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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re K.M., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.M. et al.,

Defendants and Appellants.

E059994

(Super.Ct.No. RIJ1100622)

OPINION

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

Linda Rehm, under appointment by the Court of Appeal, for Defendant and  
Appellant K.M.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and  
Appellant S.M.

Pamela J. Walls, County Counsel, Raymond M. Mistica, Deputy County Counsel,  
for Plaintiff and Respondent.

K.M. (father) and S.M. (mother) appeal an order granting a petition for modification of a juvenile dependency court order, pursuant to Welfare and Institutions Code section 388. (All statutory citations herein refer to the Welfare and Institutions Code unless another code is specified.) In granting the petition, the juvenile court suspended all parental visitation with the parents' son, Ki., until Ki.'s therapist recommended that visitation resume. We find no abuse of discretion with respect to either parent, and we affirm the judgment.

#### FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>

In October 2009, the Los Angeles County Department of Children and Family Services (DCFS) received a referral that then six-year-old Ki. and four-year-old Ke. were at risk for physical abuse by father.<sup>2</sup> DCFS filed section 300 petitions with respect to both boys alleging that father abused the children by striking them and by grabbing Ki. around the neck and threatening him by saying he would never see his family again if he told anyone about the abuse. As to mother, the petition alleged that she failed to protect

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<sup>1</sup> Much of the following history is taken from our opinion in *In re K.M.* (Apr. 28, 2014, E058604) [nonpub. opn.], hereafter referred to as *K.M. I.* Citations to that case are to the slip opinion. We also take judicial notice of the records in that case and in all other related cases. (Evid. Code, § 452, subd. (d).)

<sup>2</sup> Ke. is not the subject of this appeal. We have omitted much of the history concerning Ke., except where it is relevant to Ki. and the issue presented in this appeal. A younger sibling, Ka., was born after the establishment of the dependency for Ki. and Ke. She was removed from the parents at birth and has been freed for adoption. (See *K.M. I, supra*, E058604.)

her children from abuse by father. The trial court placed the children with mother. In September 2010, after father completed reunification services that included alcohol treatment, anger management, and parenting classes, the trial court allowed him to move back into the home with mother and the children. (*K.M. I, supra*, E058604.)

In March 2011, Ke. reported that father had spanked him with a stick and, as a result, Ke. was in so much pain he could not sit down. The reporter stated that Ke.'s buttocks were severely bruised and marked. Based on the referral, DCFS filed a section 387 petition, later superseded by an amended petition filed in April, alleging that father and mother both had physically abused the children by hitting them with belts, causing marks and bruises. The petition further alleged that father hit the children with a board, tied their hands and feet, and pinched them. This time the court removed the children from the parents' custody and ordered reunification services and monitored visits. Because mother and father were living in Riverside County, the case was transferred to that county in May 2011. (*K.M. I, supra*, E058604.)

In October 2011, the Riverside County Department of Public Social Services (DPSS) recommended that the boys be returned to the care of mother and father with family maintenance services. At the pertinent review hearing, the trial court followed that recommendation. (*K.M. I, supra*, E058604.)

On March 6, 2012, DPSS received an immediate response referral through the child abuse hotline after Ke. ran away from the family's apartment. He went to the leasing office of the apartment complex and reported that he was afraid to go home because he gets "woopings" from mother and father, but mostly father. Ke. had a number

of small bruises on the inside of his left leg that he said were caused by mother hitting him with a belt. He also had a large bruise on his buttocks and said father hit him with a wooden stick or paddle. Ki. reported that father would grab Ki. by the neck and tell him to pay attention. Ki. had a bruise on his neck and reported having other bruises on his upper thigh. (*K.M. I, supra*, E058604.)

DPSS filed a supplemental petition on March 8, 2012, later superseded by an amended petition, with respect to both Ke. and Ki. Among other things, DPSS alleged that mother and father physically abused both children causing injury to each of them. The petition further alleged Ke. refused to go home to his parents. According to the social worker's detention hearing report, Ke. said his mother "whooped" him because he misbehaved at school. Mother admitted she "whooped" the child with a belt. The social worker noted the parents had both been advised many times not to use physical discipline on the children. (*K.M. I, supra*, E058604.)

A doctor examined both children on March 8, 2012, at Riverside County Regional Medical Center. The doctor reported that both boys had suffered severe physical abuse. Both had scars on their necks the doctor believed had been caused by fingernails and which were consistent with strangulation. They both had other patterned scars on their neck, chest, back, arms, thighs, and legs. Those scars were consistent with having been inflicted with a belt. According to the doctor, both Ki. and Ke. described severe and repetitively inflicted trauma. (*K.M. I, supra*, E058604.)

