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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DANICA J., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

X.W. et al.,

Defendants and Appellants.

D069734

(Super. Ct. No. EJ3795)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,  
Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and  
Appellant X.W.

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and  
Appellant Jonathan J.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court declared Danica J. a dependent after X.W. (Mother) left her unsupervised with Jonathan J. (Father), a registered sex offender whose parole conditions prohibited him from contacting minors, including his own child. The juvenile court terminated Mother's reunification services at the 12-month status review hearing,<sup>1</sup> and set a permanency planning hearing under Welfare and Institutions Code section 366.26.<sup>2</sup> Mother filed a section 388 petition requesting that the court modify this order.<sup>3</sup> The court summarily denied the petition, and at the subsequent section 366.26 hearing terminated parental rights and selected adoption as Danica's permanent plan.

On appeal, both parents contend the juvenile court erred by summarily denying Mother's section 388 petition. They further contend the court erred by finding there was not a beneficial parent-child relationship between Mother and Danica that precluded termination of parental rights. (See § 366.26, subd. (c)(1)(B)(i).) Father also contends that if we reinstate Mother's parental rights, we must also reinstate his. We find no error and affirm.

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<sup>1</sup> Father never received any reunification services due to his sex-offender status.

<sup>2</sup> Undesignated statutory references are to the Welfare & Institutions Code.

<sup>3</sup> Under section 388, a parent may petition to change or set aside a prior order based on a showing of (1) changed circumstances or new evidence, and (2) the promotion of the child's best interests. (§ 388; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.)

## FACTUAL AND PROCEDURAL BACKGROUND

### *Family Background*

In 2007, Father pled guilty to sex offenses involving seven- and 16-year-old children. He admitted to having a sexual relationship with the 16-year-old, but denied the seven-year-old's detailed allegations of molestation. Father maintains he pled guilty only to avoid a lengthier sentence. He served three years in custody, was released on parole, and is required to register as a sex offender. The conditions of his parole prohibited him from having any contact with minors, including his own children. Father violated parole five times, including by possessing pornography, being in prohibited areas, and driving under the influence.

Mother was born and raised in China and moved to the United States in about 2009 to pursue graduate studies after completing college in China. Mother's family is still in China.

Mother and Father first "met" in an online chat room in May 2010. Father disclosed his status as a registered sex offender before they met in person a few weeks later. The parents moved in together within a few months of meeting, and married a few months later in December 2010.

Mother was arrested twice in 2012 for domestic violence incidents. Although neither arrest resulted in a conviction, the second arrest resulted in a criminal protective order that restrained Mother from having any contact with Father until February 2, 2015.

Nevertheless, Mother and Father intentionally conceived Danica in 2013 and she was born in January 2014. The parents claim Father then moved out of the family home

and lived in his car to comply with the parole condition that prohibited him from contacting minors.

### *Petition and Detention*

In mid-April 2014, the San Diego County Health and Human Services Agency (Agency) received a report that Father had signed a sworn statement indicating he was living with Mother and Danica. The Agency interviewed Mother, who denied Father was living with them or had had any contact with Danica since her birth. Mother stated she was aware of Father's background, had no concerns about him, and they were working to modify the no-contact condition of his parole. The social worker advised Mother of her duty as a parent to protect Danica.

On May 6, 2014, an employee at the Agency's Family Resource Center observed Father, Mother, and Danica together. Social workers interviewed Father, who denied the allegation. He claimed he had not seen Danica since her birth, but admitted "they Skype every night." Father acknowledged this contact violated his parole, but claimed his parole officer was aware of the contact.

On May 11, 2014, police responding to an unrelated call found Father and Danica alone in Father's car in a grocery store parking lot. Father explained he was watching Danica so Mother could work. Police arrested Father for violating his parole conditions.

On May 15, 2014, the Agency filed a petition alleging there was a substantial risk Danica would be sexually abused by Father and that Mother had failed to protect her.

(See §§ 300, subd. (d), 355.1, subd. (d).)<sup>4</sup> At the detention hearing the following day, the juvenile court ordered that Danica be detained in foster care, that Mother receive liberal supervised visits, and that Father have no contact with Danica. The court set a jurisdictional hearing for June 10, 2014.

