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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re T.V., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.V.,

Defendant and Appellant.

E056539

(Super.Ct.No. J228403)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A.  
Buchholz, Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,  
for Plaintiff and Respondent.

## I

### INTRODUCTION

Mother appeals from juvenile court orders denying her petition under Welfare and Institutions Code section 388,<sup>1</sup> and terminating parental rights. Mother contends she demonstrated her circumstances had changed and granting her petition was in the best interests of her daughter, T.V. (born in July 2009). We conclude the juvenile court reasonably found mother had not sufficiently changed her circumstances and granting mother's petition was not in T.V.'s best interests. Because there was no abuse of discretion in denying mother's petition, the judgment is affirmed.

## II

### FACTS AND PROCEDURAL BACKGROUND

T.V. is a special needs child, and mother's sixth child. T.V. has developmental delays and microcephaly. She is receiving treatment through the Inland Regional Center. T.V. came to the attention of the San Bernardino County Child and Family Services (CFS) when mother told the hospital social worker after T.V.'s birth, that mother did not know she was pregnant until four days before giving birth to T.V., and therefore had had no prenatal medical care. When mother gave birth to T.V., mother had a highly contagious methicillin-resistant strain of *Staphylococcus aureus* infection (MRSA). T.V. tested positive for MRSA but with no active infection.

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

Before T.V. was born in July 2009, mother's other five children became dependents of the juvenile court in May 2009, because of severe neglect. Mother failed to provide her children with a safe, clean home. T.V.'s father was no longer living with mother and had moved to Texas. Father was unemployed. Mother had still not sufficiently cleaned her home by the time of T.V.'s birth. Mother's father (grandfather) had been helping her clean and restore the house to an acceptable condition for mother's children to live there. Grandfather lived relatively far from mother but visited twice a week to assist mother with transportation and cleaning up her home. Mother was unemployed and had no means of transportation, other than grandfather.

A CFS social worker inspected mother's home on July 30, 2009, and concluded it still did not meet the standards required for placement of a newborn baby in the home. A social worker had previously suggested mother go to the Department of Behavioral Health for a medication evaluation because mother appeared to be quite depressed, which might have been why she had not adequately cleaned and maintained her home. Mother said she had not gotten an evaluation, as suggested, but intended to do so soon. The day after T.V.'s birth, CFS removed T.V. from mother's care and placed her in foster care. T.V. remained in the hospital after her birth, until her discharge on August 2, 2009, at which time she was placed with her foster mother.

On August 3, 2009, CFS filed a juvenile dependency petition as to T.V., under section 300, subdivisions (b) and (g). Mother allegedly failed to protect T.V. by not providing a clean, safe home for T.V.'s five siblings and T.V., resulting in their removal from mother. Mother had not sufficiently eliminated the conditions that created a risk to

T.V.'s safety and well-being in mother's home. On August 4, 2009, the juvenile court ordered T.V. detained and placed in foster care.

#### *Jurisdictional/Dispositional Hearing*

The CFS reported in its jurisdictional/dispositional report filed on August 20, 2009, that mother had set up an appointment to be evaluated for depression at the Department of Behavioral Health, was working hard to restore her home to a habitable state, and was very cooperative with CFS. The juvenile court took jurisdiction over T.V. on August 25, 2009, and ordered CFS to provide mother with reunification services. The juvenile court authorized mother to receive five hours of unsupervised visitation with T.V., on the weekend, at mother's home. The court also ordered two of mother's other children returned to mother's custody on family maintenance. Father waived reunification services and custody of T.V.

#### *Six-Month Review Hearing*

CFS's six-month hearing report, filed on January 8, 2010, stated that mother had completed a parenting education course and eight sessions of counseling. A psychiatrist evaluated mother and concluded she suffered from depression or was bi-polar. Her mood and affect had improved from taking prescribed antidepressant medication. Grandfather was instrumental in cleaning and restoring mother's home but, according to the social worker, the condition of her home was deteriorating again. Mother appeared to be suffering from depression again. Nevertheless, mother seemed to be doing well parenting two of her children who had recently been returned to her custody. One of the children was in ninth grade and the other was in sixth grade.

