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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.L.,

Defendant and Appellant.

E055886

(Super.Ct.No. J236535)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,  
Judge. Affirmed.

Michelle Jarvis, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, Danielle E. Wuchenich, Deputy County  
Counsel, for Plaintiff and Respondent.

No appearance for Minor.

K.L. (Mother) appeals from the juvenile court's orders (1) denying her petition to modify a court order related to her daughter, N.B. (Welf. & Inst. Code, § 388),<sup>1</sup> and (2) terminating her parental rights to N.B. (§ 366.26). Mother contends the juvenile court erred by denying her petition to modify a court order because Mother proved that (1) her circumstances had changed, and (2) it would be in N.B.'s best interests to order reunification services. Mother asserts the juvenile court erred by terminating her parental rights because the court should have applied the parent-child bond exception. We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. DETENTION**

N.B. was born in November 2010. At the time of N.B.'s birth, mother had an open dependency case for two of her older children, A.S. and J.S., who were in the process of being adopted. Mother's other three children, who ranged in age from four to 14 years old, lived with the maternal grandmother (Grandmother). In total, Mother had given birth to six children.

On December 8, 2010, two social workers made an unannounced visit to the home where Mother was staying for three weeks; Mother is transient. Mother told the social workers she chose not to follow the case plan for A.S. and J.S., but now regretted that decision. Mother waived her rights in the case involving A.S. and J.S., and her rights were terminated on July 22, 2010.

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<sup>1</sup> All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

Mother explained “her drug of choice is speed and that she was ‘living on the streets’ during her entire pregnancy” with N.B. Mother admitted using drugs for the first six months of her pregnancy, but stopped in order to test negative when giving birth. N.B. tested negative for drugs at birth. N.B. appeared clean and healthy during the social workers’ visit. Mother agreed to submit to drug testing.

On December 13, 2010, Mother’s drug test reflected a negative result for drugs; however, a background check revealed Mother had an arrest warrant for solicitation. The solicitation was alleged to have occurred while Mother was pregnant. A background check of T.B. (Father)<sup>2</sup> revealed he had been arrested for domestic violence during 2009 or 2010. San Bernardino County Children and Family Services (the Department) decided to remove N.B. from Mother’s and Father’s care due to (1) Mother’s five older children not being in her care, (2) Mother’s criminal warrant, (3) Father’s alleged domestic abuse, and (4) Mother’s housing instability. On December 14, N.B. was removed from Mother’s and Father’s care. N.B. was placed in the same foster home as her half-siblings, A.S. and J.S.

The Department filed a petition alleging (1) Mother had an extensive substance abuse history, including using methamphetamine while pregnant, which placed N.B. at harm and compromised Mother’s ability to care for N.B. (§ 300, subd. (b)); (2) Father knew or should have known about Mother’s compromised ability to care for N.B.; (3) Father had a history of domestic violence, which placed N.B. at risk of harm; and

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<sup>2</sup> Father is not a party to the appeal.

(4) Father had an extensive criminal history, which impaired his ability to parent N.B. (§ 300, subd. (b).) The petition further alleged Mother's parental rights to A.S. and J.S. were terminated due to Mother's substance abuse and neglect of A.S. and J.S., and Mother had not ameliorated the problems that led to the termination, thus placing N.B. at risk of similar neglect. (§ 300, subd. (j).) The juvenile court found continuing N.B. in Mother's and Father's care would place N.B. in substantial danger. The court ordered N.B. removed from Mother's and Father's care.

**B. JURISDICTION/DISPOSITION**

On December 17, 2010, Mother tested positive for amphetamines/methamphetamines. Mother insisted the results were positive due to use of her asthma inhaler. When Mother was informed asthma inhalers do not cause positive drug test results, Mother said she was also taking over-the-counter cold medicines containing pseudoephedrine. Mother and Father had weekly visits with N.B. The visits were "usually quiet and mellow." Mother and Father typically arrived on time, and fed, changed, and held N.B.

