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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

E055936

(Super.Ct.No. J229482)

OPINION

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

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant  
and Appellant.

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

Appellant T.L. (mother) appeals from the juvenile court's denial of her Welfare and Institutions Code<sup>1</sup> section 388 petition regarding her child, A.L. (the child). She also claims that the beneficial parental relationship exception applied. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On October 19, 2009, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition on behalf of the child. The child was six months old. The petition alleged that he came within section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (d) (sexual abuse). The petition included the allegations that the child's alleged father (father)<sup>2</sup> physically abused one of the child's half siblings, and sexually abused another half sibling; that mother knew or reasonably should have known that the child was at risk of sexual and physical abuse by father but failed to protect him; that mother suffered from a substance abuse problem; and that mother had a history of engaging in relationships with "abusers."

A detention hearing was held on October 20, 2009, and the court detained the child and placed him in the temporary care and custody of CFS. The court ordered reunification services pending the development of a case plan. The court also ordered supervised visitation.

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

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

*Jurisdiction/disposition Report and Hearing*

The social worker filed a jurisdiction/disposition report on November 5, 2009, recommending that reunification services be provided to mother. The social worker reported that a referral was received on October 7, 2009, alleging that mother and her children<sup>3</sup> had moved back in with father, who had sexually abused one of the child's half sisters. Mother had previously left father, obtained a restraining order against him, and went into a drug rehabilitation center with her children. However, when she was recently terminated from the program for noncompliance, she moved back in with him. The social worker spoke with mother on the telephone on October 16, 2009. Mother's words seemed slurred. The social worker encouraged her to go into inpatient treatment, and mother asked for other options. The social worker then referred her to an outpatient treatment program. The social worker attached a case plan, which included objectives for mother such as staying free from illegal drugs, staying sober, obtaining and maintaining a stable and suitable residence for herself and her children, and showing that she would not permit others to physically abuse her children. The case plan included the requirements that mother participate in general counseling, a parenting education program, participate in an outpatient substance abuse program, participate in random substance abuse testing, and attend a 12-step program.

In an addendum report, the social worker reported that mother tested positive for marijuana on October 20, 2009. She enrolled in an outpatient treatment program on

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<sup>3</sup> Mother apparently had three other children who were detained at the same time as the child. Those children are not subjects of this appeal.

November 13, 2009, and then tested positive for opiates on November 17, 2009. She also tested positive for marijuana on December 7, 2009 and December 11, 2009.

A contested jurisdiction/disposition hearing was held on January 6, 2010. The court found that the child came within section 300, subdivisions (a), (b) and (d), and declared him a dependent of the court. The court approved the case plan and ordered mother to participate in reunification services. The court also ordered supervised visitation, twice a week.

#### *Section 387 Report and Hearing*

The social worker filed a section 387 supplemental petition on May 28, 2010, alleging that the maternal grandmother, with whom the child was residing, disclosed to the social worker that she had relapsed and used methamphetamine. In the section 387 petition, the social worker explained that the child was placed with the maternal grandmother on March 19, 2010, following the completion of the assessment by the Relative Approval Unit. However, the social worker was now recommending that the child be removed from her home, in light of her recent relapse. The social worker also reported that mother entered an inpatient drug treatment program on March 11, 2010, and was making excellent progress. Based on mother's substantial progress in treatment, and her participation in counseling, parenting, and 12-step meetings, the social worker recommended that the child be returned to mother's care at the treatment facility, on a family maintenance plan.

At the hearing on the petition on June 1, 2010, the court returned the child to mother's care and ordered that she remain in treatment. The court also ordered her to participate in family maintenance services.

*Status Review*

The social worker filed a family maintenance review report on June 21, 2010, recommending that the child remain with mother. The child appeared to be doing well in her care. The report stated that mother planned on staying an additional 60-90 days in her inpatient treatment program.

A status review hearing was held on July 6, 2010. The court found that conditions still existed which justified the initial assumption of jurisdiction, and that mother had not completed the family maintenance case plan. The court ordered the child to be continued as a dependent of the court and mother to continue participating in the family maintenance case plan.

The social worker filed another status review report on December 22, 2010, and recommended that the child stay in mother's custody. The social worker reported that on March 11, 2010, mother was terminated from her inpatient program for marijuana and alcohol use. On September 3, 2010, she was terminated from another program for relapsing on methamphetamine. Mother was released from another residential drug treatment program, but then readmitted, for prohibited use of a cell phone. She was scheduled to graduate on February 11, 2011. Mother reported that she was not ready to be on her own yet and needed to work on her sobriety.