At the detention hearing on March 9, 2012, the trial court ordered the children detained and removed them from the physical custody of both parents. (*K.M. I, supra*, E058604.)

Ki.'s caretaker reported that Ki. broke out in hives when he was told he was going to visit with his parents. Another time, Ki. urinated on himself just as he was about to leave for a visit with his parents. Ki. told the social worker he was "scared" of father; he was afraid father would "whoop" him with a belt or choke him out by putting his hands around Ki.'s neck. (*K.M. I, supra*, E058604.)

DPSS referred Ki. to Dr. Klebel, a psychologist. He diagnosed Ki. with posttraumatic stress disorder (PTSD), as evidenced by Ki.'s report that he had daily memories of abuse and nightmares several times each week. Dr. Klebel also attributed Ki.'s bedwetting to PTSD. In the doctor's opinion, the fact that Ki. breaks out in hives before a visit with his father is "a sure sign" that Ki. is "very much emotionally and physically afraid of his father." Dr. Klebel recommended that Ki. be allowed to decide whether he wanted to visit with father, but that if Ki. broke out in hives, the visit should not be allowed, even if Ki. said he wanted to see father. (*K.M. I, supra*, E058604.) Dr. Klebel reported that both Ki. and Ke. had said that father told them that "what happens in the family stays in the family." (*Ibid.*)

On July 18, 2012, the trial court found the allegations of the amended section 387 petition true as to both Ki. and Ke. The court denied reunification services to mother and father because they had made minimal progress on their respective case plans and

because the time for services had expired. The trial court set the section 366.26 selection and implementation hearing for November 15, 2012. (*K.M. I, supra*, E058604.)

At a review hearing on November 28, 2012, the court ordered Ki. and Ke. maintained in their respective placements, with the goal of legal guardianship as the permanent plan. The social worker reported Ki. had been severely traumatized by his parents and, even though he did not have contact with father, his visits with mother or other relatives would cause him to remember the terror he experienced in his parents' home. Ki. would regress to the age of a four-year-old child, break out in hives, and wet the bed. (*K.M. I, supra*, E058604.)

At the selection and implementation hearing for Ki. on July 10, 2013, the court ordered legal guardianship as Ki.'s permanent plan. The court ordered monthly visits between Ki. and mother, and ordered an assessment by Ki.'s therapist to determine whether visits with father in a therapeutic setting would be appropriate.

On August 7, 2013, DPSS filed a petition asking the court to suspend all parental visitation. DPSS alleged that after a visit with father on July 10, 2013, Ki. had "episodes of encopresis [and] he is having nightmares, night terrors, flashbacks to abuse and witness to same." DPSS asserted that suspension of visitation was necessary in order for Ki. to gain the most benefit from therapy. (We will discuss additional facts pertinent to the petition in greater detail below.)

In response, the parents filed a section 388 petition to change Ki.'s social worker and therapist. The court summarily denied their petition. (*K.M. I, supra*, E058604.) The

parents appealed from that order and from the order terminating their parental rights as to Ka. We affirmed both orders. (*K.M. I, supra*, E058604.)

The hearing on the DPSS section 388 petition was held on November 5, 2013. The court granted the petition, finding that it was in the child's best interest to suspend visits with the parents until Ki.'s therapist recommended otherwise. Both parents appealed.

### LEGAL ANALYSIS

#### THE COURT PROPERLY GRANTED THE SECTION 388 PETITION

A party may petition the court under section 388 to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that (1) there is a change of circumstances or new evidence, and (2) the proposed change is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) The 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. (*In re Jasmon O.*, at pp. 415-416.) Where two or more inferences can reasonably be drawn from the facts, the reviewing court may not substitute its judgment for that of the trial court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

As noted above, DPSS filed a section 388 petition seeking termination of all visits between Ki. and his parents because Ki. had an extremely negative reaction to a courtroom visit with his father at a hearing on July 10, 2013. The parents contend that because Ki.'s problems had been in existence long before the section 388 petition was filed and because neither the petition nor the addendum reports contained any new

information, DPSS failed to meet its burden to demonstrate either a change of circumstances or new evidence which establishes that suspension of visitation was in Ki.'s best interest. In addition, mother contends that granting the petition as to her was an abuse of discretion because there was no evidence that visits with her had any negative effect on Ki. We disagree with both contentions.

The history of visitation between Ki. and his parents leading up to the section 388 petition is as follows: Up until the date of the scheduled jurisdiction/disposition hearing on June 6, 2012, Ki. and his brother had been having visits with their parents supervised by DPSS. At a visit on June 4, 2012, father read to the boys from the Bible. At one point, father referred to "lying" and said, "[W]hen you're doing something wrong you're letting Jehovah, your parents and the family down." He stated that "Satan is happy you guys are not in the home," and added, "[I]n order for you guys to come home, the parents have to want you to be home, you have to want to come home."

