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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re X.H., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. A.H., et al. Defendants and Appellants.	E054272 (Super.Ct.No. RIJ1100140) OPINION

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

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant A.H.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant V.N.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants A.H. (father) and V.N. (mother) appeal from an order terminating their parental rights to minor X.H. under Welfare and Institutions Code[1] section 366.26. Father contends the juvenile court erred when it denied his petition for modification under section 388. Mother contends that if father's parental rights are restored, hers also must be restored. We find no error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

Our statement of facts concerning matters preceding the present appeal is taken from our opinion in the case of *A.H. v. Superior Court* (June 1, 2011, E053168) [nonpub. opn.], hereafter, case No. E053168.)[2]

"Hospital staff notified the Riverside Department of Public Social Services (department) soon after X.H. was born in late January 2011. X.H. was born healthy and full term, but her mother (mother) disclosed to hospital staff that mother had two children previously, one of whom had died in 2001 after being assaulted, and another who resides with relatives. Mother identified father as X.H.'s father.

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[1] All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

[2] We have incorporated our record in the prior writ proceeding into the record in the present case.

"An investigation revealed that mother had been convicted of murdering her 16-month-old child, D.R., in 2001, for which she was sentenced to 25 years to life in prison. The autopsy showed that D.R. had been severely abused—she had numerous broken ribs and a lacerated liver and pancreas. D.R. had bled to death internally. The medical examiner concluded that the injuries were caused by massive blunt force to the abdomen.

"Mother and father had an intimate relationship in 1997 and/or 1998, and they learned mother was pregnant with father's child, M.H., either before or just after they broke up. Shortly thereafter, mother married another man, a Mr. Ramirez, who agreed to raise M.H. as his own. Mother and Mr. Ramirez then had D.R., whom mother beat to death in August 2001.[3] Father was not involved in M.H.'s life until M.H. was removed in August 2001 after D.R.'s death. At that time, father was offered weekly supervised visitation with M.H., but father did not visit M.H. Father was termed an alleged father, and later the biological father, and was not offered reunification services.

"After serving approximately eight years in prison, mother accepted a deal to reduce the charges to voluntary manslaughter and was released on parole a few months later, in November 2009. Mother and father resumed their intimate relationship in January 2010. Mother and father hoped to get married when mother's divorce from Mr. Ramirez was final, and wanted to raise a family together.

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[3] "At the time of D.R.'s death in August 2001, mother and Mr. Ramirez were no longer living together. In fact, mother sometimes stated that her then-boyfriend, a Mr. Lugo, had killed D.R."

"The detention hearing was held on February 3, 2011, at which the juvenile court found a prima facie case to detain X.H.

"The contested jurisdiction/disposition hearing was held on March 15, 2011. The Department recommended denying reunification services to father under . . . section 361.5, subdivision (b)(11),[] because he had previously lost parental rights to X.H's brother, M.H. The Department entered into evidence the amended section 300 petition filed on February 22, 2011, the detention report filed on February 2, the jurisdiction and disposition report filed on February 24, and the addendum filed on March 10.

"At the March 15 hearing, father testified that he had met with the social worker about two weeks prior to receive referrals for services. Since then he had completed three sessions of individual counseling, enrolled in a parenting class and completed two sessions of conjoint counseling. He had also visited weekly with X.H. and had only missed one visit because he did not want to pass on his cold to the infant. Father was present for X.H.'s birth and was named on the birth certificate. He had given money to mother to purchase items to prepare for X.H.'s arrival.