On January 6, 2011, the day originally scheduled for a review hearing, county counsel asked for a one-day continuance, noting that the child had been removed from mother's custody. The prior order was that mother could be on family maintenance if she remained in a treatment program. However, on December 16, 2010, mother violated one of the program's contract rules (no cell phones on the premises). The social worker filed a section 387 petition regarding the violation. The review hearing was continued.

The court held a hearing the next day. It removed the child from mother's custody, and placed him in the temporary care of CFS. The court ordered that the child be maintained in a foster home, and it authorized unsupervised visitation, on the conditions that mother participate in a treatment program, test clean, and follow the rules of the program.

#### *Section 387 Jurisdiction/disposition*

The social worker filed a jurisdiction/disposition report on January 25, 2011, recommending that the court find the allegation in the section 387 petition true, and that mother be provided with reunification services until the section 366.22 hearing. The social worker reported that mother admitted she violated the rules of the sober living home contract on at least three separate occasions. She subsequently started a new program in another sober living home.

As to visitation, the social worker reported that mother had been nurturing during visits with the child, and she tried to play games, teach him words, and develop a bond. However, the social worker noted that the child presented "with a flat affect," meaning that he did not smile or speak, but often just stood and stared. During the last supervised

visits that the social worker supervised, the child pulled away from mother when she tried to hold him for a kiss. He did not appear to enjoy being held by her. The child had also been observed hitting mother in the face and trying to stick his fingers in her eyes. At the end of their visits, the child did not cry or reach for mother.

At a hearing on March 3, 2011, the court found that the previous disposition was not effective and ordered the child removed from mother's custody. The court ordered mother to participate in reunification services and ordered unsupervised visitation, twice a week. The court set the matter for a section 366.22 hearing on July 6, 2011.

#### *18-month Status Review*

The social worker filed an 18-month status review report on June 17, 2011, and recommended that the court set a section 366.26 hearing to establish a permanent plan of adoption. The social worker reported that mother had maintained her sobriety, and that her last random drug test on May 26, 2011, was negative. The social worker further reported that mother's living arrangements were unstable. She had graduated from an inpatient program and moved into a sober living home. However, she only lived there for about four weeks because she did not have a job and could not pay the rent. She found another sober living home and lived there for about six weeks before having to move, since she was again unable to pay the rent. On June 8, 2011, mother informed the social worker that she had spent the last six nights in a government-subsidized hotel, but she did not know where she was going to sleep that night. The social worker stated that she had been supervising mother since October 2010, and mother had never been self-supporting.

She concluded that mother's transient lifestyle suggested that she would not be able to provide for the child.

The social worker noted her observations that the child had a difficult time receiving affection from, and showing affection to, mother at visits. He did not display any emotions at the end of visits and would look away when she tried to kiss him goodbye. Mother had a few two-hour, supervised visits, and the visits were increased to longer, unsupervised visits. By May 2011, the child had his first overnight visit, which mother reported was positive.

A hearing was held on July 6, 2011, and mother's counsel stated that mother only lacked a home. Mother informed the court that she was currently living in a sober living home, and that her mother was paying her rent until she found a job. Mother said she had been looking for a job since February. The court said that mother was "out of time" on the case, but noted that the child probably would not be at risk with mother if she had a place to live. Upon county counsel's suggestion, the court set a presettlement/trial setting conference for August 17, to see if mother's housing would stabilize. The court warned mother that she had to find a job by then, and instructed her to keep a log of her job search.

At the hearing on August 17, 2011, CFS continued to recommend that the court terminate mother's reunification services and set a section 366.26 hearing. The court found that mother had failed to make substantive progress in her case plan and that reasonable services had been provided. The court terminated services and set a section

366.26 hearing for December 15, 2011. The court ordered supervised visitation once a month, until then.

At a nonappearance hearing on September 26, 2011, it was reported that the child was placed with prospective adoptive parents and was adjusting well in his new home.

*Section 366.26 and Section 388*

The social worker filed a section 366.26 report on December 1, 2011, and recommended that the court terminate mother's parental rights and set adoption as the permanent plan. The social worker noted that mother and the child began having monitored visits in August 2010, and the interaction between them was tense. The child would pull away and whine when she tried to hold him. At a visit on September 2, 2011, mother kept asking the child for kisses, and he would sometimes comply. However, his primary interest appeared to be "escaping from his mother's clutches so he could play with the toys in the room." The social worker opined that the child was aware that mother was a part of his life, but he was apparently not bonded with her. At the beginning of a visit on September 26, 2011, the child did not want to leave the foster mother's arms and started crying when she put him down on the floor. At one point, mother was holding him, and he began crying harder and reaching for the social worker. The social worker opined that, overall, the visits appeared to be frustrating for the child. Although he did interact with mother, he rarely initiated the interaction. He rarely smiled during visits, and his "affect [was] often flat."