The social worker terminated the visit and attempted to discuss with the parents her concern about the remark concerning Satan. She later explained to the boys that it was not appropriate for their parents to talk to them about when they might be coming home and that the comment about Satan was also not appropriate. The boys told the social worker that at an earlier visit, their parents had told them they would be getting new toys when they came home. The social worker had heard Ke. ask about the new toy at the beginning of the visit and heard father say that the toys were at home and would be there for them when they came home.

When the social worker dropped the boys off at their foster home, the foster mother told her that during the last visit, father had showed her letters he had had the boys write stating that they wanted to have phone calls and visits with the parents. The foster mother assured the boys that they had done nothing wrong. However, she noticed that Ki. had broken out in hives as she was being confronted by father. She also told the social worker that on May 25, 2012, Ki. had gone on a field trip to the park where visits with his parents had been taking place. When he returned home, he had hives on his chest and shoulders. He said he thought he had seen his father sitting on a park bench. Ki. had a session with his therapist, Dr. Klebel, later that day, and Dr. Klebel observed the hives.

At a hearing on June 6, 2012, the court expressed grave concerns about the negative impact visitation was having on both Ki. and Ke. It ordered visitation for father solely in a therapeutic setting, i.e., supervised by a therapist, and only with the consent of the therapist. The court specifically advised the parents that the therapist would have the right to terminate any visit “if it appears either minor is struggling or having a hard time during the visit.” After a continued jurisdiction/disposition hearing, the court continued the prior visitation order.

On July 30, 2012, Ki.’s therapist, Dr. Klebel, recommended against visitation. He stated that Ki. was “very afraid” of talking about his father. He continued to make the same recommendation through October 2012. During that time, Ki. had “regressed significantly.” He would share flashbacks with Dr. Klebel, and would cry and have tantrums. He had confided in the foster services agency social worker that he wanted to

be “half boy” and “half girl,” and that he enjoyed playing with Barbie dolls and would like to “design girl shoes.” He said that when he would cry when his father disciplined him, his father would say, “[Y]ou should have been a girl, you shouldn’t carry my name.”

In further sessions with Dr. Klebel, Ki. continued to display childish behaviors such as not knowing how to put on shoes or get dressed. He would display regression by “talking funny.” Dr. Klebel suspected that Ki. felt guilty for speaking out and that he was under “heavy emotional stress.” He continued to break out in hives at times when he thought about his father. At one session, Ki. “froze” when he entered Dr. Klebel’s waiting room and could hardly talk. He had a “total different expression on his face, no affect, slow and lethargic action and his talk was that of [a] very young child, just out of baby talk and hard to understand.” Ki.’s caregiver took him outside for a walk. When they returned, Ki. acted “normal” and said, “I’m up now.” Dr. Klebel stated that this is “a state of severe regression that seem[ed] to happen to [Ki.] whenever his father was even mentioned or remembered, sometimes [breaking] out in hives, sometime[s] just making him act like a two or three year old child.” Dr. Klebel opined that this state of regression is explainable only by extremely high anxiety. Ki. even went into that state of regression when asked about the possibility of living with his aunt and uncle. Ki. said he was afraid of going to his aunt and uncle’s house because father would probably be able to see him there. Dr. Klebel concluded that it would take more treatment and the “feeling of not ever hav[ing] to face his father” to resolve Ki.’s severe anxiety and PTSD. He stated that until this disorder was resolved, Ki. should not be removed from his present home, especially not to relatives of his father, because Ki. “would always fear to have

[father] intruding in his life and sabotage his rehabilitation.” Ki. was diagnosed as having “Regression or Depersonalization Disorder with Somatization Disorder, when developing hives” and “MDD recurrent with psychotic features, PTSD and Nocturnal Enuresis.”

As of July 10, 2013, the date of Ki.’s section 366.26 hearing, Ki. had apparently not had a visit with his father for many months. He had a reunion with father in the courtroom and sat next to him. (Ki. later reported that he felt “safe” visiting with father in the courtroom because there were other adults present, including a police officer.) The court found that Ki. had made progress in therapy by that point and concluded that Ki. might be ready to resume visits with father. The court ordered an assessment by the date of Ki.’s second therapy appointment that month in order to determine whether it was appropriate to allow visitation between Ki. and father. The court ordered monthly visits for mother.

By that time, Ki. was in therapy with a new psychotherapist, Edmund Kasner. He had been seeing Kasner for about four months. In a letter to DPSS dated July 30, 2013, Kasner recommended against any contact with either parent.