### *Jurisdiction/Disposition*

The Agency's jurisdiction/disposition report recommended that Danica remain in foster care. The Agency reported Mother had provided excellent physical care for Danica before intervention and was pumping breastmilk for the foster mother to bottle-feed to Danica. Moving to foster care was "quite an adjustment" for Danica, who was accustomed to spending time with Mother. Mother's visits went well.

However, the Agency reported it was concerned Mother was minimizing the threat Father posed to Danica. Mother did not believe the allegations that led to his convictions, and stated, "He's not weird like that." The Agency also reported concern about Mother's

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<sup>4</sup> Section 300, subdivision (d) provides that a child is within the jurisdiction of the juvenile court and may be declared a dependent if "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

Section 355.1, subdivision (d) provides: "Where the court finds that . . . a parent . . . of . . . a minor who is currently the subject of the petition filed under Section 300 . . . has been previously convicted of sexual abuse . . . or . . . is required, as the result of a felony conviction, to register as a sex offender . . . , that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence."

immigration status. She had overstayed a student visa and was only able to work "under-the-table job[s]."

The Agency recommended Mother receive six months of reunification services.

Father was scheduled to be released from custody a few weeks after the jurisdictional hearing. He planned to live in his car to avoid contact with Danica. Father still denied he sexually abused his seven-year-old victim. The Agency recommended Father not receive any reunification services due to his status as a registered sex offender.<sup>5</sup>

The juvenile court sustained the petition, declared Danica a dependent, removed physical custody from the parents, and placed her in foster care. The court ordered that Mother receive reunification services, but Father receive none.

#### *Six-month Status Review*

The Agency's report for the December 3, 2014 six-month status review advised that Danica had been moved to a new foster home after her original foster family moved out of the county. Danica was thriving in foster care, was in good health, and was almost always happy and smiling.

The Agency reported "many of [Mother]'s visits indicate that she is nurturing, loving and attentive to Danica's needs. However, there have been some visits where the mother has had inappropriate behavior . . . ." For example, the visitation center reported

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<sup>5</sup> Section 361.5, subdivision (b)(16) provides: "(b) Reunification services need not be provided to a parent . . . when the court finds . . . [¶] (16) That the parent . . . has been required by the court to be registered on a sex offender registry . . . ."

that Mother refused to sign the visitation center's rules; yelled at a visitation monitor while holding Danica; talked on her cell phone after being instructed not to; ignored a visitation monitor's warning not to leave Danica unattended on a couch because she might fall; and did not change Danica's dirty diaper. When confronted about her conduct by a social worker, Mother raised her voice to the social worker and accused the visitation monitor of lying.

During a visit supervised by the foster mother, Mother glared at her and yelled so loudly that everyone in the Agency's office could hear her, prompting a security officer to intervene. At the end of the visit, Mother berated the foster mother as she walked to her car. The foster mother reported that Danica was "shut down and disconnected" after this visit.

After a social worker addressed Mother's visitation conduct, Mother's behavior improved to the point the Agency was willing to consider unsupervised visits.

Mother's therapist reported she was making "some progress." Mother began in group therapy, but was removed because she was "highly defensive" and "really judgmental with the other women." Mother denied any contact with Father, and expressed to her therapist "that maybe she does not want to have anything to do with her husband now or in the future since she 'doesn't know if he could sexually abuse . . . .' " (Italics omitted.) Mother later consistently told her therapist she wanted nothing further to do with Father and wants a divorce.

The court appointed special advocate (CASA) reported she observed two supervised visits between Mother and Danica. Mother was frustrated by the CASA's

presence. The CASA noted Mother appeared attentive during the visits, but added Mother was "not aware of nonverbal cues." The CASA reported the foster mother had observed Mother Skype with Father during one of Mother's visits with Danica. The CASA also stated Mother has "made some comments that hint at her denial about the nature of the situation."

At the December 3, 2014 six-month status review hearing, the court found it would be detrimental to Danica to return her to parental custody. The court continued Danica's placement in foster care and ordered that Mother receive additional reunification services.

#### *March 2015 Addendum Report*

A few months after the six-month review hearing, the Agency filed an addendum report to recommend Mother undergo a psychological evaluation and attend nonprotective parent sexual abuse group therapy.

