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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. Y., a Person Coming Under  
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
  
Plaintiff and Respondent,  
  
v.  
  
V. D.,  
  
Defendant and Appellant.

C069925  
(Super. Ct. No. JD230925)

Appellant V. D., the mother of the minor J. Y., appeals from the juvenile court's orders denying her petition for modification and terminating her parental rights. (Welf. & Inst. Code,<sup>1</sup> §§ 395, 388, 366.26). She contends that it was an abuse of discretion for the juvenile court to deny her petition

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

for modification seeking reunification services and custody of the minor. We affirm.

#### BACKGROUND

Mother brought the minor to Mercy San Juan Hospital in August 2010. A medical examination of the one-month-old minor determined she had sustained a fractured left femur, four fractured ribs, a bucket handle fracture of the medial corner above the ankle joint, and a greenstick fracture of the proximal left radius. The minor underwent surgery and was placed in a half body cast. Doctors determined that the injuries were of different ages. Mother could not explain how her child was injured.

The Sacramento County Department of Health and Human Services (the department) filed a dependency petition in August 2010, alleging jurisdiction of the minor pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse). The minor was detained later that month.

A department social worker interviewed mother in September 2010. Mother denied having seen anything suggesting the minor was hurt. She said that her former boyfriend, J. S., was never left alone with the child. She admitted leaving the minor with her roommate when she and J. S. went to the drugstore to get medicine. She also once left the child with the maternal grandmother for about an hour. Mother bathed the child and never saw a bruise on her. She was no longer in a relationship with J. S., and had moved out of the home where they lived.

However, she did not think J. S. harmed her child, and had said so to the police. Mother said that she broke up with J. S. in case there was any chance he could have hurt the minor.

Mother knew J. S. had a prior conviction for injuring a child. In January 1997, J. S. inflicted extensive injuries on his one-and-one-half-month-old son, including brain hemorrhaging, a lacerated liver, and broken ribs. The injuries were of different ages, and the infant sustained permanent brain damage as a result of the attacks. J. S. was convicted of three counts of felony child endangerment and sentenced to 13 years and 4 months in state prison. Mother said that J. S. told her his son fell off the couch and he then fell onto him.

The minor's caregiver reported mother was aggressive with her on the telephone and was bringing people with her to the medical visits. The maternal aunt withdrew her request for placement in November 2010, stating that mother's "uncontrollable anger issues, temper, and selfishness" kept her from seeing the minor's best needs or from putting the minor's needs before her own.

A February 2011 report noted mother was regularly visiting the minor. Mother's visits were appropriate and the baby appeared to be soothed by her presence. She successfully completed a domestic violence program, was almost finished with physical abuse counseling, and was in a three-day outpatient drug program.

Mother reported that she was now living with the maternal grandmother. She said J. S. had watched the minor one or two

times -- once when she went to the bathroom and another time somewhere else. Mother thought J. S. might have done something to the minor but was not sure.

The department was opposed to reunification services, noting that mother had already participated in various services but continued to be ambiguous about the cause of the minor's injuries.

At the contested jurisdiction and disposition hearing, mother testified that she discovered J. S. had been in prison when they were dating, but she did not know he had been convicted of child abuse until the minor's removal. She recently realized that he had hurt her child.

Mother said she left the minor with J. S. in August 2010 when she went to a health center after her stitches were torn. She also left the baby alone with him when she went to the garage to do laundry. When she returned, the baby was crying and mother noticed "teeth marks" on the minor's neck.

Mother admitted seeing J. S. as late as the prior week. She would talk to him on the phone and text him at least five times a day. Mother had spent the night at J. S.'s residence within the prior two weeks. She told her services providers that she was no longer in a relationship with J. S., but had not informed them that she was still seeing him. Mother claimed she was letting J. S. think she was still interested in him in order to obtain information from him.

Mother did not know when the minor was hurt, but knows she did not hurt her baby. The minor had been crying very

differently on the morning mother took her to the hospital, crying every time she put her down. Mother had smoked marijuana with J. S. on the night before the injury; she wondered if she had rolled over her baby and caused the injuries.

After cross-examination, mother waived her trial rights and submitted the matter. The juvenile court sustained the petition and denied reunification services pursuant to section 361.5, subdivision (b)(5).

The August 2011 selection and implementation report related that mother's twice monthly visits remained consistent and appropriate. The minor made a good recovery from her injuries. She was very comfortable with her current caretakers, who were approved for adoption home study.

Mother filed a petition for modification (§ 388) in August 2011. The petition alleged as changed circumstances mother having completed numerous voluntary services and requested the juvenile court order services and vacate the selection and implementation hearing.

A contested hearing on the section 388 petition was held in November 2011. The owner of Changing Courses, Claudia Dias, testified that mother enrolled in the Changing Courses 52-week family violence program in May 2011. The program included segments on child abuse, anger management, and domestic violence. Mother attended every session and was compliant with the program. Having attended the course for 34 weeks, mother had a solid view of her responsibility for her choice of partners and for what happened to her child. According to Dias,

mother had made "drastic changes" in her life, including ending her relationship with J. S. and his family, signing up for various programs, finding a job, and enrolling in school. Dias "had no problems" with mother gaining custody of the minor and believed she had the tools to avoid another "bad relationship."