Furthermore, the social worker reported that the child was diagnosed in January 2012 with posttraumatic stress disorder (PTSD). A pediatrician noted that visits with

mother appeared to have an adverse affect on the child. He was anxious upon seeing her and extremely tired after each visit. The doctor opined that the child was re-experiencing trauma from previously living with mother and recommended withholding visitation, in order to resolve the child's PTSD-related symptoms.

Additionally, the social worker reported that the prospective adoptive parents were developing a relationship with the child, but they already loved him very much. They considered him to be their son, and he thought of them as his parents, calling them "mommy" and "daddy." He looked to them for approval and acceptance. They wanted to provide him with a stable, loving home. The social worker observed the child to be comfortable and relaxed in their home. The prospective adoptive parents were meeting his social, developmental, medical, and emotional needs. They were committed to raising him to adulthood.

On January 3, 2012, mother filed a section 388 petition requesting that the court return the child to her care or, in the alternative, reinstate reunification services and liberalize visitation. Mother alleged that she had stable housing, attended 12-step meetings, visited the child regularly, and had been employed.

The court held a contested, combined hearing pursuant to sections 388 and 366.26 on February 27, 2012. Mother testified on her own behalf. She said that she had stable housing, as she was staying with her boyfriend's aunt. She said that the child would be able to stay there too. Mother further testified that if something were to happen to that

housing, she had other housing options.<sup>4</sup> She also said that she had another child in her care now. She had just given birth to another child. Mother said she was currently on maternity leave, but intended to return to work within the next month with the agency she was with before she had her baby. Mother testified that she visited the child once a week, that she and the child played with toys together, and that the child was happy to see her and would run up to her. She also said the child would give her kisses all over her face when they played together. When asked if she had ever noticed any negative behavior during her visits, mother only said that the child did not like to share with her.

When asked why she thought it would be in the child's best interest to return him to her, mother replied, "Because I'm his mother." She later added that she did not think anybody could care for a child "as good as a mother can." Mother also said she had been sober and had not relapsed since October 24, 2010.

On cross-examination, mother explained that she was living in a two-bedroom house with her baby, her boyfriend's aunt, and the aunt's daughter. She had lived there since August 2011, and was paying rent, although she was not on the lease. Mother said she was not currently working. She was previously working at two different warehouses doing packaging, and had worked at those locations from August to November. Mother said she had not made any money since she last worked, but she was receiving \$490 in welfare.

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<sup>4</sup> Mother did not name any of the options.

Mother's counsel argued that mother was asking the court to find a change in circumstances due to her "continued and ongoing sobriety." County counsel argued that mother had not shown the stability necessary to be able to parent the child full time, and noted that mother had other children who were not living with her. After considering mother's petition, as well as her testimony, the court stated that it believed mother was not using, but felt that "overall there really [had] not been a change in circumstances relative to the child." The court also stated that the best interest part of the section 388 analysis had not been met. The court denied the section 388 petition. The court further found that it was likely that the child would be adopted, terminated parental rights, and set adoption as the permanent plan.

## ANALYSIS

### I. The Court Properly Denied Mother's Section 388 Petition

Mother argues that the juvenile court abused its discretion in denying her section 388 petition. She acknowledges that her home was not fully approved by CFS at the time of the section 388 hearing and, thus, only contends that the court erred in failing to reinstate her reunification services, not in failing to return him to her custody. We conclude that the court properly denied mother's petition.

#### *A. The Court Did Not Abuse Its Discretion*

A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317 (*Stephanie M.*)) A section 388

petition is addressed to the sound discretion of the juvenile court, and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*Id.* at p. 318.)

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘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 interest 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 interest of the child.” (*Id.* at p. 317.)

