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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re H.D. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiffs and Respondents,

v.

M.D. et al.,

Defendants and Appellants.

E061077

(Super.Ct.Nos. J245021 & J245022
& J245023 & J245024)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lily L. Sinfield,
Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant M.D.

Grace Clark, under appointment by the Court of Appeal, for Defendant and
Appellant M.B.

Jean-Rene Basle, County Counsel, Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

M.B. (Mother) and M.D. (Father) appeal after the termination of their parental rights to MD, CD, MB, and HD at a Welfare and Institutions Code section 366.26 hearing.¹ Father also appeals the denial of his section 388 petition. Mother's parental rights were terminated for two additional children, MeB and MA, who each had different fathers, who are not parties to the instant appeal.²

Father contends on appeal that the juvenile court erred by denying his section 388 petition requesting visitation be granted to him for MD, CD, MB and HD.³ He also contends that the juvenile court erred by terminating parental rights and selecting adoption as the permanent plan because there was a strong parental bond between Mother and the children within the meaning of the exception to adoption under section 366.26, subdivision (c)(1)(B)(i). Mother joins in the arguments raised by Father in his brief.⁴ We affirm the juvenile court's orders.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² A seventh sibling, NB, ran away during the dependency proceedings; therefore, Mother's parental rights as to her were not terminated. Father was not the father of NB.

³ An appeal was also filed by the maternal grandmother (MGM). She filed a letter brief under *In re Sade C.* (1996) 13 Cal.4th 952 finding no arguable issues. We dismissed MGM's appeal on December 16, 2014.

⁴ As noted, Mother has seven children. Father was named the presumed father only for MD, CD, MB and HD. Father's arguments in his brief apply only to these four
[footnote continued on next page]

FACTUAL AND PROCEDURAL HISTORY

A. DETENTION

On September 22, 2011, NB (13 years old); MD (9 years old); CD (8 years old); MB (5 years old); HD (4 years old); and MA (10 months old), were detained from Mother by the Los Angeles County Department of Children and Family Services (LADCFS). They were all placed in a foster home. NB's father was unknown. Father was named as the presumed father of MD, CD, MB and HD. HA was named as the alleged father of MA.

On September 20, 2011, Mother had engaged in a violent altercation with the children's maternal aunt (Aunt). NB, MD, CD, MB, HD and MA were all staying with Aunt because Mother had been evicted from her home. MGM was also living in the home. NB asked Mother to sign a letter stating that she was living with Aunt so she could enroll in high school. This upset Mother. She yelled profanities at NB. Aunt tried to intervene. Mother threatened to kill Aunt. Mother found a knife and stabbed Aunt in the thigh. Aunt sustained a wound over an inch long and deep.

Mother left the house with the children and MGM. MGM, all of the children, and Mother stayed the night in Mother's car. MGM dropped off Mother and kept the children. Mother was located and arrested. Mother was released because Aunt did not want to press charges.

[footnote continued from previous page]

children. By joining in Father's brief, Mother has made no argument regarding the disposition of the case against MeB and MA and has waived any claim that the termination of her parental right to these children was erroneous.

Aunt advised the social worker from LADCFS that on a previous occasion, Mother had hit MGM in the head with a bat because Mother felt that MGM was siding with Aunt. Mother had also hit MGM with her fists.

NB stated that she was “a little afraid of” Mother. Mother had called NB a “whore” and a “bitch.” NB had witnessed Father hit Mother; Father was in jail for hitting Mother. On September 26, 2011, NB reported that Mother had hit her in the stomach during the altercation. NB also reported that she had previously been hit by Mother with extension cords and hangers; Mother had pulled NB’s hair and hit NB in the face with her hands.

MD stated Mother had slapped him in the face when he misbehaved. MD had seen Mother slap NB in the face; MD had seen Mother “sock” MGM; Mother called MD names. HD reported that Mother had hit her “pow pow” with a belt. MD had observed Mother physically abuse HD, CD and MB by striking them in the face with her hands. She had also pulled their hair.