Pamela Maxwell was mother's dependency counselor. Mother participated in her program since January 2011. She never tested positive for drugs or alcohol and was "compliant in all areas" of her program. Mother also completed a series of anger management classes with Maxwell.

Mother testified that she was living with the maternal grandmother, had a job at Taco Bell, had supplies for the minor, and found child care facilities within two blocks of her residence. She had no contact with J. S. since the April jurisdiction/disposition hearing, having ended the relationship because she believed he did something to her daughter.

She had been in denial up to the jurisdiction/disposition hearing, but during questioning mother could no longer "make up all of these . . . justifications as to how it could have been an accident." She continued her relationship with J. S. after finding out he had been imprisoned for child abuse because of her codependency issues, and fear of being alone. Entering a relationship with J. S. was the biggest mistake of her life.

Mother now believed that J. S. intentionally injured the minor and she took responsibility for her daughter being injured. She could now recognize "red flags" and had a support system in place. She had completed parenting classes and was

participating in individual counseling. Having completed an anger management course, mother learned the difference between anger and aggression. The most beneficial class was Dias's physical abuse class, which taught her that you cannot make excuses and get away with being the victim.

She visited the minor twice a month for a one hour visit, and never missed a visit. The minor was curious and looks to the foster mother at the beginning of the visits. There were a few "rough visits" where the child was upset and crying, so mother talked to the foster parents about techniques to soothe the minor. The minor would mimic her and they would play together during visits.

Mother thought there was a connection between the minor and herself. She would do "anything possible" to reunify, declaring that "I am a permanent plan."

The juvenile court denied the petition for modification and terminated parental rights.

#### DISCUSSION

Mother contends the juvenile court abused its discretion in denying her petition for modification. 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, 188-189.)

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 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, 1528.)

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, 310.) "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. [Citation.]" (*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.

[Citation.]" (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

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 granting her petition. 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, italics omitted.)

Mother asserts that the juvenile court's statement that the mother has "changed since the last time she was in court, that she understands how to keep her child safe under those circumstances" demonstrates that she established changed circumstances. Admitting the problems which led to the dependency were serious, mother argues her participation in a myriad of services since the dispositional hearing allowed her to overcome her denial regarding her former boyfriend's role in abusing the minor. Mother further contends that her testimony regarding the bond she had with the minor showed "it would be in the child's best interest to be returned to the mother's care and/or receive family reunification services." Since mother had

a "safe, stable home and was not in a relationship," she claims that she "could provide permanency for the child."

We reject mother's claim that the juvenile court found changed circumstances. The quote from the juvenile court which mother uses to support this assertion is taken out of context. The passage quoted by mother was not from the juvenile court's ruling, but from a question posed by the juvenile court to mother's counsel during argument. The quote reads in full as follows: "*Assuming that the Court would find that the mother has demonstrated she has changed since the last time she was in court, that she understands how to keep her child safe under those circumstances, are you arguing that the Court must just assume it's in the child's best interest to return to the mother's care or to reopen services for the mother, or is there something else that the Court needs to reweigh?*" (Italics added.)

The juvenile court did not find changed circumstances. In denying mother's petition, the juvenile court declared that in spite of the evidence presented at the section 388 hearing, "the Court has not been convinced that, given emotional difficulties in the future, the mother would not make the same mistakes to the detriment of her child." This was not an abuse of discretion.

Mother presented similar evidence at the jurisdiction/disposition hearing -- extensive services and her testimony that she thought her former boyfriend might have been responsible for injuring the minor. Mother then waived her trial rights during

the hearing after cross-examination exposed several falsehoods, including her continuing relationship with her boyfriend. Given her lack of credibility in making the same claim with similar evidence at the earlier hearing, the juvenile court could reasonably conclude that mother had not met her burden of establishing changed circumstances at the hearing on mother's petition.

The problems which led to the dependency action were profound -- her one-month-old daughter sustained numerous fractures, and she was living with a man previously convicted of inflicting serious physical harm to his infant child. Mother's explanations for the minor's serious injuries were nonexistent or equivocal for much of the dependency. Her testimony at the section 388 hearing, that her former boyfriend J. S. was responsible for the injuries but had been left alone with the child on only two occasions, is difficult to square with the medical evidence. The minor's fractures were of different ages, supporting the inference that she was injured more than once. If the mother's testimony is to be believed, then J. S. injured the minor on the only occasions he was left alone with her. The other inferences from this evidence -- that mother was not truthful about how often she left the minor alone with J. S., J. S. injured the minor in her presence, or that she injured the minor -- provide strong support for finding no changed circumstances or best interests.

Mother did not have a strong bond with the minor; the minor spent most of her life outside mother's care and would have

problems with mother at some of the visits. The minor was closely bonded to her caretakers, who were interested in adoption. In light of the serious abuse which led to the dependency, the equivocal evidence of changed circumstances, and the minor's strong interest in permanency, it was not an abuse of discretion for the juvenile court to deny mother's petition.

DISPOSITION

The juvenile court's orders denying mother's petition for modification and terminating parental rights are affirmed.

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ NICHOLSON \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ HULL \_\_\_\_\_, J.