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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CECILIA P., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SHERRY G.,

Objector and Appellant.

D062139

(Super. Ct. No. J516187C)

APPEAL from an order of the Superior Court of San Diego County, Laura J.

Birkmeyer, Judge. Affirmed.

Sherry G. appeals from an order denying her petition under Welfare and Institutions Code section 388.<sup>1</sup> She contends the juvenile court abused its discretion

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

when it denied her petition to modify a dispositional order denying reunification services to her. We affirm the order.

#### FACTUAL AND PROCEDURAL BACKGROUND

Sherry G. and D.P. are the parents of Cecilia P., who was born in December 2009. In August 2011, the San Diego County Health and Human Services Agency (Agency) filed a three-count petition under section 300, subdivision (b), alleging Cecilia was at substantial risk of harm due to Sherry's diagnosis of schizophrenia, which manifested in delusions and aggressive and violent behaviors; D.P.'s continued substance abuse; and the parents' history of domestic violence. Due to a similar constellation of problems, Sherry's and D.P.'s parental rights to their two older children had been terminated in 2007.

Although Sherry was under the care of a psychiatrist, she was not stable on her medication regimen and suffered from delusions. Sherry denied that Cecilia was her child and insisted the hospital had switched her with another baby at birth. She had several other fixed delusions about her own identity. D.P., who was Cecilia's primary caregiver, did not leave Cecilia alone with Sherry. He said Sherry had become more delusional but less violent in the last eight months.

D.P. wanted custody of Cecilia and was prepared to separate from Sherry if necessary. He had a history of polysubstance abuse and related mental health problems. On two recent occasions, D.P. sought emergency room treatment for stomach bleeding. The doctors believed the bleeding was caused by excess consumption of alcohol without food.

In October 2011 the juvenile court made a true finding on the petition and removed Cecilia from parental custody. On the Agency's recommendation, the court ordered a plan of family reunification services to D.P., who was Cecilia's primary caregiver, but denied reunification services to Sherry under section 361.5, subdivision (b)(10), (11).<sup>2</sup> The Agency placed Cecilia with her paternal great-grandparents, who are the adoptive parents of Cecilia's siblings.

The social worker reported that Sherry was "mildly interactive" with Cecilia but did not attend to her needs because she did not believe Cecilia was her child. In February 2012, Sherry's psychiatrist modified her medication regimen and her psychotic symptoms went into remission. D.P. said Sherry's moods were more stable, she was calmer and her delusions were greatly reduced. Her primary symptom was blunted affect.<sup>3</sup> Sherry's interactions with Cecilia improved. At a visit in February, the social worker observed that Sherry was helping Cecilia color and eat a snack, and that Sherry "appeared present."

D.P. promptly completed substance abuse and parenting education programs. He visited Cecilia every day from early morning to early afternoon and provided all her care during that time. Within a few months, the Agency allowed D.P. to stay overnight in the great-grandparents' home once a week and have a weekly unsupervised visit with Cecilia.

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<sup>2</sup> The court may deny family reunification services to a parent when the parent had failed to reunify with the child's sibling (§ 361.5, subd. (b)(10)), or the parent's parental rights to the child's sibling had been terminated (§ 361.5, subd. (b)(11)), and that parent had not subsequently made a reasonable effort to treat the problems that led to the removal of the child's sibling from the parent. (§ 361.5, subd. (b)(10), (11).)

<sup>3</sup> "Blunted affect" is defined as "a disturbance in mood seen in schizophrenic patients manifested by shallowness and a severe reduction in the expression of feeling." (Physician's Desk Reference Medical Dict. (2nd ed. 2000) p. 32, col. 1.)

Cecilia was excited to see D.P. There were no concerns about his interactions with her. The Agency wanted D.P. to demonstrate his sobriety for a longer period of time before returning Cecilia to his care. D.P. reiterated his willingness to separate from Sherry or move to the great-grandparents' home if required for reunification.

In April, at the six-month review hearing, the court found that D.P. had made substantial progress with the provisions of his case plan and that it appeared likely the child would be returned home by the next review hearing. The court extended family reunification services to him for another six-month period.