"Father testified that he had fathered a total of seven children, and that he paid child support for all except for M.H., who had been adopted after father lost parental rights. He testified that his 17-year-old daughter lives in Fullerton and had stayed with him a few times on the weekends, most recently the previous week. Father has two children, ages 13 and 7, who live in Anaheim and with whom he does not have much contact because their mother, 'don't really want to comply with such.' Father stated he had spent 'thousands and thousands of dollars in attorneys to fight for visitation and

custody' and that, even with a court order, the mother would refuse to allow the children to go with him when he went to pick them up for visits. Father sees these children only when their mother feels like it, the last time about five months previous. Father speaks to the children once or twice per month on the telephone. Father has two children, ages four and eight, with another woman, with whom he has a good relationship and who live in Colorado. Father testified that these two children were going to stay with him for two and one-half months in the summer and that Father was paying for their transportation. The older child had previously come to stay with him for the summer, but this was the first time the youngest one would be coming. He speaks to them four or five times per week. When questioned on cross-examination, father knew the names, ages and grades of each of his seven children.

"Regarding M.H., father testified that in 2001 he was eventually found to be the biological father, but was denied services. He did not seek services on his own because 'I was so inexperienced at that time.' Father stated that he knew mother was pregnant with M.H. when they broke up. He testified that M.H. was born while mother and Mr. Ramirez were married, and that he never saw M.H. because the family moved out of the county with M.H. and he 'lost track [of them] completely.' Father was initially named an alleged father, and later the biological father, but never the presumed father. Father stated that he would do 'anything' if the Department were to offer him reunification services for X.H., including following the reasonable directives of the social worker. Father believed that he made reasonable efforts in this current case.

"After hearing argument, the juvenile court noted its sympathy for father and stated that 'He seems like a decent human being who testified well, and I have no doubt [he] loves his daughter.' However, the court stressed its concern that father planned to continue his relationship with mother, despite her conviction for having killed her toddler in 2001. For this reason, the court could not find that it would be in X.H.'s best interest to grant services to father. The court set the section 366.26 hearing for July 13, 2011, and advised father of his writ [rights]." (Case No. E053168, pp. 2-5.)

Father filed a petition for extraordinary writ, contending the juvenile court abused its discretion in denying him reunification services and in setting the matter for a section 366.26 hearing. This court found no abuse of discretion and denied the petition. (Case No. E053168.)

Meanwhile, in June 2011, the Department filed a section 366.26 report recommending termination of parental rights. The social worker stated that X.H. was healthy and meeting developmental milestones. She had been placed with a prospective adoptive family in April, had adjusted well, and she was forming a strong bond with them. Father continued his one-hour weekly visits with X.H. He acted appropriately during the visits and had shown a loving bond with her. Father completed individual counseling in early June, and his counselor reported he appeared to have benefited from the sessions. He had also completed a parenting class that month.

The Department also filed a preliminary assessment of the prospective adoptive family, stating that X.H. bonded well with them, and they were providing loving care for her and wished to adopt her and provide her a permanent home.

In July 2011, father filed a petition under section 388 requesting the juvenile court to return X.H. to his custody or, in the alternative, to provide reunification services to him. Father reported he had completed a 14-week parenting class and 12 one-hour therapy sessions.

At the hearing on the petition, it was stipulated that father was X.H.'s presumed father. Father testified that although he was not provided reunification services, he had enrolled in a parenting program, attended all sessions, participated fully, and completed the program. He also attended counseling and had interacted freely and openly with the counselor. He had visited X.H. and wanted to do whatever it took to get her back. He testified the parenting classes helped him learn how to take care of his children and protect them from getting hurt. Through counseling, he had learned "how to handle things, how to talk to people, how to ask for things," and ask for help.

Father testified he owned his own home and worked fulltime as a smog technician. He had prepared a room in his home for X.H. His mother usually lived with him, but she had gone to Mexico for a few weeks.

Two of father's sons, ages 4 and 8, who lived in Denver, had recently spent two months with father. Father got those sons for "all of the vacation time." He tried to spend the most time possible with another daughter, but that child's mother "doesn't really cooperate." Father also had an 18-year-old daughter with whom he had a continuing relationship.

Father testified that his plan for the care of his children if he got custody of X.H. was "Give them the best of me; love her, and especially because she's my blood, my

daughter." He would enroll her in any type of daycare that the social workers requested or approved, and he would participate in any special counseling they or the court recommended. Father's mother would babysit X.H. if the child were returned to him.