Mother had arrests and convictions for drug possession, paraphernalia possession, and being under the influence of drugs. A.S. and J.S., who were twins, were removed by Alameda County Child Protective Services after Mother gave birth to them while incarcerated in Chowchilla for drug possession. Mother was reunited with A.S. and J.S. upon her release from prison, but they were removed again in August 2009 when she relapsed into using methamphetamine.

After a referral by the Department, Mother entered an inpatient drug treatment program on December 27, 2010. During an interview on December 28, 2010, Mother admitted using drugs since the age of 18; Mother was born in 1977.

During the December 28 interview, Mother changed her story about using drugs while pregnant with N.B.; Mother stated the last time she used drugs was nine months to a year prior. Father told the Department Mother never used drugs around him and she appeared to act normally. Mother had not had a job in ““over 10 years.”” Father also did not have a job, but was looking for work; he had worked previously in warehouse and sales.

Mother checked herself out of the drug rehabilitation program on January 9, 2011. On January 12, 2011, Father called the Department to report Mother was using drugs again, and to request separate visits with N.B. The following day, January 13, it was reported Mother was hallucinating while taking methamphetamine and making threatening telephone calls to Father. Mother contacted the Department and explained she left the rehabilitation program due to a family emergency, and that she was on a waiting list for a different program. Mother appeared to be under the influence during the telephone call to the Department; she was alternating between being angry and tearful, and speaking rapidly. On January 14, Mother spoke to a Department social worker in person. Mother appeared to be under the influence, and stated another man, other than Father, could be N.B.’s father.

On January 24, 2011, Mother informed the Department she was homeless, because she had to leave her sister’s house where she had been staying. Mother did not

give a reason for having to leave her sister's house. Mother denied using drugs. Father informed a social worker that he was N.B.'s father; Mother was upset with him because he no longer wanted to be her boyfriend.

On February 1, 2011, the juvenile court declared N.B. a dependent of the court and ordered she be maintained in foster care. Father was granted a maximum of six months of reunification services. Father was found to be N.B.'s presumed father. The juvenile court denied reunification services for Mother due to Mother's parental rights to J.S. and A.S. being terminated, and Mother not making a reasonable effort to treat the problems that led to their removal. (§ 361.5, subd. (b)(11).)

C. SIX-MONTH STATUS REVIEW

Mother and Father told the Department they were concerned Grandmother and the foster mother of N.B., J.S., and A.S. were exchanging confidential information about N.B.'s dependency case. Mother suggested T.G., a non-related extended family member, be assessed for placement of N.B. N.B. was placed with T.G. on February 25, 2011.

In April and May 2011, the Department tried to contact Father about scheduling visitation appointments. Father's girlfriend eventually informed the Department that Father did not believe N.B. was his child, and no longer wanted to visit the child. Mother missed two visits with N.B., but otherwise was consistent in her visitation. Mother requested her visits be reduced from two hours to one hour, because Mother was "unable to sit for two hours." The social worker observing the visits believed Mother

was unable to sit for long in one place due to substance abuse. Mother was appropriate during the one-hour visits, cuddling and playing with N.B.

On May 24, 2011, Mother told a social worker she wanted N.B. to be adopted by T.G. In June 2011, Mother told a social worker she wanted N.B. to be placed with Grandmother or Mother's brother (Uncle); however, Grandmother was on parole so N.B. could not be placed with her, and Uncle had "some issues," so N.B. could not be placed with him. In July 2011, Mother said a man who was possibly N.B.'s father would be released from prison soon, and might want visitation with N.B. It appeared to the Department that Mother did not recognize N.B. had developed a healthy attachment and bond to T.G. N.B. sought attention from T.G., and T.G. was able to comfort N.B.

At the six-month status review hearing, the juvenile court found placing N.B. in Mother's or Father's care would be detrimental to N.B.'s welfare and best interests. The court terminated Father's reunification services.

#### D. TWELVE-MONTH STATUS

In December 2011, N.B. appeared happy, friendly, and attached to T.G. T.G. wanted to adopt N.B. The social worker observed a mutual attachment between N.B. and T.G. N.B. sought out T.G. when she needed affection, attention, or food. Mother's visits continued to be scheduled for two hours, but Mother continued requesting one-hour visits. During a six-month period, Mother missed four visits due to transportation or personal issues, and generally failed to stay at the appointments for the whole two-hour period. Mother's visits with N.B. were appropriate; Mother hugged, kissed, and played with N.B. N.B. appeared comfortable with Mother during the visits.

