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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re D.G. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

GEORGE G. et al.,

Defendants and Appellants.

D062120

(Super. Ct. No. J510520G-H)

APPEAL from orders of the Superior Court of San Diego County, Carol Isackson,  
Judge. Affirmed.

George G. and Nancy T. appeal juvenile court orders terminating their parental  
rights to their children, D.G. and E.G. They assert there was not substantial evidence to  
support the court's findings the beneficial parent-child relationship exception of Welfare

and Institutions Code,<sup>1</sup> section 300, subdivision (c)(1)(B)(i), and the sibling relationship exception of section 300, subdivision (c)(1)(B)(v) to termination of parental rights and adoption did not apply. George also appeals an order summarily denying his petition under section 388 without a hearing. Each parent joins in and adopts the arguments of the other. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

On July 5, 2011, the San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivisions (b) and (g) on behalf of five-year-old twins, D.G. and E.G., based on Nancy's methamphetamine use and because Nancy and George were in custody.<sup>2</sup> The children were taken into protective custody along with their half-sister, L.H. L.H. is not a subject of this appeal.

Nancy's seven older children earlier had been removed from parental custody because of neglect and Nancy's drug use. George is the father of four of these children. George and Nancy have lost custody of all of their older children. They each have extensive criminal histories. Nancy has been arrested more than 20 times. She has been on parole since 2004 and has violated parole 12 times. Her substance abuse history dates to 1988, and she has never completed a drug treatment program. George has had 37

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

<sup>2</sup> At the time the children were taken into protective custody, Nancy had been arrested for violating the conditions of her parole by testing positive for methamphetamine. George was in custody in Arizona after being arrested for transporting and importing dangerous drugs and narcotics.

arrests, 13 for drug-related charges. He had some past contact with the twins, but had been in custody for much of their lives.

On September 30, 2011, the court assumed jurisdiction under section 300, subdivision (b). It declared the twins dependents of the court, removed them from parental care, ordered them placed in relative care, denied services to the parents and set a section 366.26 hearing to determine permanent plans. The twins were detained with their adult sister, Sarina.

On November 29, 2011, the twins were removed from Sarina's care. The Agency petitioned under section 387 because Sarina was permitting Nancy to have unsupervised contact with them in violation of a court order, and Sarina and Nancy had been using marijuana around them. The court found the allegations true and ordered the twins placed in foster care.

In February, 2012, George informed the Agency that he had been released from custody in Arizona and had moved to San Diego. He began visiting the twins and began reunification services, including drug treatment.

The Agency recommended the court order adoption as the twins' permanent plans. Nancy requested a bonding study, but she did not show up at the scheduled time. She had two visits with the twins in May 2012.

On June 6, 2012, George filed a section 388 petition, seeking return of the twins or six months of services. The court summarily denied the petition. The court then proceeded with the section 366.26 hearing. It received documentary evidence and heard testimony from George. After hearing argument from counsel, the court found the twins

were adoptable and none of the statutory exceptions to adoption was present. It terminated parental rights and referred the matter to adoption.

## DISCUSSION

### I

George contends the court erred by denying his section 388 petition without an evidentiary hearing. He argues he made a prima facie showing that his circumstances had changed and the twins' best interests would be served by granting the petition.

#### A. *Legal Framework*

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 obtain 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 child's best interests. (§ 388; Cal. Rules of Court, rule 1432(a)(6); *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) A petition is liberally construed in favor of its sufficiency. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) The petitioner bears the burden of proof, however, to make both showings. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

" ' "The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing." ' [Citations.]" (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.) "[I]f the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing." (*In re Angel B., supra*, 97 Cal.App.4th at p. 461.)

B. *Application*

George has not shown the court abused its discretion by summarily denying his petition. After he was released from custody in Arizona, he contacted the Agency and began regularly visiting the twins and participating in drug treatment and parenting education. He moved to San Diego and obtained employment. Although he was starting to make positive changes in his life, in view of his long criminal and drug abuse history, it would take considerable time to make real changes. Meanwhile, the twins would be in limbo, waiting to see if he might be able to reunify with them in the future.

George had numerous arrests in Arizona and California from 1985 through 2011. Many were drug related and he had never before had treatment for his substance abuse problem, nor had he completed any other type of reunification service. The court did not abuse its discretion by finding that George's three months of visits with the twins and recent participation in substance abuse treatment and parenting education were insufficient to warrant a hearing on whether he had shown changed circumstances within the meaning of the requirements of section 388.

