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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.M. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

E057778

(Super.Ct.No. RIJ111306)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Roni Keller, 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.

R.S. (mother) has three children. In January 2006, when this dependency was originally filed, the oldest child was four, the middle child was two, and the youngest child was *in utero*. In December 2012, when the juvenile court made the orders that are challenged in this appeal, the children were eleven, nine, and six, respectively. The mother has been given seven years to reunify successfully, but she has failed to do so.

The challenged orders denied the mother's "changed circumstances" petition (Welf. & Inst. Code, § 388) and reduced her visitation. At that time, a permanency planning hearing (Welf. & Inst. Code, § 366.26) had been set, but it had not yet been held. When the mother appealed, we stayed the hearing.

The mother's changed circumstances petition merely alleged that she was in therapy; however, she had been in therapy, on and off, throughout the dependency. Thus, the petition fell woefully short of suggesting that she would ever be able to reunify. The juvenile court properly reduced the mother's visitation because it was interfering with the children's relationship with their prospective adoptive parents. This appeal wholly lacks merit. We therefore affirm the orders and vacate the stay. It's time to get this show on the road.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Original and Amended Petitions: Physical Abuse.*

As of January 2006, the mother had two children by her husband J.M.¹ — daughters A.M. and M.M. A.M. was four and M.M. was two. The mother and the children were all living with the mother’s then-boyfriend, J.T.

In January 2006, the mother took M.M. to the emergency room. M.M. had a cut on her head and bruises in different stages of healing. M.M. said, “[J.T.], mommy hit.” The older girl, A.M., said that J.T. and the mother “hit [M.M.] with a belt ‘all the time,’” and that they also hit her. As a result, the Riverside County Department of Public Social Services (the Department) detained both girls and filed a dependency petition regarding them.

In February 2006, the mother gave birth to a child by J.T. — a son, E.T. The Department immediately detained E.T. and filed an amended petition adding him as a subject of the dependency.

In April 2006, at the jurisdictional/dispositional hearing, the juvenile court found jurisdiction based on serious physical harm (as to A.M. and M.M. only) (Welf. & Inst. Code, § 300, subd. (a)), failure to protect (*id.*, § 300, subd. (b)), and abuse of a sibling

¹ The mother had filed for divorce in 2004. If the record contains any indication that the divorce ever became final, we have not found it.

(*id.*, § 300, subd. (j)). It formally removed the children from their parents' custody and ordered reunification services.

B. *The Subsequent Petition: Sexual Abuse.*

Around June 2006, A.M. told a foster parent that J.T. had sexually molested her. In a forensic interview, she disclosed "vivid details" of the sexual abuse. The mother refused to believe that she was telling the truth. Accordingly, in August 2006, the Department filed a subsequent petition.

In November 2006, at a jurisdictional/dispositional hearing on the subsequent petition, the juvenile court found that it also had jurisdiction over A.M. and M.M. based on sexual abuse (Welf. & Inst. Code, § 300, subd. (d)).

The mother complied with her reunification services plan. Thus, in June 2008, the juvenile court gave the mother sole custody of the children and terminated jurisdiction.

C. *The "Reactivated" Petition: Sexual Abuse of an Unrelated Child at the Mother's Home.*

In July 2009, an unrelated girl reported that, during a party at the mother's home, J.T. had molested her. The mother admitted that she had let J.T. move back in with her. Accordingly, the children were redetained and the Department filed a "[r]eactivated" petition, under the same case number, regarding them.

In September 2009, at the jurisdictional hearing on the reactivated petition, the juvenile court found jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)), sexual abuse (*id.*, § 300, subd. (d)), and, solely as to A.M. and M.M., their

father's failure to support (*id.*, § 300, subd. (g)). In November 2009, at the dispositional hearing, it formally removed the children from their parents' custody and ordered reunification services for the mother.

D. *The Supplemental Petition: Ineffective Disposition.*

Once again, the mother complied with her reunification services plan. Thus, in April 2011, the children were placed back with her.

Between April and October 2011, however, concerns accumulated about the appropriateness of this placement.

In April 2011, the children disclosed that, during overnight visits, the mother had also let male friends sleep over. "[A]bout four or five men sleep over and they sleep on the floor in the living room."² Sometimes A.M. and M.M. slept on the floor in the living room at the same time as the men. On one occasion, the mother's boyfriend had "spooned" A.M. M.M. and E.T. both disclosed that the mother's boyfriend regularly slept over at the house.