In January 2015, Mother progressed to unsupervised visits. When a social worker made an unannounced visit to Mother's residence, her roommate stated Mother was not home and had not slept there in several nights. The social worker called Mother, who explained she worked as a masseuse at two spas and sometimes slept at work when she worked late. The social worker had difficulty verifying Mother's employment. Mother reassured the social worker she had not seen Father in seven months.

However, in early February 2015, Father's parole officer reported to the social worker that he had seen Mother socializing with Father in his trailer in December 2014. The parole officer also reported seeing Mother's car parked at Father's trailer earlier in

February. Father told him Mother was not there and had given him the car because she had bought a new one.

Later in February, the social worker went to Father's trailer and observed both parents exit together. When the social worker approached, Mother said she was merely getting some paperwork from Father. Father told the social worker he and Mother planned to remain married; Mother said he was lying.

Also in late February, the parole officer reported Father was unemployed, had no income, and Mother had been paying all his expenses and provided him with a car.

In early March, the social worker attended a therapy session with Mother to update the therapist on these developments. A few weeks later, the therapist reported she would likely be recommending terminating Mother's therapy. Mother had said all the right things and done her homework, but continued to have contact with Father. The therapist stated "insight oriented therapy is not effective when [Mother] is not forthcoming, is defensive and deflective." The therapist also stated she could not detect whether Mother was lying. The therapist recommended Mother undergo a psychological evaluation to determine "if she has a personality disorder or if her difficulties complying with treatment [are] cultural."

On March 19, 2015, the juvenile court ordered that Mother undergo a psychological evaluation and participate in nonprotective parent sexual abuse group therapy.

*Father's Section 388 Petition*

In April 2015, Father filed a section 388 petition seeking reunification services and visitation on the basis his parole conditions now allowed him to contact Danica. In June 2015, the court denied reunification services, but granted "closely supervised" visitation.

*Continuance of 12-Month Status Review*

The Agency's May 26, 2015 report for the 12-month status review confirmed that Mother's therapist terminated her individual therapy sessions "due to her ongoing defensive, deflective, and argumentative behavior in group and individual settings." The Agency requested a continuance of the status review to allow the Agency to identify a culturally competent psychologist to conduct Mother's psychological evaluation.

In the meantime, the Agency reported Mother continued to state she wants a divorce, but would not provide the Agency with contact information for her divorce attorney. Mother stated "she did not know why [the social worker] kept bringing up [Father]." The social worker explained it was to protect Danica.

The Agency's report updated the court regarding recent visits. In February, a visitation monitor reported Mother "does not demonstrate her parental role, knowledge of Danica's development, or respond appropriately to Danica's verbal/non-verbal signals some of the time." The social worker and her intern "observed Danica's engagement with [Mother] has decreased over the last couple of months."

During a visit in March, Danica fell off a couch when Mother had her back turned.

During a visit in May, the social worker observed that Danica did "not want to engage" with Mother, which led Mother to throw a bag of snacks out of frustration, causing Danica to cry. The social worker reported "the qualities of [Mother]'s visits have changed and it seems as though Danica does not want to engage with [Mother]."

Mother had also been receiving in-home parent training services that addressed Mother's cultural issues. The parent partner reported in April that she was terminating services because Mother had received the maximum number of sessions allowed. The partner told the social worker she "felt very concerned about this case as [Mother] has gone through extreme lengths to stay by [Father]'s side." Mother told the parent partner she does not know why the Agency maintains its case now that Father "has learned from his mistakes" and can contact Danica.

The juvenile court continued the 12-month status review hearing.

#### *12-Month Status Review Reports*

The Agency and the CASA submitted additional reports in connection with the continued 12-month status review.

In a July 2015 addendum report, the Agency recommended the court terminate Mother's services and set a section 366.26 hearing. In June, Katherine Ellis-Hernandez, Ph.D., in consultation with counselors at the Union of Pan Asian Communities, completed a culturally sensitive psychological evaluation of Mother and diagnosed her with paranoid personality disorder and delusional disorder. Dr. Ellis-Hernandez observed Mother displayed extreme defensiveness and deceitfulness, including lying to Dr. Ellis-

Hernandez about recent contact with Father. Dr. Ellis-Hernandez opined it would take "years" of treatment with a trusted provider to address Mother's issues.

The Agency also reported that Mother's nonprotective parent sexual abuse counselor reported Mother "continues to state [Father] did not do anything wrong" and does not believe he poses a threat to Danica.