Sherry filed a section 388 petition asking the court to provide her with family reunification services. She alleged her circumstances had changed: she was stabilized on medication; her interactions with Cecilia had improved; and she voluntarily participated in in-home parenting education services and benefitted from those services. Sherry said it was Cecilia's best interests to grant her petition because Sherry and D.P. lived together and Cecilia was likely to return to his care. In a letter attached in support of the petition, Sherry's psychiatrist said Sherry was compliant with treatment and did not display paranoia, hostility, hallucinations or delusional thinking. Her psychotic symptoms were in remission and were not likely to recur with her medication regimen.

In reports prepared for the section 388 hearing, the social worker said Sherry did not show she had the capability to be Cecilia's custodial parent. Although Sherry interacted with Cecilia during a visit in February, during a March visit, Sherry did not interact with Cecilia unless she was encouraged to do so by the parenting instructor. Sherry was able to tell the social worker the basic modules of her parenting instruction

but could not describe how she would implement those skills. Family members reported, and Sherry acknowledged, the new medications made her tired and she slept or felt sedated most of the day. Sherry missed her last psychiatric appointment and had yet to inform her doctor of the side effects of the medication. The social worker expressed concern that Sherry's medication regimen was still in a "trial pattern" and she was not yet stable.

At the hearing on Sherry's section 388 petition on June 8, 2012, the court admitted in evidence the social worker's reports and Sherry's 388 petition, including the letter from her treating psychiatrist, and heard testimony from the social worker. Sherry's counsel said the primary issue before the court was whether her client would benefit from reunification services. She asserted that Sherry had benefitted from participating in medication management and voluntary parenting services. The court asked Sherry to identify the services that would assist her. Sherry identified individual therapy, in-home parenting services, medication management, wraparound services<sup>4</sup> and Parent Child Interaction Therapy (PCIT).

The social worker testified that in the case of a parent diagnosed with schizophrenia, the Agency usually recommended medication management. Any other services would depend on the parent's psychological evaluation. Sherry was already receiving medication management and had successfully completed in-home parenting

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<sup>4</sup> Wraparound services are designed for families with children with severe mental illness. (§ 18250 et seq.) The purpose of wraparound services is to provide eligible children with services alternatives to group home care through the development of expanded family based services programs. (§ 18250, subd. (a).)

services on her own. Cecilia did not qualify for in-home wraparound services because she did not have a behavior disorder.

The court found that Sherry's circumstances were changing but were not yet changed. In view of Sherry's complex mental health diagnosis, the evidence presented was insufficient to show she could benefit from services. Further, Sherry did not meet her burden to show that a modification of the prior order to grant her reunification services was in Cecilia's best interest. The court noted it was not generally averse to ordering services. D.P. was making progress toward reunification and if he did reunify with Cecilia, it would become necessary to determine Sherry's role with Cecilia. The court denied the section 388 petition without prejudice.

#### DISCUSSION

*The Court Did Not Abuse Its Discretion When It Denied Sherry's  
Petition for Modification Under Section 388*

Sherry contends the juvenile court erred when it denied her petition for modification under section 388. She argues the court abused its discretion when it required her to show she could benefit from services. Sherry argues the denial of reunification services was based on the finding she had not made a reasonable effort to treat the problems that led to the removal of her other children from her care; thus to show changed circumstances, she needed only to prove she had subsequently made a reasonable effort to treat her problems. (§ 361.5, subd. (b)(10), (11).) She further argues that at the dispositional hearing, the Agency did not plead and prove the elements of section 361.5, subdivision (b)(2), which would have required the Agency to prove that she was suffering from a mental disability that rendered her incapable of utilizing family

reunification services, and requiring her to prove the converse at the section 388 hearing unfairly shifted the burden of proof to her.

## A

### *Forfeiture*

We conclude that Sherry has forfeited her arguments concerning the 388 petition. "A party forfeits the right to claim error as grounds for reversal of appeal when he or she fails to raise the objection in the trial court." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221, 222.) The record shows that instead of objecting, Sherry raised the question whether she would be able to benefit from services in her section 388 petition. In describing why the requested modification was in Cecilia's best interest, Sherry said she had demonstrated "*an ability to benefit from services*" during the last six months. At the section 388 hearing, Sherry's counsel said, "Right now the issue is whether or not mom will benefit from services." In response to Sherry's position at the hearing, the court determined that because of Sherry's complex mental health diagnosis, she did not meet her burden to show she would benefit from reunification services.

