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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

E053950

(Super.Ct.No. RIJ111988)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,
for Plaintiff and Respondent.

Defendant and appellant T.M. (Mother) appeals from the juvenile court's order terminating her parental rights as to her one-year-old son A.B.¹ Mother contends: (1) that the juvenile court erred in denying her Welfare and Institutions Code² section 388 petition to change or modify a prior court order; and (2) that the juvenile court abused its discretion in denying her request to continue the selection and implementation hearing. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Riverside County Department of Social Services (DPSS) in November 2010, following A.B.'s birth. Mother had a history of abusing controlled substances and a history with child protective services regarding her three older children (A.B.'s half siblings). During a prenatal drug test on October 5, 2010, Mother tested positive for marijuana. In addition, while hospitalized following A.B.'s birth, Mother bragged about her drug use and made inappropriate comments about the newborn.

Additionally, in regard to A.B.'s half siblings, jurisdiction as to those children, ages 10, nine, and four, was established on July 26, 2006. Following her failure to adequately participate in family maintenance and reunification services as to A.B.'s half

¹ Father V.B. is not a party to this appeal, and his whereabouts remained unknown throughout the dependency proceedings.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

siblings, Mother's rights were terminated on January 23, 2008, and a plan of legal guardianship was ordered for the children on August 12, 2010.

On November 30, 2010, a petition on behalf of A.B. was filed pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provisions for support), and (j) (abuse of sibling). A.B. was formally detained on December 1, 2010, and placed in the same foster home as his half siblings on December 6, 2010.

The contested jurisdiction/disposition hearing was held on January 10, 2011. Following the presentation and submission of evidence, the juvenile court found the allegations in the petition true as recommended by the social worker. A.B. was declared a dependent of the court, and Mother was denied reunification services pursuant to section 361, subdivision (b)(10).³ The contested selection and implementation hearing was set for May 10, 2011.

Mother participated in weekly supervised visits with A.B., and the visits appeared to be appropriate. However, Mother had difficulty with scheduling and making her appointments at the scheduled times due to transportation and class conflict issues. Meanwhile, A.B. continued to thrive physically and emotionally in his foster home, and he appeared to be very bonded to his foster parents and half siblings. The foster parents were committed to adopting A.B., they continued to be the legal guardians to the half siblings, and they were committed to allowing Mother to have contact with A.B.

³ Father was also denied reunification services pursuant to section 361.5, subdivisions (a) and (b)(1).

On April 26, 2011, DPSS requested that the juvenile court continue the selection and implementation hearing for 120 days to allow DPSS to complete the adoption assessment and to merge the sibling case, which was set for a section 366.3 status review hearing on August 12, 2011. On May 10, 2011, the juvenile court granted the request and continued the hearing to June 15, 2011. It also ordered DPSS to complete the adoption assessment before the June 15, 2011, hearing date.

On May 5, 2011, Mother filed a "Request to Change Court Order" pursuant to section 388, seeking reunification services based on changed circumstances. In support, Mother claimed that she had, on her own volition, enrolled in a substance abuse treatment and parenting program, had drug tested with negative results, and had made significant progress in her program. She further alleged that she had stable housing, was employed, and was "extremely motivated" in getting A.B. back.

While acknowledging that Mother had graduated from a substance abuse program, DPSS objected to Mother's request for services, based on: (1) Mother's failure to reunify with her three oldest children, despite having received over 18 months of services; (2) her criminal history; (3) her history of abusing drugs; and (4) her history of failing to benefit from services provided to her. DPSS also noted that Mother no longer had stable housing or sufficient income to support herself, let alone A.B.

On June 1, 2011, DPSS filed the preliminary adoption assessment. The social worker reported that A.B. was bonded to his prospective adoptive parents, who were very committed to providing the child and his half siblings a permanent and loving home. However, DPSS indicated that additional time was needed to adequately assess the

family and address the issues associated with fire safety hazards in the home and allegations of excessive discipline by the prospective adoptive parents.⁴ The social worker explained that due to the short time frame and provisions, training, and services required of the prospective adoptive parents, the prospective adoptive parents had yet to be cleared as an adoptive level home. The social worker, however, believed that with time, the prospective adoptive parents should be able to meet the demands that an adoption level home study requires, since the prospective adoptive parents were very motivated in completing the process and appeared very bonded to all four children. Additionally, the children seemed very happy in the home and desired to remain together with the prospective adoptive parents. The social worker concluded that even if the prospective adoptive home was not approved, A.B. was very adoptable and “the likelihood of him being adopted, given his age and physical health is extremely high if parental rights are severed.”