T.V. remained in the care of her foster mother, who had taken her to numerous medical appointments. T.V.'s foster mother reported that when T.V. returned from visits with mother, T.V. was exhausted, would not eat, had trouble sleeping, and had projectile vomiting for one or two days.

At the six-month review hearing on January 19, 2010, the juvenile court found mother had made progress but that returning T.V. to mother's care would be detrimental to T.V. The court authorized weekly unsupervised visitation between mother and T.V., on Sundays.

#### *12-Month Review Hearing*

CFS reported in its 12-month review hearing report, filed on July 17, 2010, that four of mother's other children had been returned to her care and appeared to be doing well. Their ages ranged from seven to 15 years. Mother acknowledged suffering from depression. She changed physicians and had started taking medication for her depression again. Her home appeared to be returning to the condition it was in when the children were removed. The social worker concluded mother had completed her case plan service objectives. She continued to attend parenting classes. T.V. had overnight visits on Saturdays, which were going very well. The social worker recommended T.V. remain with her foster mother because the extent of her health problems remained unknown. Additional medical test results were required. Also, mother would have difficulty transporting her to medical appointments because she did not have transportation, other than the bus and when grandfather visited once or twice a week.

At the 12-month hearing on July 19, 2010, the court found mother had made moderate progress but had not completed her case plan. The court also found that returning T.V. to mother would be detrimental to T.V. The court ordered family reunification services and visitation continued for mother. Following the 12-month hearing, mother's fifth child was returned to her custody, leaving T.V. her only child who was not returned to her custody.

### *Special Hearing*

On August 15, 2010, T.V.'s foster mother noticed that, upon T.V. returning from an overnight visit with mother, T.V. had signs of a head injury. T.V. was diagnosed by an emergency room doctor as having a contusion, abrasion, and mild concussion. The social worker believed it was a result of a lack of supervision. During a special hearing on September 16, 2010, the juvenile court changed T.V.'s weekly overnight visits to unsupervised day visits. T.V.'s foster mother noted in her log of T.V.'s visits that T.V. often vomited and was sick after the visits.

During a nonappearance review hearing on October 8, 2010, CFS requested T.V.'s visits with mother and T.V.'s siblings be immediately suspended because T.V. was diagnosed with microcephaly and dysphasia. She also had MRSA, which became active after T.V. visited mother and T.V.'s siblings. This indicated that someone in the family was a MRSA carrier. In accordance with CFS's request, the juvenile court ordered T.V.'s visits suspended until T.V.'s siblings were examined and treated for MRSA. Two of T.V.'s siblings tested positive for MRSA.

CFS reported in its status review report filed on January 7, 2011, that a psychiatrist diagnosed mother as having depression and prescribed antidepressants. She reported feeling better. All of mother's children, with the exception of T.V., had been returned to mother and were doing well in her care. Mother was keeping her home clean.

T.V. remained with her foster mother, with whom she had resided since her detention. T.V. had a multitude of health concerns and developmental delays, which required constant medical care. Her cognitive abilities were below average. Her gross motor functioning was also significantly delayed. T.V.'s pediatrician was concerned T.V. had mild cerebral palsy. Her neurodevelopmental delays required an appropriate home environment in order for T.V. to attain her full developmental potential. T.V. needed structure, consistency, and nurturance.

T.V. had adjusted well to her foster home. She was very attached to her foster parents. CFS recommended T.V. remain in her foster home because the extent of her health issues were still unknown and it would be difficult for mother to transport T.V. to her numerous health appointments, since mother did not have transportation, other than by bus and when grandfather visited once or twice a week. It was also recommended that the juvenile court set a section 366.26 hearing to establish a permanent plan of adoption for T.V. The social worker noted that mother was a good, loving mother to her children but T.V.'s medical needs were more than mother could handle, in addition to caring for her other five children.