E. REQUEST TO CHANGE A COURT ORDER

On February 28, 2012, Mother filed a request to change a court order. (§ 388.)

In the request, Mother explained her circumstances had changed because she completed a substance abuse treatment program, was attending aftercare, and attending a parenting class. Mother also noted she regularly visited N.B. Mother requested the juvenile court return N.B. to Mother's custody, or grant her reunification services with overnight and weekend visits. Mother felt the changed order would be in N.B.'s best interests because Mother and N.B. had a strong bond and N.B. "should be raised by her mother." Mother attached a certificate of completion to her request, reflecting that she was in treatment from November 6, 2011, to January 4, 2012.

The Department argued Mother's sobriety was "very new" and therefore did not support a finding of changed circumstances. The Department pointed out Mother had completed a treatment program during J.S. and A.S.'s dependency case as well, but then relapsed five months after the case closed. The Department also noted that while Mother visited N.B., she wanted her visits reduced from two hours to one hour. The Department argued Mother was making progress, but had not shown changed circumstances. N.B.'s attorney joined in the Department's argument. The juvenile court denied Mother's request, because the court found Mother did not provide new evidence or present changed circumstances.

F. TERMINATION

Mother testified at the termination hearing. Mother had been sober for six months and continued to attend aftercare and Narcotics Anonymous meetings three

times per week. Mother stated she was supposed to have two-hour visits with N.B. once per week, but she was never given two-hour visits—her visits were only one hour.

During visits Mother played with N.B. and held her. Mother believed N.B. recognized Mother because N.B. would run up to Mother and give her kisses. N.B. called Mother “mom.” Mother believed N.B. enjoyed the visits with Mother. Mother felt termination of her parental rights would harm N.B., because N.B. knew Mother as her mom and was bonded with Mother.

The juvenile court found it was likely N.B. would be adopted, and none of the exceptions to termination were applicable. The juvenile court terminated Mother’s and Father’s parental rights to N.B.

## **DISCUSSION**

### **A. REQUEST TO MODIFY A COURT ORDER**

Mother contends the juvenile court erred by denying her request to change a court order because Mother proved (1) her circumstances had changed, and (2) it would be in N.B.’s best interests to order reunification services. We disagree.

Under section 388, a parent may petition a juvenile court to modify a previous order on the grounds of changed circumstances. (§ 388; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) The petitioner has the burden to show, by a preponderance of the evidence, a change of circumstances, and to show that the proposed modification is in the child’s best interests. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; Cal. Rules of Court, rule 5.570(h)(1).) “We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. [Citations.]” (*In re B.D.*, at p. 1228.)

The juvenile court's finding that Mother's circumstances had not changed was within reason, because Mother's sobriety was relatively new. Mother began using drugs at the age of 18, and was approximately 34 years old during the dependency proceedings. Mother supported the section 388 petition with proof that she was in a treatment program for two months and maintained her sobriety in aftercare for another two months; specifically November 6, 2011, through February 22, 2012. In Mother's prior dependency case she relapsed five months after the case closed. Given the evidence, it can reasonably be concluded that Mother's four months of sobriety, after approximately 16 years of drug abuse, was not sufficient to show changed circumstances—Mother was making progress, but had not sufficiently changed the drug abuse issue.

In regard to the second prong, the best interests of the child are determined by considering (1) the seriousness of the problem that led to the dependency; (2) the strength of the parent-child bond; and (3) whether the problem that led to the dependency has been resolved, or the ease with which it may be resolved. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

N.B. was detained because (1) Mother had an extensive substance abuse history, including using methamphetamine while pregnant, which placed N.B. at harm and compromised Mother's ability to care for N.B. (§ 300, subd. (b)); and (2) Mother's parental rights to A.S. and J.S. were terminated due to Mother's substance abuse and neglect of A.S. and J.S., and Mother had not ameliorated the problems that led to the termination, thus placing N.B. at risk of similar neglect. (§ 300, subd. (j).) Mother's

drug abuse appeared to be serious, since she had been using drugs for nearly 16 years and used drugs while pregnant. Mother had begun resolving the issue by participating in treatment and maintaining her sobriety, but the juvenile court could reasonably conclude the progress was too new to consider the issue resolved.

