

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SARAH T.,

Defendant and Appellant.

D060751

(Super. Ct. No. SJ12427A)

APPEAL from orders of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

Sarah T. appeals juvenile court orders denying her Welfare and Institutions Code¹ section 388 petition requesting the court vacate orders setting a section 366.26 hearing regarding her daughter Alyssa C. She also appeals orders terminating her parental rights

¹ Statutory references are to the Welfare and Institutions Code.

to Alyssa. She contends the court abused its discretion by denying her petition because she showed her circumstances had changed and further reunification services would be in Alyssa's best interests. She asserts the court erred by terminating parental rights because Alyssa would benefit from preserving their relationship. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2010, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of three-month-old Alyssa under section 300, subdivision (b), on the basis of domestic violence between Alyssa's father, Cameron C., and Sarah in Alyssa's presence. Sarah had pointed a butter knife at Cameron, and he threw a glass statue at her leg, causing bruising and a cut.

Sarah said she felt depressed and the social worker noted she appeared emotionally unstable. Sarah had had an anxiety attack and was assessed at a psychiatric facility, but refused medication. She said she was afraid she suffered from bipolar disorder as do some of her relatives, and she struggled to care for Alyssa. Both parents had criminal histories. Cameron had been arrested for drug-related crimes, assault with a deadly weapon and battery. Sarah had been arrested for willful cruelty to a child, battery and being under the influence of a controlled substance. Her older daughter was in a guardianship with relatives. The court found the allegations of the petition true, declared Alyssa a dependent of the court, ordered her placed in foster care and ordered reunification services.

During the first six months of Alyssa's dependency, neither parent participated in services or visited Alyssa. Sarah admitted she was heavily into drug addiction during

that time. At the six-month review hearing in April 2011, the court found returning Alyssa to parental custody would be detrimental and the parents had not made substantive progress in reunification services. It terminated court-mandated services and set a section 366.26 hearing to implement a permanent plan.

The social worker assessed Alyssa as likely to be adopted if parental rights were terminated. Alyssa had lived with her foster mother for more than one year, and the foster mother had an approved adoptive study and wanted to adopt her. In addition, numerous other families wanted to adopt a child with Alyssa's characteristics.

After not visiting Alyssa for six months, Sarah visited her in April 2011, when the Agency arranged a visit at the KIVA program, where Sarah had begun participating in residential drug treatment. During subsequent visits, Sarah showed appropriate parenting skills. The social worker concluded it would not be detrimental to terminate parental rights because, although visits were pleasant, Alyssa's relationship with Sarah was like that of an extended family member and Alyssa separated easily from Sarah when visits ended.

Sarah participated in the residential recovery program at KIVA from March until September 2, 2011, where she tested clean, finished the program, and completed an eight-week domestic violence treatment program. She had two visits with Alyssa in early August 2011, but then did not maintain contact. After missing a month of visits, she visited twice in September, but did not appear for the next scheduled visit.

In September Sarah filed a section 388 petition requesting Alyssa be placed in her care or the court reinstate reunification services. The social worker recommended the

petition be denied. Sarah had an ongoing relationship with Cameron, who had not been treated for domestic violence; she had not completed counseling or had a psychological evaluation; and she had not maintained regular contact with Alyssa.

In October 2011, at the hearing on Sarah's section 388 petition and the section 366.26 hearing, Sarah testified she had participated in services on her own after services were terminated in April. She said she had completed a parenting course at KIVA and she had learned how to care for a child of Alyssa's age. She also had attended other programs and had had negative drug tests. She said she had not had individual therapy and had missed five months of visits with Alyssa, but after she entered drug treatment, she began seeing her on a regular basis.

The court denied Sarah's section 388 petition and found Alyssa was likely to be adopted and none of the statutory exceptions to termination of parental rights and adoption applied. It terminated parental rights and referred Alyssa for adoption.

DISCUSSION

I

Sarah contends the court abused its discretion by denying her section 388 petition. She argues she showed changed circumstances and that it would be in Alyssa's best interests to vacate the section 366.26 hearing and to place Alyssa with her or order further reunification services.

After a court has terminated reunification services, "the focus shifts to the needs of the child for permanency and stability." (*In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1800.) However, "[e]ven after the focus has shifted from reunification, the [statutory]

scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of [the child's] custody status." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

A change of circumstances may be brought to the court's attention through a petition under section 388. Section 388 provides in part:

"(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. [¶] . . . [¶]

"(d) If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held"

To gain the relief sought in a section 388 petition, the petitioner must show both a change of circumstances or new evidence and that the change sought is in the minor's best interests. (§ 388; Cal. Rules of Court, rule 5.570; *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) The petitioner bears the burden of proof to make both showings. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

In *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532, the appellate court listed three factors a court might consider when determining if a child's best interests would be served by granting a section 388 petition: (1) the seriousness of the problem that led to the dependency and the reasons for any continuation of the problem; (2) the strength of the bond between the child and the caretaker; and (3) the degree to which the problem may be removed and the degree to which it has been removed.

"The [section 388] petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) A reviewing court will not disturb a court's discretionary ruling in a dependency proceeding " "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." " " (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.)

The court did not abuse its discretion by denying Sarah's petition. Sarah did not participate in any of the services offered during the reunification period, but waited until court-ordered programs were terminated before being involved in any services. She lost contact with Alyssa for several months and had not had any individual counseling or a psychological evaluation, as required by her services plan. She had only recently begun to address the serious problem of domestic violence and she was new to her recovery from severe drug addiction. Also, she remained in a relationship with Cameron, who had not had any treatment for domestic violence. At best, she showed changing circumstances, not changed circumstances as required by the statute.

Also, Sarah did not show Alyssa's best interests would be served by granting her petition. During the dependency Sarah had missed months of visits. Alyssa needed the stability of an adoptive home and had a strong bond with her foster mother, who wanted to adopt her. It would not be in her best interests to delay her adoption. The court did not abuse its discretion by denying Sarah's section 388 petition.

II

Sarah asserts the court reversibly erred by terminating her parental rights because she showed there existed the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), to termination of parental rights and adoption.

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show that termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted that "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception." In interpreting the meaning of "benefit" in section 366.26, subdivision (c)(1)(B)(i), this court stated in *In re Autumn H.*, *supra*, at page 575:

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence most favorably to the trial court's order,

giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Sarah did not maintain regular visitation and contact with Alyssa, as required by the statute. She did not see her for several months and only resumed contact after reunification services were terminated. She did not show a parent-child relationship so beneficial to Alyssa that termination of parental rights would be detrimental. Although Sarah had appropriate visits with Alyssa after visitation resumed, she did not assume a parental role. Her relationship with Alyssa was that of an extended family member or friend. At the time of the hearing Alyssa was 17 months old and had been a dependent child of the court for 14 months. She needed the security of a permanent home. Sarah did not show the benefit of maintaining the parent-child relationship would outweigh the benefits to Alyssa of a stable, permanent adoptive home so that termination of parental rights would greatly harm her.

DISPOSITION

The orders are affirmed.

MCDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.