### *Pretrial Settlement Hearing*

On March 23, 2011, the juvenile court found that mother had completed her case plan. The court terminated jurisdiction as to mother's children, with the exception of T.V.

### *18-Month Review Hearing*

At the 18-month review hearing on May 10, 2011, counsel for CFS advised the court that T.V. had again contracted MRSA and therefore T.V.'s foster mother requested that visitation not occur at mother's home. The juvenile court ordered mother and her children to test and treat for MRSA. The court further found mother had failed to participate regularly and make substantive progress in the court-ordered case plan. The court concluded that returning T.V. to mother's custody would place T.V. at risk of detriment. Although the court terminated mother's reunification services, it authorized an additional six months of reunification services under T.V.'s permanent plan. The court also authorized supervised visitation once a week for one hour, conditioned upon mother and T.V.'s siblings testing negative for MRSA.

CFS reported in its status review report filed on November 1, 2011, that T.V. was strongly bonded to her foster parents. T.V.'s foster mother reported that T.V.'s doctors said that T.V. may need surgery to remove part of her skull to allow her brain to grow. CFS recommended setting a section 366.26 hearing.

### *Post-Permanent Plan Review Hearing*

At a contested post-permanent plan review hearing on January 10, 2012, mother testified that grandfather was providing transportation for the family. Meanwhile, mother

was attempting to obtain a driver's license and a vehicle. Mother testified a male friend was sleeping on her couch in the living room. The CFS social worker expressed concern that T.V.'s medical conditions were beyond mother's ability to care adequately for T.V. The juvenile court acknowledged that T.V. had a relationship with her siblings, and mother loved T.V. Nevertheless, the court concluded that not much had changed during the past six months. The court further noted that, according to the neurodevelopmental evaluation in May 2011, changing T.V.'s caregiver could have a significant impact on T.V., requiring constant monitoring of her response to the changes. In addition, T.V. needed structure, consistency and nurturance. The court found that it was in T.V.'s best interests to set a section 366.26 hearing.

#### *Writ Petition*

On February 21, 2012, mother filed a writ petition (case No. E055377), arguing that the juvenile court erred in using the best interest standard when setting the section 366.26 hearing. On April 19, 2012, this court held that the juvenile court used the correct standard of review and denied mother's petition.

#### *Section 388 Petition and Section 366.26 Hearing*

On April 30, 2012, CFS filed a section 366.26 hearing report, stating that T.V. was adoptable and her foster parents wished to adopt her. T.V. had resided with her foster parents for over two years and was closely bonded to them. T.V.'s foster parents described her as happy and loving. T.V. visited her siblings and mother during weekly, supervised 90-minute visits at a park. Mother did not have any transportation, other than by grandfather, when he visited. Grandfather indicated he was getting tired of driving to

mother's home every week but agreed to continue providing transportation for T.V. T.V. appeared to be bonded to her siblings and mother. CFS nevertheless concluded adoption was in T.V.'s best interest because of her young age and because she had lived with her foster family her entire life. T.V.'s foster parents were willing to allow T.V. and mother to maintain contact. T.V. required constant monitoring and structure. Removing her from her foster home would be detrimental to T.V. CFS therefore recommended T.V. be adopted by her foster parents.

On June 7, 2012, mother filed a section 388 petition, requesting vacating the orders on January 10, 2012, terminating reunification services and setting a section 366.26 hearing. Mother requested T.V. be returned to her care or, alternatively, that reunification services be reinstated, with liberalized, unsupervised visits. Mother alleged that her changed circumstances consisted of continuing to visit T.V. and attending T.V.'s medical appointments with T.V.'s foster mother. Grandfather had agreed to continue providing mother with transportation. Mother asserted that granting her section 388 petition was in T.V.'s best interests because T.V. and mother had a strong bond and had had a lot of contact, including during their weekly supervised visits and during frequent medical appointments.