The mother signed a written safety plan, which provided, "no one is to live, stay, visit the home."

In July 2011, when a social worker was visiting, J.T. came to the home. The mother admitted that he had come there once before to see E.T.

² In January 2011, the mother had agreed that no one was to sleep over at the home.

In June 2011, an unnamed informant reported a number of statements by A.M. A.M. had said that one of her mother's boyfriends tried to hug her and bite her neck. She also said "she does not like the text picture and messages that her mother's boyfriend sends her."

In August 2011, an unnamed informant once again reported a number of statements by A.M. A.M. said "she feels she has no support from mom when she talks about the sexual abuse as mom tells her that 'that did not happen[.]'" A.M. said she heard the mother and her friends talk "about sex and sexual positions" A.M. (then aged 10) also said, "Mom also goes out and parties at night and leaves [me] caring for [my] siblings." A.M. said that she would not tell the social worker anything and that "it's better to lie to CPS than go to foster care."

When the social worker questioned A.M., she said that J.T. had been to the house "maybe five or seven times[,], maybe more." M.M. and E.T. confirmed this. He gave the mother money. Sometimes he asked A.M. to hug him. A.M. also said that the mother went out every Friday, leaving A.M. to care for her siblings.

When the social worker questioned M.M., she started to cry because the mother's boyfriend played with A.M. and did not play with her. "He tickles [A.M.] and plays around with her." He had bought a horse for A.M., which A.M. rode at his ranch. The mother admitted that the boyfriend came to her home "to fix things." He was asked to Livescan but never did.

In October 2011, the Department redetained the children. It filed a supplemental petition, which alleged that “the mother has failed multiple safety plans, she continues to minimize the sexual abuse that has occurred to her children, and [she] continues to allow known perpetrators and numerous males to frequent the family home”

In November 2011, at a jurisdictional/dispositional hearing on the supplemental petition, the juvenile court found the allegations of the petition true; it also found that the previous disposition had not been effective. Once again, it formally removed the children from the mother’s custody. This time, however, it terminated the mother’s reunification services, and it set a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26) for March 2012.

E. *The Section 366.26 Hearing.*

Ultimately, the section 366.26 hearing was continued to February 2013.

Meanwhile, in October 2012, the children were placed with prospective adoptive parents.

In December 2012, the juvenile court held a review hearing. Two days before the hearing, the mother filed a petition pursuant to Welfare and Institutions Code section 388 (section 388 petition). After hearing argument, the juvenile court denied the section 388 petition. Thereafter, at the department’s request, it reduced the mother’s visitation from one hour, twice a week, to two hours, once a month. It confirmed the date of the section 366.26 hearing.

On February 4, 2013, this court stayed the then-pending section 366.26 hearing.

II

SECTION 388 PETITION

The mother contends that the trial court erred by denying her section 388 petition without an evidentiary hearing.

A. *Additional Factual and Procedural Background.*

In her section 388 petition, the mother asked the juvenile court to vacate the section 366.26 hearing and either (1) reinstate reunification services and liberalize visitation, or (2) place the children with her.

As changed circumstances, she alleged that she was continuing to engage in individual counseling. The counseling addressed “the issues she has had of parenting, her [own] early sexual abuse, and her relationships with her children and her boyfriend.” Her therapist had agreed that she did not need group counseling. Her therapist was “confident . . . that [the mother] . . . would not in any way ignore any red flags due to possible abuse in her children.”

Regarding the children’s best interests, the mother alleged that the children wanted to return to her care rather than be adopted, and that during visitation, she “interacts appropriately with her children and continues to parent them”

The juvenile court denied the petition without an evidentiary hearing. It found that there were no changed circumstances and that it would not be in the best interest of the children to grant the petition.

B. *Analysis.*

“To prevail on a section 388 petition, the moving party must establish that new evidence or changed circumstances exist so that the proposed change in the court’s order would promote the best interests of the child. [Citations.] Unless the moving party makes a prima facie showing of both elements, the petition may be denied without an evidentiary hearing. [Citation.]” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642.)