A combined hearing on the section 388 petition and the selection and implementation was held on June 15, 2011. At that time, Mother and the social worker testified. In pertinent part, Mother testified that she had completed a substance abuse treatment program and a “hands-on parenting” program; that she had been sober since

⁴ The social worker pointed out that A.B.’s half brothers resided in a converted room in the garage, with bunk beds blocking the boys’ only emergency exit from the room in the event of a fire. Upon questioning, the prospective adoptive father stated that he had arranged the beds against the door so as to prevent the boys from going outside without his knowledge. However, when the social worker informed the prospective adoptive father the arrangement posed a fire hazard, the prospective adoptive father agreed to rearrange the furniture.

October 2010; that she had randomly drug tested with negative results; and that she was enrolled in a 12-week aftercare program. She further stated that she had recently moved in with her mother and was employed as an in-home caregiver. Mother claimed that she was willing to participate in additional services should the juvenile court grant them; that she had a bond with A.B.; and that she had changed her circumstances by changing her attitude and completing the parenting and substance abuse programs. Mother acknowledged that she had used marijuana for the past 12 years, but vehemently argued that she had changed. The social worker acknowledged that Mother had completed a substance abuse program for new mothers; that Mother had drug tested negative; that Mother had completed a parenting program; that Mother was appropriate and attentive to A.B.'s needs at the supervised visits; and that Mother had maintained contact with A.B.'s half siblings. The social worker also admitted that Mother had made a positive lifestyle change.

Following argument, the juvenile court denied Mother's section 388 petition, finding that Mother was in the process of changing her circumstances, but had not sufficiently changed, and that it was not in A.B.'s best interest to grant the petition.

Mother's counsel thereafter requested a brief continuance of the section 366.26 selection and implementation hearing so that the adoption assessment social worker could be present at the hearing to be cross-examined. Counsel also noted that more time was needed to approve the adoptive home and address the initial concerns about the physical environment in the home and inappropriate discipline of the children by the prospective adoptive parents.

DPSS's counsel replied that the social worker who had testified at the section 388 hearing was present; and that she had investigated the allegations of excessive discipline in the adoptive home and was willing to testify the allegations were unfounded. After the juvenile court denied the continuance request, it heard testimony from the social worker in regard to the excessive discipline investigation. The social worker testified that the "Out-of-Home Investigation worker" assigned to the excessive discipline referral had spoken with the children, and they had denied any physical discipline by the prospective adoptive parents. The investigation worker also noted that there had never been any marks or bruises found on the children, and that DPSS was going to find the allegations "unfounded." Mother's counsel thereafter questioned the social worker in regard to Mother's bond with A.B. The social worker acknowledged that Mother had consistently maintained contact with the child; that Mother was appropriate and attentive to his needs during visits; and that Mother was attached him.

After hearing argument, the juvenile court terminated parental rights and found that A.B. was adoptable. This appeal followed.

DISCUSSION

A. *Denial of the Section 388 Petition*

Mother argues that the juvenile court abused its discretion in denying her section 388 petition. Specifically, she contends that her participation in a substance abuse and parenting program, eight-month period of sobriety, enrollment in a 12-week aftercare program, and change in attitude constituted changed circumstances such that the juvenile court should have granted her petition and ordered at least four months of reunification

services. She further claims that because DPSS had concerns about approval of the prospective adoptive home, and that she was bonded with A.B. and had a stable job and appropriate housing, it was in the child's best interest to grant the petition. We disagree.