The report also stated Mother had not demonstrated a consistent pattern of safe parenting during supervised visits. For example, Mother allowed Danica to (1) walk around while chewing her food amongst toys that could cause her to fall and choke; and (2) run around and interfere with other family's visits, and when staff redirected Mother, she told them that it was their job to control Danica.

The CASA noted that her review of social worker reports and visitation logs indicated Danica was not attaching to Mother—Danica was crying at the beginning of visits, in response to which Mother stood by the door and said, " 'I am leaving' "; Mother was making inappropriate comments, such as telling Danica the visitation monitor and social worker are " 'bad people' "; and Mother was not following the visitation monitor's instructions. The CASA recommended the juvenile court terminate parental services and set a section 366.26 hearing.

In an August 2015 addendum report, the Agency advised that Mother's therapist for the nonprotective parent program described Mother as "confrontational with him continuously." The therapist "stated he believed [Mother] hates him and does not feel that she is truly learning anything"—she does well on assignments, but her statements reveal a disconnect regarding the danger Father poses to Danica. For example, Mother

stated, " 't[h]e past is the past' " and one of the Father's minor victims " 'was a whore and she wanted it.' " The therapist concluded Mother "has made little progress and it is doubtful that much will occur in the future."

Regarding visits, the Agency report stated Mother "continues to have inconsistent reviews on her visits with Danica. [Mother] continues to demonstrate a lack of knowledge of child development . . . ." At the beginning of a visit on August 11, the visitation monitor observed Danica say "[n]o" and throw her crayons on the floor when she saw Mother enter the facility.

The Agency also reported its suspicions that Mother was not residing at her last reported address—the Agency received a returned mail notice; neighbors and the landlord did not recognize the social worker's description of Mother; and there were no female clothes in the room Mother claimed was hers. The Agency also recited its difficulty verifying Mother's places and hours of employment. Based on the difficulty in verifying Mother's residence and employment, the Agency reported it "is very concerned [Mother] is residing with [Father]."

#### *Contested 12-month Status Review Hearing*

The juvenile court heard the contested 12-month status review over four days in August and September 2015. Mother argued (among other things) the Agency had not provided adequate, culturally appropriate reunification services. Notably, Mother testified she did not know Father very well. When the Agency's counsel asked if Father poses a danger to Danica, Mother responded, "I never think about that." The court followed up, "Well, I want you to think about it. With everything you know about the

father, everything you know about this case, does he present a risk of sexual abuse to your daughter?" Mother responded, "Well, maybe. Maybe not."

At the conclusion of the hearing, the court terminated Mother's reunification services and set a section 366.26 hearing. The court explained at length why it concluded the Agency had provided adequate services and why it was terminating them:

"The mother was given services. She was going to services. She was having therapy. She was doing parenting. And a very competent provider said she was argumentative, defensive, and deflective in therapy. That's when things started changing. In fact, this court in particular said I want a culturally sensitive psych eval, because I wanted to rule out any cultural problems.

"I've been doing this a while. I understand some of the cultural issues in Pan Asian families, because I just dealt with it a lot. I can't say that being argumentative, defensive, and deflective are necessarily the ones I see the most. [¶] Generally, the ones I've heard in the past are that people don't want to air their dirty laundry. That's the phrase that was used. They don't like to talk about their problems. She still remained argumentative, defensive, and deflective. That's the way she testified. And I believe that that might be explained by some of what came through in the psychological evaluation, the diagnosis and the psychological evaluation. That is possibly part of the personality disorder.

"The evidence fails at all to show that it was some kind of a misunderstanding where she's not been given the right services. She's just unable to benefit from those services. Her position is and has been, father made a mistake. People can change. She doesn't believe some of the things that happened because the father told her that they didn't happen. The evidence just doesn't suggest that."

#### *Section 366.26 Reports*

The Agency's December 2015 section 366.26 report recommended that the juvenile court terminate parental rights and select adoption as Danica's permanent plan.

Danica had been in the same foster placement for approximately 17 months and her foster mother was willing to adopt her.