“Whether [the petitioner] made a prima facie showing entitling [the petitioner] to a hearing depends on the facts alleged in [the] petition, as well as the facts established as without dispute by the [dependency] court’s own file’ [Citation.]” (*In re B.C.* (2011) 192 Cal.App.4th 129, 141 [brackets in original].) “In considering whether the petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case. [Citation.]” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.)

“We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. [Citations.]” (*In re Y.M.* (2012) 207 Cal.App.4th 892, 918.) “. . . ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319, original quotation marks corrected.) “‘The denial of a section 388 motion rarely merits reversal

as an abuse of discretion.’ [Citation.]” (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

In discussing this issue, the mother’s appellate counsel completely ignores all of the counseling that the mother had received during the preceding seven years. However, this is highly relevant to whether she showed any changed circumstances.

The mother first started case-related counseling in January 2006, less than a month after the case was filed. She completed this counseling in April 2006. At that time, the social worker observed: “She appears detached from the treatment and is not benefiting from services.”

Also in April 2006, the mother started a 52-week counseling program for child batterers. She completed this program in May 2007.

Meanwhile, in October 2006, after the subsequent petition was filed, the mother started a counseling program specifically geared to sexual abuse. A little over a year later, she completed this program.

The mother was asked to go to a group therapy program, as well. At first, she refused, saying “she has had counseling services throughout her life.” Eventually, she went to a few sessions, then quit.

According to an April 2007 psychological evaluation, “[The mother] has been exposed to a significant amount of treatment My impression is that she ‘put up’ with this process as opposed to actively involving herself in treatment I doubt that she internalized much of it.”

After the reactivated petition was filed, the mother was required to attend both general counseling and sexual abuse counseling. Accordingly, in August 2009, she started general counseling again. As the counseling proceeded, her therapist reported that “[t]here are no concerns as to [the mother] being unprotective with her children.” “[The mother] is now able to see the ‘red flags’ and make different choices.” “[S]he is capable and willing to provide a safe and healthy environment for [the children].”

Once again, the mother was resistant to attending group sexual abuse therapy. According to her, she started attending in October 2010. However, it later appeared that this was not true. As of October 2011, her individual counselor had agreed that she did not need to attend.

Meanwhile, in or about March 2011, the mother started conjoint counseling with A.M. and, separately, conjoint therapy with E.T. In September 2011, she started conjoint counseling with M.M.

Around September 2011, however, the mother unilaterally stopped going to her individual counseling appointments. She also unilaterally stopped going to conjoint therapy with E.T. It is unclear whether she ever completed her conjoint therapy with A.M. or M.M. In October 2011, the children were redetained. In November 2011, the juvenile court terminated the mother’s reunification services.

Against this background, the mere fact that the mother was still in individual counseling was in no way a changed circumstance. While her counselor gave her glowing reviews, the same counselor had also done so earlier in the case; nevertheless,

the children had had to be removed from the mother's custody again. Thus, the juvenile court properly found that there were no changed circumstances. Indeed, we believe that a contrary finding would have been an abuse of discretion.

Separately and alternatively, the juvenile court could also properly find that granting the petition was not in the best interest of the children. The mother had an egregious pattern of failing to protect them. Twice, she had complied with her reunification plan; twice, the children had been returned to her; and twice, they had had to be removed again. Admittedly, the children still loved the mother and wanted her in their lives. For this reason, the Department was attempting to arrange a post-adoption contract. However, the children themselves were not the best judges of whether it would be in their best interest to be in her custody. The juvenile court could reasonably conclude that, even assuming the mother completed therapy with flying colors, it would not be in the best interest of the children to return them to her.

III

REDUCED VISITATION

The mother contends that the juvenile court erred by reducing her visitation to two hours, once a month, in anticipation of the section 366.26 hearing.

A. *Additional Factual and Procedural Background.*

The evidence introduced at the hearing consisted of two specified social worker's reports, plus an oral statement by the mother in lieu of testimony. We limit our review to this evidence.

Until October 2012, when the children were placed in a prospective adoptive home, the mother had visitation once a week, for two hours at a time, supervised by the foster mother. She was generally appropriate during visits. However, she would “often” leave early, without giving any reason. In September 2012, A.M. and E.T. both said they would like to have longer visits. M.M. said she missed her mother and just wanted to go home.