The juvenile court here did not abuse its discretion in denying mother’s section 388 petition, as she failed to show changed circumstances or that a changed order would be in the child’s best interest. As to changed circumstances, she alleged that she had stable housing for herself and her son, and that she had been sober since October 24, 2010. She further alleged that she attended 12-step meetings, visited the child regularly every week, and that she “[had] been employed.” However, at the time the court terminated mother’s services, the main issues were that mother did not have a stable home or employment, and, as the court pointed out, she was “out of time.” As the child was originally detained on October 20, 2009, mother had received services for over 18 months. The court encouraged mother to “try to change the circumstances” within the next four months, before the section 366.26 hearing. The court was clearly concerned with mother’s stability and ability to provide for the child, as it specifically instructed her to get out of the sober living home she was in, find a place to live, and get a job. Despite

the court's instructions, by the time of the section 388 hearing months later, mother had found a new place to live (with her boyfriend's aunt), but she was not employed. Her only income was the \$490 she was receiving in welfare. Moreover, perhaps the biggest change in circumstances was that she just gave birth one month prior to the hearing. Thus, mother now had another child to support on her limited income. Overall, mother's petition simply failed to demonstrate the changed circumstances that the court was looking for.

Furthermore, mother was unable to demonstrate that a changed order was in the best interest of the child. "[A] primary consideration in determining the child's best interest is the goal of assuring stability and continuity." (*Stephanie M., supra*, 7 Cal.4th at p. 317.) As to the best interest of the child, mother alleged that she loved the child, and that she had maintained a bond with him through weekly visits. She then simply concluded that, "[i]t would be in [the] child's best interest to be raised by his mother." Mother clearly failed to show *how* it would be in the child's best interest to reinstate her reunification services. She had already had *over* 18 months of services, yet failed to make substantive progress in her case plan. Moreover, her circumstances failed to assure the court of any stability or continuity. (*Ibid.*) She had been living in her home for only a few months. Moreover, she was just renting a room from her boyfriend's aunt, but was not on a lease. Mother was not working at the time of the hearing, and she merely testified that she *intended* to return to work after her maternity leave. She had also had an unplanned pregnancy and thus had the added responsibility of caring for a newborn. In

view of the circumstances, it is difficult to see how reinstating mother's services, with the ultimate goal of returning the child to her custody, would be in the child's best interest.

We conclude that the court carefully evaluated the evidence, determined that mother had not carried her burden of proof, and properly denied mother's section 388 petition.

## II. The Beneficial Parental Relationship Exception Did Not Apply

Mother contends that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the 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 phrase "benefit from continuing the relationship" refers to a parent/child relationship that "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.*)) It is the parent's burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

In support of her position, mother asserts that she was "fiercely and beneficially" bonded with the child, and that she had regular visits with him. She further states that she "demonstrated she occupied a parental role in [the child's] life, resulting in significant, positive, emotional attachment, and that severing [his] parent-child relationship would deprive [him] of a substantial, positive emotional attachment, such that [the child] is suffering [*sic*] great harm." The main evidence she points to is the social worker's report which stated that during the visits, the child was playful and had fun, and that they played with his toys. She also points to her own testimony that the visits "go good" and the child was "happy" when he saw her at visits, he gave her kisses all over her face, and that if he needed discipline, she would take away his toys until he was ready to clean them up, or she would have him sit down until he was ready to pick them up.

Mother's interactions with the child do not even begin to demonstrate that her relationship with him promoted his well-being "to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."

(*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) She has not proffered any evidence to support a finding that the child had a “substantial, positive emotional attachment [with her] such that [he] would be greatly harmed” if the relationship was severed. (*Ibid.*) To the contrary, the record shows that the child had a difficult time receiving affection from, and showing affection to, mother. In contrast to mother’s description of their visits, the social worker observed that the child would pull away and whine when mother tried to hold him. At a few visits, he tried to get away from her and was primarily interested in playing with the toys. The social worker further observed that the child was aware that mother was a part of his life, but he was not bonded with her. At the beginning of one visit, the child did not want to leave the foster mother and started crying. At one point during the visit, mother was holding him, and he began crying harder and reaching for the social worker. The social worker concluded that, overall, the visits appeared to be frustrating for the child, noting that he rarely initiated interactions with mother, he rarely smiled during visits, and his “affect [was] often flat.” Moreover, the evidence showed that the child was suffering from PTSD, and a doctor recommended withholding visitation with mother, since they had an adverse affect on the child. In light of all this evidence, it is difficult to conclude that the child had a positive, emotional, or beneficial relationship with mother.

We further note that the child was thriving in his prospective adoptive home. He was attached to the prospective adoptive parents and called them “mommy” and “daddy.” He was comfortable in their home. The prospective adoptive parents were willing, able, and eager to meet the needs of the child on a permanent basis.

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(1) did not apply here.<sup>5</sup>

DISPOSITION

The court's orders are affirmed.

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HOLLENHORST  
J.

We concur:

RAMIREZ  
P. J.

KING  
J.

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<sup>5</sup> We acknowledge mother's final argument that "[a]doption is not a permanent arrangement," but see no need to address it.