After observing 12 visits between Mother and Danica in October and November 2015,<sup>6</sup> the Agency's adoptions social worker opined there was no significant parent-child relationship between Mother and Danica. Mother brought Danica snacks, changed her diaper, played with her, Skyped with the maternal grandmother, and was affectionate. However, Danica sometimes told Mother "no" when (1) asked for a kiss, (2) asked to Skype with her grandmother, (3) asked whether she misses Mother, and (4) Mother tried to push her on a tricycle. During one visit, when the foster mother left the room to get Danica's car seat, Danica looked outside and said " '[m]ama, mama' " a few times. Danica was less interactive with Mother than usual during that visit. During some visits, Danica elected at times to interact with the social worker and intern rather than with Mother. Danica did not exhibit distress when visits ended.

The CASA filed a report recommending that the court terminate parental rights and select adoption as Danica's permanent plan.

The Agency filed an addendum report in January 2016. The report advised that Danica underwent a developmental evaluation on December 15, 2015, during which both Mother and the foster mother were present. The evaluator noted Danica did not follow

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<sup>6</sup> The visits occurred at an Agency office because the visitation center was no longer willing to supervise Mother's visits due to her inappropriate behavior during visits, such as removing Danica from the facility to go to her car and offering Danica coffee and tea. The CASA and foster mother were also unwilling to supervise visits because Mother had yelled at and was disrespectful to them while holding Danica.

instruction from Mother or seek her out for comfort; instead, Danica sought comfort from the foster mother even though Mother had her arms open for a hug.

The addendum report stated that during visits in December 2015, Danica was sometimes affectionate with Mother, but also sometimes declined affection and hit Mother.

#### *Mother's Section 388 Petition*

About two weeks before the section 366.26 hearing, on January 21, 2016, Mother filed a section 388 petition to modify the prior court order terminating her reunification services and to request that the court place Danica in her care. As changed circumstances, Mother asserted she had undergone a new psychological evaluation with Richard Scott, Ph.D., who determined she did not exhibit any major mental health disorders (although she did display mild paranoia, depression, and anxiety as a result of the Agency's removal of Danica).<sup>7</sup> Dr. Scott recommended ongoing therapy, which Mother began in September 2015. The petition also cited Mother's consistent visitation and ability to provide Danica with a loving home that promoted her Chinese heritage and culture.

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<sup>7</sup> Dr. Scott's evaluation included the following disclaimer: "This is a basic/general evaluation, and this patient agrees that if she is to get into any kind of custody battle using psychological evaluations, this evaluation is not appropriate for that purpose as it is very basic; however, this clinician would suggest a very extensive 'custody expert psychologist' for her to do a much more in-depth and conclusive evaluation for the purposes of custody. This evaluation is mainly assessing as to whether or not this patient has any major psychiatric diagnosis or conditions and it discusses some basic history as well."

On January 21, the juvenile court summarily denied Mother's petition with the following explanation:

"The Court has read and considered the entire file, which is my normal practice in [section] 388's. I'm very familiar with the case. We've had multiple contested hearings on this matter.

[¶] . . . [¶]

"The court will deny the prima facie finding for the following reasons: I have received an evaluation. And the reason that the court ordered that psych evaluation and that it was culturally sensitive is that I wanted to make sure there was [not] some underlying reason why the mother wasn't doing what she was supposed to do. This particular evaluation says she's fine. So that answers my question. It wasn't anything to do with culture as to why she wasn't doing what she was supposed to do. And she did not complete her reunification plan.

"I'd also note that this psych eval says it's a basic evaluation. It should not be used for any kind of custody battle. It's very basic. So that has to be taken into account also. But there is no change. There might be changing circumstances slightly, but no change of circumstances and certainly no best interests showing."

#### *Section 366.26 Hearing*

At the February 3, 2016 section 366.26 hearing, the adoptions social worker reiterated her recommendation that the court terminate parental rights and select adoption as Danica's permanent plan. The social worker testified about her observations during supervised visits. She opined Danica's attachment to Mother appeared to be waning, with Danica sometimes—including the day of the hearing—retreating from Mother and hitting her when she attempts to initiate affection. She acknowledged Danica referred to Mother as "mommy" or "mama," but added that she also referred to the foster mother and visitation monitor by those names. The social worker also acknowledged that the

visitation center logs indicated Mother "more often than not" appeared to demonstrate a parental role during visits. However, the social worker clarified there were other categories in which Mother performed less consistently, such as responding appropriately to Danica's verbal and nonverbal signals, putting Danica's needs ahead of her own, showing empathy, and demonstrating knowledge of child development. The social worker also noted Danica did not exhibit distress at the end of visits and did not ask about Mother between visits.