CFS filed an interim review report on June 13, 2012, stating that two additional people were living in mother's home. Mother and a man and women were sleeping on sofas in mother's living room. In addition, grandfather had expressed frustration with having to travel to mother's home every week to provide transportation for T.V. CFS concluded delaying adoption would be detrimental to T.V. and would not be in her best

interests. T.V. had lived with her foster parents for almost three years. She was closely bonded to them and had made a great deal of progress, which likely would begin to dissipate or reverse if T.V. was returned to mother.

On June 13, 2012, the juvenile court conducted a combined section 388 and 366.26 hearing. The court concluded that even though grandfather likely would continue assisting mother with transportation, mother had not established that it was in T.V.'s best interests to grant mother's section 388 petition. The court noted T.V. suffered from significant medical problems, requiring a lot of care. T.V.'s foster parents were able and willing to provide for T.V.'s special needs. Regardless of whether there were changed circumstances, the court denied mother's section 388 petition on the ground that granting it was not in T.V.'s best interest. The juvenile court also terminated mother's parental rights to T.V. and found she was adoptable and no exception to termination of parental rights applied.

### III

#### SECTION 388 PETITION

Mother contends the trial court abused its discretion in denying her section 388 petition, seeking return of T.V. to her care or, alternatively, reinstatement of reunification services.

##### *A. Applicable law*

“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. [Citation.] 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.] The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion. [Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959-960 [Fourth Dist., Div. Two].)

In evaluating whether parents have met their burden to show changed circumstances, the trial court should consider: (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 parents 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. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) These factors become less significant once reunification services have been terminated, as in the instant case. This is because, “[a]fter the termination of reunification services, . . . ‘the focus shifts to the needs of the child for permanency and stability’ [citation], . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The best interests of the child becomes paramount. (*Ibid.*)

#### *B. Discussion*

Mother has not shown her circumstances changed after January 10, 2012, when the court terminated reunification services and set a section 366.26 hearing. At the time of the hearing on the section 388 hearing, mother still relied on grandfather for transportation. Although mother had begun accompanying T.V. and her foster mother to

T.V.'s medical appointments, this was not a sufficient change for purposes of granting section 388 relief.

Even if there was a change of circumstances within the meaning of section 388, mother did not establish that granting her section 388 petition was in T.V.'s best interest. Mother has not established that she is capable of adequately caring for T.V., in addition to her other five children. T.V. is a special needs child who requires a great deal of individualized care. She needs frequent transportation to weekly doctor's appointments, and mother still had not obtained a driver's license or car. Grandfather expressed frustration with having to provide transportation, particularly since his home is a substantial distance from mother's home.

The CFS social worker also expressed concern for mother's ability to care for T.V. Mother's other five children had previously become dependents of the juvenile court because she was unable to cope with caring for them, possibly because she was suffering from depression. Although mother had begun taking medication for her depression and had regained custody of the five children, there were still signs that she struggled with depression and maintaining a safe, clean home. She also continued to need assistance with transportation. More importantly, as noted by T.V.'s neurologist, T.V. is a special needs child, who requires structure, consistency, and nurturance. T.V. has never lived with mother and mother has never been solely responsible for all of T.V.'s needs.

On the other hand, T.V. has a very close, strong bond with her foster parents, who have cared for all of her needs since she was a day old. Removing T.V. from her foster parents, with whom she had lived her entire life (over three years), was simply not in

T.V.'s best interests. ““When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.”” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In this case, T.V.’s need for structure, consistency, and nurturance dictates the conclusion that maintenance of T.V.’s current arrangement, living with her foster parents, would be in T.V.’s best interests.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

HOLLENHORST

Acting P. J.

KING

J.