Mother denied that she hurt Aunt. Mother called her a “fucking piece of shit” and claimed that Aunt was trying to get Mother’s children away from her. Mother insisted that Aunt hit her. Mother admitted there had been domestic violence between her and Father. A police report was included that detailed a domestic violence incident between Mother and Father occurring on April 27, 2007. Father and Mother had gotten into an argument. Mother was six months pregnant. Father pushed Mother on the bed and got on top of her, pinning her to the bed. Father bit Mother. Father also hit her in the lip with his forearm.

Mother advised the social worker that NB was conceived when Mother was raped at age 13. She did not know the father. Mother stated that Father was the father of MD, CD, MB and HD. Father had been incarcerated in Mississippi since April 14, 2009. HA was also incarcerated.

Mother had previous referrals for the children, which resulted in inconclusive findings. Mother had a previous conviction of making terrorist threats. Father had an extensive criminal history, which included convictions of theft, robbery, possession of controlled substances, domestic violence and threatening victims.

All of the children, who were capable of providing an opinion, reported they wanted to live with MGM.

On September 27, 2011, LADCFS filed a section 300 petition against Father (for MD, CD, MB & HD) and Mother (for all the children). It was alleged under section 300, subdivisions (a) and (b), that Mother and Father failed to protect the children and that the children had suffered or would suffer serious bodily harm due to Mother's violent acts against Aunt, MGM, and all of the children. It was additionally alleged that Father posed a risk of serious harm because of his prior battery against Mother, and he failed to protect the children. It was further alleged under section 300, subdivision (j) that each of the children's siblings had been subjected to child abuse.

The detention hearing was held on September 27, 2011. The juvenile court found that Father was the presumed father of MD, MB, HD, and CD. HA was declared the alleged father of MA. The juvenile court found a prima facie case and ordered all six children be detained.

A first amended petition was filed on October 25, 2011. An additional allegation under section 300, subdivision (b) that Mother had tested positive for marijuana was added.

B. JURISDICTIONAL/DISPOSITIONAL REPORT AND HEARING

A jurisdiction/disposition report was filed on October 27, 2011. The children remained in a foster home. NB had been interviewed on October 14, 2011. Mother encouraged NB not to attend high school and wanted NB to take care of her siblings. NB saw Mother with the knife before Mother stabbed Aunt. When NB was 10 years old, she observed Mother hit MGM in the eye. MGM sustained a black eye. While Father and Mother were together, NB had observed bruises all over Mother's body. NB had suffered a black eye and "busted" lip on prior occasions when Mother had hit her. NB was hit so many times by Mother on one day that NB ran away. NB felt that Mother did not like her.

NB had observed Mother hit MD with a shoe. NB indicated that CD and MB were Mother's favorite children and she did not hit them. NB had seen Mother using marijuana.

MD was also interviewed. MD was at school when the stabbing occurred. MD had observed Mother hit MGM on five prior occasions. MD was aware that Father was in prison and it was because he and Mother had been fighting. He had seen Father hit Mother. MD had seen Mother hit NB. MD reported Mother had hit him in the face. He had seen Mother slap CD on the hand and hit her in the face, and hit MB on the back. MD had observed Mother smoke marijuana.

CD denied any knowledge of the stabbing, of Mother hitting MGM, and denied that Mother hit her or her siblings. MB stated that she did not have a dad because he was in jail. Father was in jail because he and Mother had been fighting; MB had seen Mother hit NB “really soft.” MB did state that Mother hit him “really hard” in the face. HD had no knowledge of domestic violence between Mother and Father, and no knowledge of any other violence in the home.

Mother was interviewed twice during the reporting period. Mother denied injuring Aunt. Mother explained the incident where MGM got hit with a bat. She claimed MGM had been hit by a bat when MGM intervened in an argument between her and Aunt. Mother and Father had lived together for approximately six years prior to his incarceration. During this time, they only had one or two physical altercations; they mostly had verbal altercations. MGM was “nosy” and would report domestic violence between Mother and Father. Mother began crying during the interview and admitted that she and Father separated because of the domestic violence.