A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) “The parent bears the burden to show both a “legitimate change of circumstances” and that undoing the prior order would be in the best interest of the child. [Citation.]” (*Ibid.*)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) A juvenile court's ruling will not be disturbed on appeal unless it has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

Here, the juvenile court found that Mother was in the process of changing her circumstances, but had not made a change sufficient to support the petition. “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 . . . 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 Mary G.* (2007) 151 Cal.App.4th 184, 206.) The best interests of the child are of

paramount consideration when a petition for modification is brought after denial or termination of reunification services. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

The court in *In re Kimberly F.* (1997) 56 Cal.App.4th 519 observed that the determination of a child's best interest under section 388 involves looking at a number of factors generally falling along a continuum. (*In re Kimberly F.*, at p. 530.) 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.) These factors are not exhaustive, but they "provide a reasoned and principled basis on which to evaluate a section 388 motion." (*Ibid.*)

The juvenile court concluded that despite Mother's progress, based upon the totality of the circumstances, continuing on the path to adoption was in the child's best interest. We cannot say the conclusion is an abuse of discretion when Mother's history of long-term drug abuse and failure to reunify with previous children was weighed against her short-term efforts to remain clean. The conclusion is amply supported by the record, particularly with respect to the bond that had developed between the caregivers and A.B. and the lack of a strong bond between Mother and child. The seriousness of the prior drug abuse and the risk of a relapse, however small in this case, also supports the juvenile court's ruling. The record reveals that drug use was a reoccurring problem for Mother. She had admitted to using drugs, namely marijuana, for the past 12 years; and, it is apparent that her drug use was linked to her inappropriate parenting skills and neglect of

the children as evidenced by her failure to reunify with her three older children. In light of this lengthy history, Mother's claim to be drug-free since October 2010, however hopeful, does not establish a permanent change and does not justify altering the plan for adoption.

Mother's reliance on *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453, *In re David M.* (2005) 134 Cal.App.4th 822, 829-830, and *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346 is misplaced. The procedural posture of those cases is distinguishable from the present case. In all three cases, the courts concluded that evidence of periodic marijuana usage on the part of a parent, without more, cannot support a finding of serious harm or serious risk of harm to the children.

In *Jennifer A.*, the issue was whether a substantial risk of detriment to the physical or emotional well-being of the children existed where, between the 12-month and 18-month review hearings, the mother tested positive for marijuana once, submitted a diluted sample once, and missed nine tests. (*In re Jennifer A.*, *supra*, 117 Cal.App.4th at pp. 1343, 1346.)

In *David M.*, the mother tested positive for marijuana at the time of her second son's birth. The allegations of the petition included the mother's marijuana usage, the father's failure to protect the children from the mother's marijuana usage, and concerns about the parents' overall mental health. The appellate court "accept[ed] as true that mother continues to suffer from a substance abuse problem with marijuana in the limited respect shown on this appellate record, and that she and father both have mental health issues." (*In re David M.*, *supra*, 134 Cal.App.4th at p. 830.) Nevertheless, the appellate

court reversed the jurisdictional finding made by the juvenile court under section 300, subdivision (b), noting that “there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness” to support jurisdiction under that provision. (*In re David M.*, at p. 829, quoting *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1137.)

Finally, in *Alexis E.*, the appellate court, citing *David M.* and *Jennifer A.*, stated: “[T]he mere use of marijuana by a parent will not support a finding of risk to minors.” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452.) Nonetheless, the court upheld a finding of jurisdiction based in part on a substantial risk of harm from the father’s use of marijuana, because the father smoked marijuana twice a day and the evidence established that his habit caused him to neglect his children. (*Id.* at p. 453.) The court had “no quarrel” with the father’s assertion that “his use of medical marijuana, without more, cannot support a jurisdiction finding.” (*Ibid.*, italics omitted.) However, the record in that case “set out the ‘more’ that supports the [juvenile] court’s finding that [the father’s] use of medical marijuana presents a risk of harm to the minors.” (*Ibid.*)

The procedural posture in this case is much different from that of *Jennifer A.*, *David M.*, and *Alexis E.* Timelines are essential in dependency proceedings. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674.) Here, A.B. was detained and jurisdiction established, as a result of Mother’s drug use and her failure to reunify with her previous children. The question here is whether Mother established her burden of proof to grant her section 388 petition, not whether her marijuana use was sufficient to establish jurisdiction. Although marijuana usage in particular cases may not justify jurisdictional

findings, in this case, Mother's marijuana usage was one of the factors supporting jurisdiction, and a hopeful but not yet permanent cessation of marijuana usage does not suffice to show a change in plan would be in the child's best interest.