As to the parent-child bond, Mother had positive visits with N.B. However, there was evidence that Mother was permitted to visit N.B. two hours per week, but Mother rarely stayed for the whole two hours. Further, there was evidence that Mother requested the visits be reduced to one hour, because she had trouble sitting for more than one hour, likely due to her drug use. Given (1) the evidence that Mother chose to allow her drug use to interfere with her visits with N.B., and (2) N.B.'s young age at the time of removal, the juvenile court could reasonably conclude the two were not strongly bonded. While Mother and N.B. appeared to enjoy their time together the bond was not that of a parent and child, but more of a friendly visitor.

Mother asserts she had been sober for just over five months at the time the section 388 petition was denied, which was a substantial change in circumstances. While we agree Mother was making progress in resolving her drug issues, the juvenile court could reasonably conclude the changes were not sufficient, given Mother's long history of drug abuse. Thus, we find Mother's argument to be unpersuasive.

B. TERMINATION

Mother contends the juvenile court erred by terminating her parental rights because the court should have applied the parent-child bond exception. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

If a juvenile court finds a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights shall not be terminated if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “The benefit to the child from continuing such a relationship must . . . be such that 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.” [Citation.]” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) In other words, for the exception to apply the bond between the parent and child must be a parent-child bond, rather than the type of bond a child might have with a friendly visitor or non-parent relative, such as an aunt. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) We review the juvenile court’s decision to not apply the parent-child bond exception for an abuse of discretion.<sup>3</sup> (*Aaliyah R.*, at p. 449.)

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<sup>3</sup> Mother contends the substantial evidence standard of review should be applied to this issue. There appears to be a split of authority as to which standard of review is applicable to a decision to not apply the parent-child bond exception. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [Fourth Dist., Div. Three applied the substantial evidence standard]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [Fourth Dist., Div. One applied the substantial evidence standard].) We choose to follow the precedent of *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, which explained the abuse of discretion standard is applicable because “[t]he juvenile court is determining which kind of custody is appropriate for the child[, and s]uch a decision is typically reviewable for abuse of discretion.”

The first requirement for the parent-child bond exception is that Mother maintained regular visitation with N.B., thus, we address that issue first. During a six-month period, Mother missed four visits due to transportation or personal issues, and generally failed to stay at the appointments for the whole two-hour period. Mother had weekly visitation appointments with N.B., so missing four visits was the equivalent of missing a month of visits. Given this evidence, the juvenile court could reasonably conclude Mother did not maintain regular visitation.

Moreover, there is evidence supporting the conclusion that the benefit to N.B. from continuing a relationship with Mother would not promote N.B.'s well-being to such a degree as to outweigh the well-being N.B. would gain in a permanent home with a new, adoptive parent. The social worker observed a mutual attachment between N.B. and T.G. N.B. sought out T.G. when she needed affection, attention, or food. Mother's visits with N.B. were appropriate; Mother hugged, kissed, and played with N.B., and N.B. appeared comfortable with Mother during visits. However, N.B. was removed from Mother's care when she was approximately two weeks old. N.B. seemed to enjoy Mother's visits, but Mother's interactions with N.B. appeared to be more akin to a friendly visitor or non-parent relative, such as an aunt. It does not appear N.B. was particularly upset when the visitation sessions ended, or that she was particularly anxious to visit Mother. In sum, the juvenile court's decision to not apply the parent-child bond exception was within reason. Thus, we conclude there was no error.

Mother asserts the juvenile court erred because N.B. referred to Mother as "mom," and ran up to Mother and kissed her at visits. We agree there is evidence

supporting a finding of a positive relationship between Mother and N.B.; however, there is also evidence supporting a reasonable conclusion that N.B. would gain the greater benefit from being placed in a permanent adoptive home, because while Mother and N.B. had positive interactions, their bond did not rise to the level of a parent and child.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

CODRINGTON  
J.