DPSS based its section 388 petition on Kasner’s July 30, 2013 letter. DPSS alleged that Kasner reported that after the visit with father on July 10, 2013, in addition to on-going episodes of enuresis, Ki. had “episodes of encopresis, . . . nightmares, night terrors, flashbacks to abuse and witness to same.” This is apparently how the juvenile court interpreted Kasner’s letter. The letter does not, however, actually say that Ki.

suffered new or worsening symptoms or behavior following the July 10 visit with father.<sup>3</sup> Rather, it recounts the therapist's observations during the four months he had been treating Ki. and provides his recommendation with respect to parental visits:

“As [Ki.’s] psychotherapist for the past four months, I have been alarmed by the serious emotional, mental and behavioral deficits presented by this minor. During the watch of both parents and most certainly at the brutal hand of his father, this child experienced multiple acute stress reactions and in the present suffers painful symptomology consistent with [PTSD], and depression. Symptoms displayed by this minor include, day and night encopresis and enuresis, nightmares, night terrors, flashbacks to abuse and witness to same. When very fearful he will curl up in a fetal position and behave in an infantile fashion. At school, this minor has displayed aggressive, hostile behavior toward peers and lies about a wrong action even though he knows he was observed. While we see self preservation aggression, we also see extreme fear when facing consequences. Historic deeply ingrained maladaptive behaviors and dysfunctional social constructs will require treatment for an indefinite period if recovery is to be achieved. Any contact with the biological parents would most certainly only serve to exacerbate recovery progress.” Kasner “strongly recommend[ed]” that all parent visitations be terminated forthwith.

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<sup>3</sup> In support of its contention that there was evidence that Ki.’s symptoms and behavior had deteriorated since the July 10 visit, DPSS cites an entry in the delivered services log, which is attached to a review report filed on October 11, 2013. That report was in the court file as of the date of the section 388 hearing. However, it was not admitted into evidence and does not appear to have been brought to the juvenile court’s attention.

As to father, it was not necessary to bring a section 388 petition. On July 10, 2013, the juvenile court did not order resumption of visits between Ki. and father;<sup>4</sup> rather, it ordered a new assessment by Ki.'s therapist to determine whether resumption of visits with father would be appropriate. Kasner's letter reflects his assessment, as Ki.'s treating therapist, that visitation with either parent was contrary to Ki.'s best interests. Accordingly, the juvenile court did not abuse its discretion when it suspended visitation for father until the therapist approved it.

As to mother, the letter does constitute new evidence that supports the juvenile court's order granting the petition. The therapist recommended termination of visitation with both parents because of the extreme trauma Ki. had suffered while living with both parents. Even though Kasner did not state explicitly how visitation with her would interfere with Ki.'s treatment and recovery, the court had previously found that mother was culpable in the damage inflicted on Ki. because she did nothing to stop it. It is reasonable to infer from the letter that Kasner believed that because mother had failed to protect Ki. from his father, contact with her would exacerbate his difficulties. This is further supported by Kasner's second letter, dated October 3, 2013, in which he referred to mother "condon[ing]" the abuse. Kasner's opinion concerning the negative effect of visitation with mother is consistent with a prior report from DPSS, dated November 28, 2012, which noted that visits with mother and other relatives caused him to remember the

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<sup>4</sup> Our statement to the contrary in *K.M. I, supra*, E058604, is incorrect.

terror he experienced in his parents' home and caused him to regress to the age of a four-year-old child, break out in hives, and wet the bed. (*K.M. I, supra*, E058604.)

Moreover, there was evidence that since the court had suspended all parental visitation pending the hearing on the section 388 petition, Ki. had begun to do a bit better. At the hearing on the petition, the court admitted into evidence addendum reports filed on September 4, October 3 and October 8, 2013. The October 8 addendum report stated that on October 3, 2013, Kasner reiterated his recommendation that Ki. have no contact with his parents. Kasner reported that Ki.'s progress in therapy was "modestly favorable," that he was comfortable and secure with his legal guardian, and that he was demonstrating increased comfort in therapy. His behavior in school had improved, with fewer aggressive acts toward other children, and his academic progress was favorable. However, he continued to suffer flashbacks to father's abuse, including beatings inflicted for bedwetting, and suffered night terrors and nightmares.

Kasner's opinion constitutes new evidence in support of the petition. The fact that it is consistent with the previous therapist's recommendations is irrelevant. Ki. has been severely traumatized as the result of the actions of both of his parents. Accordingly, because Kasner's letters reasonably support the conclusion that visitation with either parent was detrimental to Ki.'s recovery, it was not an abuse of discretion to grant the section 388 petition as to mother as well as father.

DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

KING  
J.