Also, George did not show that placement with him or providing him with services would be in the twins' best interests. At the time of the hearing, the twins were nearly

seven years old and he had not had contact with them during much of their lives because he was sometimes in custody and sometimes in Arizona while they lived in San Diego. After he was released from custody, he visited them approximately once each week from March 2012 until the hearing on June 6. In February 2012, the twins had expressed that they missed him and said he lived far away. E.G. said he had not seen him for a long time. They were happy to have renewed contact, but although they enjoyed their visits and George demonstrated a parental role during visits, he had not acted as a father to them for most of their lives. E.G. told the social worker that he wanted to live with George, but he also said he wanted to live with his prospective adoptive parents. D.G. said she wanted to live with all four parents. The twins did not cry when visits were over and they did not ask about George when he was not with them.

George had begun to make changes in his life, but the twins had experienced years of instability and were in need of a permanent and secure home. They were adjusting very well in the home of their prospective adoptive parents and, although they expressed conflicting emotions about Nancy and George, they wanted to remain in the prospective adoptive home. George has not shown an abuse of the court's discretion by summarily denying his section 388 petition.

## II

George and Nancy assert that no substantial evidence supports the court's finding the beneficial parent-child relationship exception to termination of parental rights and adoption did not apply. Nancy argues she consistently and regularly visited D.G. and

E.G. and maintaining their relationships would benefit the twins. George argues he visited to the extent he was able to do so and his bond with the twins should be protected.

A. *Legal Framework*

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 of a specified statutory exception to termination of parental rights and adoption. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show 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 "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception."

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the 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.)

In *In re Autumn H.*, this court explained that when determining whether the exception is present, the juvenile court must balance the parent-child relationship against the benefits the child would gain from the permanence of adoption by a new adoptive family. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) The court stated:

"[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Ibid.*)

B. *Application*

George has not shown error by the court not applying the exception to him. He did not visit the children at all during the first months of the dependency case because he was incarcerated. They had not seen him from the time they were removed on June 29, 2011, until his first visit on March 29, 2012. He did not send cards or letters during the time he was in custody, and he waited three weeks after he was released before contacting the Agency to ask for visits. He did not show the twins would benefit from continuing their parent-child relationship with him more than they would benefit from adoption. The social worker observed the twins were happy to see him and their visits were affectionate and appropriate, but they did not cry when visits ended. Immediately after the April 3, 2012 visit, while the social worker was transporting them back to their foster home, they talked about their new prospective adoptive parents and asked if they could call them "mommy and daddy." Although the twins sometimes expressed that they wanted to be with their parents as well as the prospective adoptive parents, George did not show the benefits of maintaining their relationships with him outweighed the benefits of a stable, permanent adoptive home.

Nancy also has not shown a lack of substantial evidence to support the courts finding the exception did not apply. She saw the children regularly while they were

placed with Sarina, but after they were removed from Sarina's home on November 30, 2011, she visited only sporadically. She missed the bonding study she had requested and missed two scheduled visits in May 2012. The twins were affectionate during visits, but usually did not cry or appear sad when visits ended. They said if they could not live with Nancy, they would like to be adopted and have a new mom and dad. Nancy had not been able to be a consistent, reliable parent and had not put her children's needs before her own. She did not show the benefit of continuing the twins' relationship with her would outweigh the benefits of adoption. The court did not err by not applying the beneficial parent-child relationship exception to termination of parental rights and adoption.

### III

Nancy maintains the court erred by not applying the sibling relationship exception to termination of parental rights and adoption of section 300, subdivision (c)(1)(B)(v), because of the children's relationships with their adult sister, Sarina.

#### A. *Legal Framework*

Under section 366.26, subdivision (c)(1)(B)(v), if the court finds the child will be adopted within a reasonable time, adoption must be ordered " 'unless the court finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child' because '[t]here would be substantial interference with a child's sibling relationship . . . .' [Citation.]" (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 811.) The purpose of this exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) The sibling relationship exception contains "strong language

creating a heavy burden for the party opposing adoption." (*Daniel H.*, at p. 813.) Factors for the court to consider include the nature and extent of the sibling relationship; whether the siblings were raised in the same home; whether they share a close bond; and whether continued contact is in the child's best interests, as compared to the benefits of adoption. (*Ibid.*) The court considers the best interests of the adoptive child, not the best interests of the other siblings. (*Ibid.*)

B. *Application*

There was no showing the twins would suffer severe detriment from cutting off their sibling relationships with Sarina. After they were removed from Sarina's home, Sarina did not contact the Agency or request a visit with them for several months. At the first visit, the children appeared happy to see her and they had an affectionate visit, but they were not upset when the visit ended. This pattern continued during Sarina's future sporadic visits with the twins. Although they had loving relationships with her, the benefit they would gain from continuing their relationships with Sarina was far outweighed by the benefits they would gain in a permanent, stable adoptive home. The court did not err by not applying the sibling relationship exception.

DISPOSITION

The orders are affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P.J.

IRION, J.