Father testified that during joint visits Danica appeared excited when Mother arrived and would run to her. He acknowledged, however, that he had not been to all of Mother's supervised visits. He also acknowledged Danica sometimes declined the parents' offers of assistance, but he attributed it to Danica's desire "to do it by herself." Father admitted he and Mother were still "loosely" in a relationship.

Mother testified she and Danica had a strong bond. Danica was excited to see her, was affectionate with her, and would video chat with her maternal grandmother in China.

After hearing argument from counsel, the juvenile court terminated parental rights and selected adoption as Danica's permanent plan. The court gave the following explanation for its conclusion that the relationship between Mother and Danica did not rise to a level that would preclude adoption:

"I'm well aware that visits have gone well, and there is a relationship between this child and the mother and father. [¶] The court has to weigh the parent-child relationship as I see it against the security and a sense of belonging to a new family. And the court would have to find that the child would be greatly harmed if parental rights were terminated, and the evidence does not support this. None of the

circumstances listed [in section] 366.26[, subdivision] (c)(1)(B)(1) exist in this case. Adoption is in the best interests of the child."

## DISCUSSION

### I. *Mother's Section 388 Petition*

Both parents contend the juvenile court erred by denying her section 388 petition without holding an evidentiary hearing. We disagree.

#### A. *Applicable Law*

"Under section 388, a parent may petition to modify a prior order 'upon grounds of change of circumstance or new evidence.' (§ 388, subd. (a)(1); see Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where 'it appears that the best interests of the child . . . may be promoted' by the new order. (§ 388, subd. (d).) 'Thus, the parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child's best interests.' (*In re G.B.* [, *supra*,] 227 Cal.App.4th [at p.] 1157. . . .)" (*In re K.L.* (2016) 248 Cal.App.4th 52, 61.)

"A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests.' (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) In determining whether the petition makes the required showing, the court may

consider the entire factual and procedural history of the case. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258 . . . .)" (*In re K.L., supra*, 248 Cal.App.4th at pp. 61-62.)

"After the termination of reunification services . . . , the goal of family reunification is no longer paramount, and ' "the focus shifts to the needs of the child for permanency and stability" [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.'" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 . . . .)" (*In re K.L., supra*, 248 Cal.App.4th at p. 62.)

"We review the juvenile court's summary denial of a section 388 petition for abuse of discretion." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

#### B. *Analysis*

The juvenile court did not abuse its discretion in concluding Mother had not met her burden of making a prima facie showing of changed circumstances. First, the court made clear at the 12-month status review and at the hearing on Mother's section 388 petition that the court ordered a psychological evaluation for the limited purpose of ensuring there was not some cultural barrier that prevented Mother from progressing in her reunification services by gaining insight into the potential danger Father posed to Danica. As the court succinctly put it, Dr. Scott's "evaluation says she's fine. So that answers my question. It wasn't anything to do with culture as to why she wasn't doing what she was supposed to do." Mother does not contend Dr. Scott's evaluation revealed

underlying cultural differences that impeded her progress or insight. Thus, the juvenile court did not abuse its discretion in concluding Dr. Scott's psychological evaluation did not establish a prima face showing of changed circumstances.

Second, apart from the substance of Dr. Scott's evaluation, its disclaimer expressly states Mother agrees the "evaluation is not appropriate" for custody purposes because it is a "basic/general evaluation." The juvenile court found this disclaimer material. We see no abuse of discretion in that finding.

Because Mother failed to meet her burden of making a prima facie showing of changed circumstances, we need not address the juvenile court's additional finding that mother failed to meet her burden of making a prima facie showing that a modification was in Danica's best interests.

## II. *Beneficial Relationship Exception*

Both parents contend the juvenile court erred in finding there was not a beneficial parent-child relationship between Mother and Danica within the meaning of section 366.26, subdivision (c)(1)(B)(i) that precluded selecting adoption as Danica's permanent plan. We disagree.

### A. *Applicable Law*

" 'At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans.' [Citation.] 'Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the

child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citations.] Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." ' ' " (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165.)

This court has interpreted "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 other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the 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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).