Mother's reliance on *In re Casey D.* (1999) 70 Cal.App.4th 38 also avails her not. While the juvenile court there determined that the father's nine-month period of sobriety for heroin addiction amounted to a change in circumstances, nevertheless, it denied the father's section 388 petition finding that it was not in the minor's best interest to be returned to the father's care. The appellate court affirmed the denial of the father's section 388 petition, "given his lack of relationship with [the minor], [the mother's] lack of sufficiently changed circumstances, [the minor's] young age and [the minor's] current need for stability." (*Id.* at p. 49.) In regard to the mother's section 388 petition, the appellate court noted that the mother had been drug free for only four months and "had an extensive drug history with a tendency to engage in treatment programs when required to do so by outside agencies and then relapse once the requirement was lifted. Further, the evidence indicated [the mother] was not yet working on a 12-step program and had not yet written her autobiography, which was a significant requirement of [the mother's] drug treatment program." (*Id.* at p. 48.)

A similar factual predicate is present here. As the juvenile court observed, Mother was making a change in her life but had not established changed circumstances. The juvenile court determined that Mother's eight-month period of sobriety did not constitute a change of circumstances when weighed in consideration with all the myriad of factors relevant in this particular case. In doing so, we cannot say that the juvenile court abused

its discretion or that its conclusion was “arbitrary, capricious, or patently absurd.” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

Furthermore, Mother simply did not have a strong parent-child bond with the child. He had been detained following his birth and placed in the same foster home as his half siblings. Thus, Mother never had custody of the child, and she never provided any meaningful care for him. While Mother testified that she was bonded with the child, and the record shows that Mother was appropriate at supervised visits with him and attentive to his needs, there is no evidence to suggest that the child *was bonded* with Mother. The prospective adoptive parents, on the other hand, had had custody of A.B. since December 6, 2010, over six months at the time of the section 388 hearing, and were committed to providing him with a permanent and loving home. In addition, A.B. was very bonded to his prospective adoptive parents and half siblings, appeared content in the home, and looked to his prospective adoptive parents to satisfy his needs. In fact, the foster mother was the only mother he had ever known.

The juvenile court did not abuse its discretion in determining that the best interest of the child would be better served by the permanency and stability proffered by the prospective adoptive home than the indeterminacy of offering Mother reunification services. Mother’s continued short-term rectification of the issues leading to detention was simply *de minimis* when considered in the context of A.B.’s interest in long-term stability and permanence.

We reject Mother’s claim that it was in A.B.’s best interest to offer her at least four months of reunification services because DPSS had identified both safety and

physical abuse concerns in the prospective adoptive home. The physical abuse allegation was resolved at the combined section 388 and section 366.26 hearing when the social worker testified, and Mother did not object, that DPSS had determined the allegations were unfounded. In addition, although the social worker had identified that the furniture arrangement in one of the bedrooms blocked the children's emergency exit from the room in the event of a fire, the prospective adoptive father agreed to rearrange the furniture once it was brought to his attention.

Moreover, the social worker believed, and there is no evidence to the contrary, that with time, the prospective adoptive parents should be able to meet the demands that an adoption level home study requires, since the prospective adoptive parents were very motivated in completing the process. Mother did not establish that resumption of reunification services would be in the child's best interest. (See *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) The juvenile court reasonably could have concluded that A.B.'s best interest was the stability that adoption would provide, despite the issues that still needed to be resolved, rather than providing four months of reunification services to Mother in the hopes that she might be able at some point to provide a safe and stable home environment for the child.

Accordingly, the juvenile court did not abuse its discretion by denying Mother's section 388 petition.

B. *Denial of Continuance*

Mother also argues that the juvenile court abused its discretion when it denied her request to continue the section 366.26 hearing so that she could cross-examine the social

worker who prepared the preliminary adoption assessment in regard to the physical discipline allegation and the safety issue in the adoptive home. She further claims that the denial violated her due process rights. These contentions lack merit.

A request or motion for a continuance is governed by section 352. A juvenile court may grant a continuance of a hearing only upon a showing of good cause and only if the continuance is not “contrary to the interest of the minor.” (§ 352, subd. (a).) “In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (*Ibid.*) Courts have interpreted the policy behind section 352 as “an express discouragement of continuances. [Citation.]” (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.) “[W]e reverse an order denying a continuance only on a showing of an abuse of discretion.” (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.)

