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<sup>4</sup> Dedra Russell, who did not know of the criminal history of Daniel W.'s father, testified that it would concern her if she learned that his history included drugs, a DUI, willful cruelty to a child, battery against a person with whom he had had a dating relationship, and battery against a police officer. Even without knowing his history, she was concerned when mother requested having him live with her because it would "change[] the focus" from herself and her children. When Russell stated this concern, mother did not force the issue.

disruptive to groups." Four staffers in the transitional program had reported such problems, which led to a "behavior contract" for her before her dismissal.<sup>5</sup> Russell was aware there was a problem scheduling a psychiatric appointment for mother; by the time the problem was resolved, mother was no longer with Russell's agency.

Adoptions social worker Silva testified she received the case in July 2011. From having observed part of a visit between the mother and the minor, observing the minor in the foster home, and reviewing the case, Silva concluded mother's relationship with the minor was no more than that of a friendly visitor, and the minor was not bonded with Daniel W. The minor called her foster parents "mommy" and "daddy"; Silva did not observe the minor calling mother by that name.

According to the reports Silva reviewed, mother's statement she never did a court-ordered drug treatment program before the current dependency was not true. Silva was also concerned about mother's explanation for her discharge from the NCADD program because mother seemed to be avoiding responsibility for her behavior, "picking and choosing which people . . . were helpful to her," while rejecting counselors with whom she had disagreements. Furthermore, mother had problems not only with NCADD staff but also with the foster parents.

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<sup>5</sup> A behavior contract is a written document, signed by the client, which specifies the client's objectionable behavior and gives notice that failure to modify it will lead to discharge.

After hearing argument, the juvenile court ruled on mother's section 388 petition, concluding she showed changed circumstances since the decision to bypass services was made, but did not show it would be in the minor's best interest to return her to mother's custody or to grant services to mother. The problem which led to mother's loss of custody, long-term substance abuse, was very serious and not quickly or easily remedied. When mother had the minor in her custody (for less than a year at the beginning of the minor's life), she was abusing drugs, homeless, and "had violence in her background." Ever since then, for "the last two-thirds of her life," the minor lived with the foster parents; for nine months of that time, mother was in jail or a custodial drug treatment program and did not even see her. The social worker's testimony showed the minor's bond with her foster parents was much stronger than her bond with mother. Although mother maintained sobriety in a structured program, her discharge from NCADD and transitional housing, and its causes, constituted a red flag. So did the fact mother considered living with Daniel W.'s father, despite his serious criminal history. Together, these factors showed the minor would be at significant risk if returned to mother.

As to section 366.26, it was undisputed the minor was generally adoptable, and mother failed to establish the beneficial parental relationship exception to adoption applied. Mother seemed to be only a friendly visitor to the minor. The

relationship between them was not such that preserving it would warrant risking permanency and stability for the minor.<sup>6</sup>

For all these reasons, the court ordered the termination of parental rights and adoption as the permanent plan for the minor.

#### DISCUSSION

##### I

Mother contends the juvenile court abused its discretion by 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 new evidence or changed circumstances, and that changing the order 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 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 mother met her burden, the juvenile court had to consider such factors as the seriousness of the problem that led to the dependency and the reasons 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

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<sup>6</sup> The court also found mother failed to establish the sibling relationship exception to adoption. Mother does not contest this ruling.

bonds between the dependent child and the child's parents and caretakers. However, this list is not exhaustive. (*In re B.C.* (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 matter is set for consideration of terminating parental rights and adoption, the child's best interests are of paramount importance. (See *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 interest in permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

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, 870.) 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.) 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.)

The juvenile court found mother failed to show that granting her services or returning the minor to her custody would be in the child's best interests because: (1) she was a long-term substance abuser who had been sober for a relatively

short time and only under controlled circumstances; (2) her dismissal from NCADD and transitional housing, and her willingness to consider living with Daniel W.'s father despite his alarming criminal history, indicated flawed judgment and weaknesses in temperament; and (3) the minor, a very young child who had lived with her foster family for the greater part of her life, was far more closely bonded to them than to mother. Given the minor's need for permanence and stability, which the foster family was able to provide, the court's findings were well within its discretion.

Mother stresses her newfound sobriety and her successful completion of her informal supervision agreement as to Daniel W. This evidence showed changed circumstances, as the court found. But the court was also entitled to find mother did not show she could maintain sobriety outside the controlled environments (incarceration and treatment programs) in which she achieved it so far. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [seven months of drug rehabilitation did not outweigh long history of addiction].) The court could also reasonably find the circumstances of mother's dismissal from her first treatment program and eviction from transitional housing suggested she was not yet prepared to put the minor's needs above her own desire to assert her will and disregard advice that displeased her.

In response to the court's finding the minor was bonded to her foster family far more closely than to mother, mother asserts -- citing only to the claim of her trial counsel -- that on June 22, 2011, the court found the strength of the minor's

bonds to mother and to her caretakers was “‘about even.’” This argument fails for two reasons. First, the court’s alleged finding is not in the record, and trial counsel’s characterization is not evidence.<sup>7</sup> Second, and more importantly, that alleged finding, even if made, was almost six months old by the time of the section 388/366.26 hearing. The court’s very different finding at that hearing was supported by the Department’s reports and the testimony of social worker Silva. Mother does not explain why the court should have rejected that evidence, and we may not reweigh it. The court’s finding on that issue alone was sufficient to justify its conclusion that the changed orders mother sought would not have been in the minor’s best interest, which at this stage required permanence and stability. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

## II

Mother contends the trial court erred by finding that the beneficial parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. We disagree.

At the selection and implementation hearing, the juvenile court must choose one of four alternative permanent plans for a minor; the permanent plan preferred by the Legislature is

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<sup>7</sup> On June 22, 2011, the court denied mother’s first section 388 petition. The reporter’s transcript provided to us does not include the hearing of that date, and the minute order does not include any finding about the comparative strength of the minor’s bonds to mother and the foster family.

adoption. If the minor is adoptable, the court must terminate parental rights absent a showing of detriment to the minor. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 998; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) We uphold a juvenile court's ruling declining to find such an exception if the ruling is supported by substantial evidence. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809.)

To prove the beneficial parental relationship exception applies, mother must show she has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) It is not enough simply to show "some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1349.) There must be a significant, positive emotional attachment between mother and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) This is not such a case.

Viewed most favorably to the judgment, the evidence showed the minor called her foster parents "mommy" and "daddy" and viewed mother only as a friendly visitor. This is not surprising, given the minor had spent the greater part of her young life in the foster parents' care. Despite mother's regular visitation and contact with the minor, substantial evidence supports the court's finding the relationship between them was not so significant and positive as to outweigh the benefits of adoption. The juvenile court did not abuse its discretion by finding the beneficial parental relationship exception to adoption did not apply.

DISPOSITION

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

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NICHOLSON, Acting P. J.

We concur:

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HULL, J.

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MURRAY, J.