Father testified that mother did not live with him and had not visited him for "a few months." They had broken up "[b]ecause based on all of these problems that we had, and specially the loss of our baby, that really devastated me. And, you know, especially if I cannot have a family with her, there is no reason why I should keep a relationship like that because I want to have a family."

Father and mother initially visited X.H. together but had had separate visits for "at least three months." Mother now visited X.H. from 9:00 to 10:00 a.m. on Thursdays, and father visited the child from 10:00 to 11:00 a.m. Father's mother went to the visits with him, and his sons also accompanied him to the visits while they were staying with him. During the visits, father played with X.H., talked to her, and hugged and kissed her. Because mother was still there when father's visits with the child began, father saw mother and said hello to her. One of father's sons called mother "mom."

Father knew mother had been convicted of D.R.'s death. Although before the parenting classes and counseling he had not thought about mother being around X.H. or being involved in X.H.'s life, it now concerned him. He had known mother since 1995 and had an on-and-off relationship with her. He continued to see mother for a few weeks after X.H. was born until he chose to break off the relationship with mother. He did not plan to get back together with her. If he got custody of X.H., he would comply with any court order not let mother see X.H. Even if the court were no longer involved, he would

not let mother see X.H., because he "d[id] not want to jeopardize in [*sic*] losing her again."

Counsel for the Department argued that father's sons had "some type of visitation" with mother when they were staying with father over the summer, and counsel had "a gut feeling" that father was still in a relationship with mother. Counsel for X.H. requested the court to deny father's petition. While it appeared father's circumstances were changing, X.H.'s relationship with him was limited to one-hour weekly visits. In response, mother's counsel argued that father's son from Colorado was not, in fact, having any current relationship with mother other than seeing her when their visits with X.H. overlapped.

The juvenile court observed that father presented himself as "a rather sympathetic figure," but the court found that father's circumstances were merely changing, not changed. The court did not find father's testimony credible regarding his relationship with mother. The court also found that it would not be in the best interests of the child to grant the petition, because the child, who was then seven months old, had been placed with the prospective adoptive parents for four months and was bonded to them. The court therefore denied father's petition.

The juvenile court moved on to the section 366.26 hearing. The court found that X.H. was adoptable and that no exception to adoption applied. The court thereupon terminated parental rights.

III. DISCUSSION

A. Father's Contention

Father contends the juvenile court erred when it denied his petition for modification under section 388.

1. Standard of Review

We review the juvenile court's denial of a section 388 petition under the deferential abuse of discretion standard. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.)

2. Analysis

Section 388, which allows a parent to petition the juvenile court to change, modify, or set aside any previous order, "provides the 'escape mechanism' that . . . must be built into the process to allow the court to consider new information." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The petitioner has the burden to show, by a preponderance of the evidence, both that there is new evidence or a change of circumstances of a significant nature *and* that the proposed modification would be in the best interests of the child. (§ 388; *Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1068; *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

We commend father for completing a parenting class and individual counseling. However, the social worker had expressed concern about father's ability to act as X.H.'s parent because he "showed poor judgment in having another child with [mother], knowing her past history." The juvenile court expressed the same concern at the March 2011 hearing: "Father is indicating . . . that he continues in his relationship with the

mother and wants to raise a family. It looks like they began seeing each other back in 1998. So there is a longstanding history between mother and father."

In his petition, father did not state that he had ended his relationship with mother. At the hearing, he did testify he had done so, but the juvenile court found his testimony on that point to be not credible. We must defer to the juvenile court's determination of credibility: "It is the [juvenile] court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) We therefore conclude that father has failed to show that the circumstances which led to the dependency have changed such that it would be in X.H.'s best interest to grant father's section 388 petition.

B. Mother's Contention

Mother's sole contention is that if father's parental rights are restored, hers also must be restored. Because we have found no error with respect to father, mother's contention must also fail.

IV. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.