Here, the juvenile court did not abuse its discretion when it denied Mother’s oral request for a continuance to cross-examine the social worker who prepared the preliminary adoption assessment. The social worker who testified at the section 366.26 hearing stated that DPSS had completed the investigation about the use of physical discipline by the prospective adoptive parents and concluded the allegations were unfounded. Specifically, upon interviewing the children in regard to the physical discipline allegation, the children had denied the allegation. The social worker also noted that there had never been any marks or bruises found on the children. As such, there was no need to continue the proceedings to cross-examine the social worker who prepared the

preliminary adoption assessment, since Mother had the opportunity to cross-examine the social worker who testified in regard to DPSS's investigation about the physical abuse allegation.

Moreover, "there is no requirement that an adoptive home study be completed before a court can terminate parental rights." (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.) In fact, section 366.26, subdivision (c)(1), provides, in pertinent part: "The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted."

When services are terminated and a section 366.26 hearing is set, the juvenile court must direct the social services agency to prepare an adoption assessment report that, among other things, evaluates the child's medical, developmental, scholastic, mental and emotional status, and includes a statement from the child concerning adoption unless the child is too young to give a meaningful response. (§§ 366.22, subd. (c)(1)(A)-(F), 366.21, subd. (i)(1)(A)-(G).) The purpose of the assessment report is to provide the juvenile court with information necessary to determine whether adoption is in a child's best interest. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 496.) An assessment report need not be entirely complete as long as it is in substantial compliance with statutory requirements. (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) Where an assessment is deemed incomplete, the reviewing court looks at the totality of the evidence before it; deficiencies go to the weight of the evidence and may prove insignificant. (*Ibid.*) Here, there was no need for the assessment report to be entirely complete, since

the juvenile court was aware of the child's medical, developmental, emotional, and educational needs, as well as the issues in the adoptive home. Moreover, the juvenile court had the necessary information to determine whether adoption was in A.B.'s best interest and was already determined to be adoptable.

Mother's citation to *In re John M.* (2006) 141 Cal.App.4th 1564 is inapplicable. In that case, the nonoffending, noncustodial natural father requested a continuance, which was denied by the court. The father, who lived out of state, had been in touch with the 13-year-old boy. The court denied the continuance because it was reluctant to place the boy with his natural father who was an "unknown entity." (*Id.* at pp. 1568-1569, 1572.) The appellate court concluded that as the problem with the father was that little was known about him, the trial court should have continued the case to allow the father to present information about himself. (*Id.* at p. 1572.) In this case, the juvenile court was fully advised about the issues in the prospective adoptive home. It made no difference that the prospective adoptive home still required additional time to be approved because A.B. was already determined to be adoptable. This is not a case in which sufficient information is lacking and the request for a continuance should have been granted.

Citing *In re Clifton V.* (2001) 93 Cal.App.4th 1400, Mother also claims she was denied her due process rights; specifically, her right to present evidence and cross-examine the social worker who prepared the preliminary adoption assessment. We reject this claim. The *Clifton V.* court found that a parent has a due process right to cross-examine witnesses at a section 388 petition hearing when opposing declarations give rise to a clear credibility contest. (*Clifton V.*, at pp. 1404-1405.) Here, there were no factual

disputes. The juvenile court was fully aware of the issues relating to the approval of the prospective adoptive home and that the home still needed to be approved by DPSS. The juvenile court evaluated the undisputed evidence and determined that the child was adoptable, despite issues involving approval of the prospective adoptive home.

Furthermore, any error in denying the request for a continuance was harmless beyond a reasonable doubt. (*In re Clifton V.*, *supra*, 93 Cal.App.4th at p. 1406.) First, a continuance was not necessary for the juvenile court to determine whether A.B. was adoptable. As previously mentioned, “there is no requirement that an adoptive home study be completed before a court can terminate parental rights.” (*In re Marina S.*, *supra*, 132 Cal.App.4th at p. 166.) Second, the preliminary adoption assessment contained sufficient necessary information for the juvenile court to determine whether adoption is in the child’s best interest. Finally, an assessment report need not be entirely complete as long as it is in substantial compliance with statutory requirements. (*In re John F.*, *supra*, 27 Cal.App.4th at p. 1378.) The totality of the circumstances here reveals that there was sufficient evidence to support the juvenile court’s finding that A.B. was adoptable.

Mother has not demonstrated that the juvenile court abused its discretion in declining to continue the section 366.26 hearing.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

RICHLI
J.

MILLER
J.