After the prospective adoptive placement, the mother had visitation twice a week, for one hour at a time, at the Department’s office. At one visit in November 2012, as soon as the mother entered the visitation room, she began to cry “hysterically.” The social worker asked her to leave the room and compose herself. The mother replied, “[W]hat[,] I am not allowed to express emotion to my children[?]” When the social worker insisted, however, she complied. The mother would also tell the children “that she . . . is their mother and that there will be no one that will take her place”

In the social worker’s opinion, this behavior “sabotages the relationship between [the children] and their caregivers as they do not allow themselves to bond . . . for fear and guilt that they are betraying their mother.” Previously, the children had benefited from counseling, therapy, and behavioral coaching. However, visitation had made them “uncertain[] of where their loyalty lies,” which in turn had caused their behavior to regress.

In an addendum report, the Department asked the juvenile court to reduce the mother's visitation to once a month. Minors' counsel supported the request. The mother opposed it, arguing that "the kids are still saying they want to continue to see me."

The juvenile court granted the Department's request and reduced visitation to two hours, once a month. It noted, "[I]t is common when having [a section 366.26 hearing] to reduce visitation. Not reducing visitation is the exception."

B. *Analysis.*

"[D]ependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason. [Citation.]" (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558.)

Once again, in discussing this issue, the mother's appellate counsel ignores the evidence that visitation was actually detrimental to the children. That evidence showed that the mother was sabotaging the children's adoptive placement by making them feel that they were betraying her. To that end, at one visit, she cried hysterically and resisted leaving the room to compose herself, insisting that she should be able to "express emotion to [her] children." She was "always quick to tell them" that no one could ever take her place. As a result, the children were "acting out and . . . aggressive with each other." They were losing the progress they had made in therapy. On this record, the juvenile court could properly have terminated visitation entirely. It follows that it was not an abuse of discretion to reduce it.

The mother argues that it was “improper” to reduce visitation in order to promote adoption. Admittedly, both the juvenile court and counsel for the Department noted that it is customary to reduce visitation after reunification services are terminated (i.e., even without any specific evidence that visitation is detrimental). In this case, however, once reunification services were terminated, it was vanishingly unlikely that the mother would ever regain custody of the children. And the children were already placed in a prospective adoptive home. ““Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) Thus, the juvenile court could properly find that it was in the children’s best interest to promote their bonding with the prospective adoptive parents.

Moreover, it is clear that the juvenile court did not reduce visitation in a “one size fits all” manner. To the contrary, it considered the specific facts of this case. For example, it commented: “. . . I do believe that the girls do love their mother [But k]ids can only handle so much drama and trauma. At some point reality for every child is that they want to be a normal, happy child.” It also observed: “. . . I’m well aware as we move through the process . . . we may have to revisit the issues.”

The mother argues that the reduction in visitation violated due process because, as a practical matter, it would prevent her from invoking the beneficial parental relationship exception to termination of parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) However, if, after seven years of being in and out of the mother’s custody,

the children still had a genuinely beneficial relationship with her, we cannot believe that reducing visitation for a few months would change that.

The mother relies on cases concerning a total denial of visitation. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007 [“The erroneous denial of parent-child visitation compromises a parent’s due process rights to litigate and establish the section 366.26, subdivision (c)(1)(A) exception.”]; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505 [“[F]or the parent deprived of visitation, ‘it is a forgone conclusion that [she] is not going to be able to establish the exception or have any meaningful chance to avoid the termination of parental rights.’”].) “Doubtless, at some point reduction of visitation to a level that actually *denies* the right or renders it illusory, would constitute a denial of substantive due process, absent a case-specific compelling reason to so limit visitation. In this case, however, appellant has not asserted any specific detriment [s]he has suffered or any particular detriment to [her] relationship with [her children] Appellant cites to no case in either the dependency or delinquency context, and we have found none, holding that limiting visitation to once a month constitutes a denial of due process (or, for that matter, an abuse of discretion)” (*In re James R.* (2007) 153 Cal.App.4th 413, 438.)

We therefore conclude that the juvenile court did not abuse its discretion by reducing the mother’s visitation.

IV

DISPOSITION

The orders appealed from are affirmed.

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RICHLI _____ J.

We concur:

McKINSTER _____
Acting P. J.

KING _____
J.