Further, were we to consider Sherry's argument, we would reject it on the merits. Notwithstanding the initial grounds for a denial of reunification services, when a parent asks the juvenile court to modify the prior order and grant reunification services, the parent is required to show that changes in his or her circumstances make it desirable to return the child to that parent's custody. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 674 [changes in the parent's circumstances that make reunification desirable may support a modification order].) In making that determination, the court considers a variety of

factors and does not merely decide whether the grounds underlying the initial denial of reunification services no longer exist. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532 (*Kimberly F.*); cf. *In re S.R.* (2009) 173 Cal.App.4th 864, 870 [not every change in circumstance can justify modification of the prior order; the change in circumstances must relate to the purpose of the proposed order].) To the extent the juvenile court should have considered the broader question that arises when a parent who has been denied reunification services subsequently seeks the opportunity to reunify with his or her child, we would conclude that error, if any, was harmless. The record clearly supports the court's order denying Sherry's section 388 petition.

## B

### *Legal Principles and Standard of Review*

Under section 388, a parent may petition the court to change, modify or set aside a previous order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The parent requesting the modification has the burden to show a change of circumstances or new evidence, and that the proposed modification is in the child's best interest. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) In evaluating whether the petitioner has made a sufficient showing, the juvenile court evaluates "(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." (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 530.) This list is not meant to be exhaustive, but to provide a

reasonable and principled basis on which to evaluate a section 388 petition. (*Id.* at p. 532.)

We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) While the abuse of discretion standard gives the trial court substantial latitude, "[t]he scope of discretion always resides in the particular law being applied, i.e., in the 'legal principles governing the subject of [the] action . . . .' Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse' of discretion. [Citation.]" (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.)

## C

### *The Record Supports the Court's Finding that Sherry Did Not Meet Her Burden Under Section 388*

In asking for family reunification services, Sherry was required to show that her circumstances were sufficiently changed to make it desirable for Cecilia to return her custody within the existing reunification period and that it was in Cecilia's best interests to do so. On this record, the juvenile court could reasonably conclude that Sherry did not meet her burden to make the required showing of changed circumstances and best interests of the child. (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 532.)

Sherry's mental health condition was diagnosed as schizophrenia. This was not a temporary condition that could reasonably be alleviated by a variety of social services. For many years, even with psychiatric care and a medication regimen, Sherry was delusional and assaultive. Although these symptoms were alleviated after February 2012, Sherry's current medication regimen left her sedated or sleeping most of the day. She displayed a flat affect, which muted her emotional responses. The court could reasonably infer she did not display a full emotional response to Cecilia. Sherry had never been Cecilia's caregiver. Cecilia did not display a strong bond with Sherry. When Sherry was with Cecilia, Cecilia would check to make sure her father was there, go to him periodically after playing with Sherry and turn to him for comfort and help. Although Sherry's condition improved with changed treatment and she no longer insisted Cecilia was not her child, the record does not indicate Sherry would be able to become a custodial parent to Cecilia if granted reunification services. After participating in an in-home parenting program, Sherry did not interact with Cecilia unless prompted to do so, and she could not describe how to make her home safe for Cecilia. The social worker said Sherry did not appear to have the insight or skill to move from a supervised visitation setting to appropriately and independently parenting Cecilia. The record supports the juvenile court's finding that Sherry's circumstances, although changing, were not sufficiently changed to show that reunification was desirable. The court reasonably

concluded that Sherry did not meet her burden to show that modifying the prior order was in Cecilia's best interests.<sup>5</sup>

#### DISPOSITION

The order is affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.

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<sup>5</sup> As the juvenile court noted, a request for family reunification services is not the same as asking for support services for the nonreunifying parent. Although Sherry argued that providing reunification services to her would help D.P. establish a safe home for Cecilia and was in her best interests, Sherry clearly stated in her section 388 petition she was seeking an opportunity to become Cecilia's custodial parent. Thus, even if Sherry were able to benefit from some services, the court did not abuse its discretion when it denied her petition. If D.P. appears likely to reunify with Cecilia, the court may offer appropriate support services to Sherry, including family maintenance services. (See *In re Alanna A.* (2005) 135 Cal.App.4th 555, 566 [the court has the discretion to offer services to the nonreunifying parent and in many cases may choose to do so].)