" 'The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.' " (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349-1350; see *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

"A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence. [Citation.] It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ' "Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . ." ' [Citation.] For the exception to apply, 'a *parental* relationship is necessary. . . .' [Citation.] ' "While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." . . . ' " (*In re J.C.* (2014) 226 Cal.App.4th 503, 529.) "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.)

"We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

#### B. *Analysis*

The Agency acknowledges Mother carried her burden of establishing she "maintained regular visitation and contact" with the child. (§ 366.26, subd. (c)(1)(B)(i).) Therefore, we need only consider whether the court abused its discretion in determining whether the benefits to Danica of continuing a parental relationship with Mother

outweighed the benefits of a permanent plan of adoption. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although the juvenile court recognized "there is a relationship between this child and the mother," Mother has not shown the juvenile court abused its discretion in concluding that relationship did not rise to a level that outweighs the benefits to Danica of adoption.

Danica was removed from parental custody when she was less than four months old. By the time of the section 366.26 hearing, she had spent more than 20 months—approximately 83 percent—of her life in foster care. Nearly 19 of those months were spent with Danica's current foster mother. Mother initially progressed from supervised to unsupervised visits, but reverted to supervised visits after she was dishonest with the Agency and her service providers about her contact with Father.

Regarding the quality of Mother's bond with Danica, Mother cites visitation logs that show she "more often than not" demonstrated a parental role during visits. However, it necessarily follows from this imprecise metric that she sometimes—potentially as much as 49.99 percent of the time—did *not* demonstrate a parental role. Mother also cites a visitation monitor's checklists for two visits in June 2015 to show Mother consistently demonstrated a parental role, demonstrated knowledge of Danica's development, responded appropriately to Danica's verbal and nonverbal signals, put Danica's needs ahead of her own, and showed empathy toward Danica. However, the accompanying narratives in those logs show Danica was hesitant to leave her foster mother at the beginning of both visits and exhibited no distress at the end of either visit.

Apart from visitation logs, the Agency's reports and the social worker's testimony further document issues that affected the quality of Mother's visits. During at least one visit, Mother reportedly Skyped with Father. Additionally, Mother yelled at others while holding Danica, causing her to "shut down and disconnect[]"; ignored feedback about Danica's safety; threw a bag of snacks out of frustration; made inappropriate comments to Danica about the visitation monitor and social worker; and removed Danica from the visitation center in violation of visitation center rules.

Danica cried or was hesitant at the beginning of some visits with Mother; called her foster mother "mommy" and "mama"; followed the foster mother when she left to retrieve a car seat; chose to seek comfort from the foster mother during the developmental evaluation instead of from Mother; declined some invitations for affection from Mother and sometimes hit her; chose to sometimes interact with the social worker and intern instead of Mother; and said "no" when asked for a kiss, when asked if she wanted to Skype with her grandmother, when asked if she misses Mother, and when Mother tried to push her on a tricycle. Moreover, Danica did not exhibit distress when visits ended, and did not ask about Mother between visits.

Based on these observations, the social worker repeatedly opined Danica's engagement with Mother appeared to decrease over time. "The trial court was entitled to find the social worker credible and to give greater weight to her assessments and testimony." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

On the other hand, Danica was thriving in foster care; she was healthy and happy; her foster mother was willing to adopt her; and Danica looked to her for comfort and support.

On this record, the juvenile court did not abuse its discretion in concluding Mother did not meet her burden of establishing it would be detrimental to Danica to terminate parental rights and select adoption as her permanent placement.

Citing a portion of the juvenile court's explanation for its ruling, Mother argues the court improperly focused on Mother's failure to comply with her reunification plan and her dishonesty with the Agency, rather than on the relative benefits of maintaining a parental relationship versus a permanent plan of adoption. We are not persuaded. While the court mentioned Mother's lack of compliance and her dishonesty, the court also expressly noted it was required "to weigh the parent-child relationship . . . against the security and a sense of belonging to a new family. And the court would have to find that the child would be greatly harmed if parental rights were terminated, and the evidence does not support this." As noted, we conclude the juvenile court did not abuse its discretion in making this finding.

### III. *Father's Parental Rights*

Because we have not reinstated Mother's parental rights, we likewise do not reinstate Father's parental rights.

DISPOSITION

The orders are affirmed.

HALLER, Acting P. J.

WE CONCUR:

McDONALD, J.

PRAGER, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.