Mother denied ever hitting any of the children. Mother claimed that she had a medical marijuana license to help with pain. The license she showed the LADCFS dependency investigator had expired.

Aunt was also interviewed. She did not press charges against Mother because she insisted the children needed their mother, but that she was seeking a restraining order. She had seen NB with a black eye. Aunt had no knowledge of any acts of violence against the other children.

MGM confirmed that Mother had previously hit her in the face with her fist. She suffered a black eye. MGM reported numerous acts of domestic violence committed by Father against Mother. MGM had seen NB with a black eye. Mother typically took her anger out on NB.

Father had been in custody since April 2009; his release date was May 24, 2013. LADCFS provided detailed reports of the arrests of Father on several domestic violence incidents involving Mother.

The children were developing normally, were healthy and there were no concerns.

LADCFS recommended that Father receive no reunification services pursuant to section 361.5, subdivisions (b)(12) and (e)(1). It was recommended that Mother receive reunification services. Father would not agree to attend drug treatment or any other program while incarcerated. Father had no knowledge of any violence committed by Mother against Aunt, MGM and the children. Attempts by LADCFS to conduct further interviews with Mother were unsuccessful. Mother had attended two visits with the children since they had been detained.

A second amended petition was filed on December 2, 2011, by LADCFS. Additional section 300, subdivision (b) allegations were alleged against Father that he was currently failing to provide the necessities of life, which endangered the lives of MD, CD, MB and HD. Further, a section 300, subdivision (g) allegation was brought against Father for failing to support the above-named children. A third amended petition was filed. LADCFS struck the allegations under section 300, subdivisions (a), (b) and (j) of

serious harm, failure to protect, and abuse of sibling for the violence against MGM, CD, MB and HD.

Just prior to the jurisdiction/disposition hearing, LADCFS provided an update. Mother claimed to be beginning parenting and domestic violence classes. Mother was taking anti-depressants. Mother had trouble attending visitations because she was told she could not have her new boyfriend attend the visits.

The jurisdiction/dispositional hearing was held on March 15, 2012. Father's counsel objected to the hearing proceeding because counsel had no contact with Father, who was still incarcerated out of state. The juvenile court advised counsel that it was not willing to continue the case. Mother waived her rights to a hearing and admitted the allegations in the third amended petition. The juvenile court found the allegations in the third amended petition true. Mother was granted reunification services. Father was denied reunification services under section 361.5, subdivision (e), which allowed the denial of reunification services due to the length of his incarceration.

C. ADDITIONAL PROCEEDINGS AND SIX-MONTH REVIEW REPORTS AND HEARINGS

LADCFS filed a status review report for the six-month review hearing. The children had been placed with a relative. On May 16, 2012, Mother was arrested in San Bernardino County for driving with a suspended license and resisting arrest. Mother was on probation at the time. She was sentenced to six months prison with a January 13, 2013, release date. Mother indicated she would try to complete her programs in prison. Mother was pregnant and was due in January 2013. Mother had been regularly visiting

the children prior to her arrest. Mother had been a no show for several random drug tests. Father remained incarcerated.

The children were doing well and were happy. They had all received counseling, but counseling was no longer recommended for them. An updated report was filed by LADCFS on October 23, 2012. LADCFS was in the process of approving MGM's home to have the children live with her in San Bernardino County. The hearing was held on October 23, 2012. Reunification services for Mother were continued.

D. DETENTION AND JURISDICTION/DISPOSITION OF ME.B

On January 29, 2013, an original petition was filed by San Bernardino County Children and Family Services (the Department) for MeB who was born in January 2013. AG was named as the alleged father. It was alleged under section 300, subdivisions (a) and (j), that Mother had abused the half siblings, putting MeB at risk. It was also alleged that Mother had a violent history and unstable lifestyle showing a failure to protect within the meaning of section 300, subdivision (b). According to the detention report, NB, MD, CD, MB, HD and MA were all living with MGM. NB was at the hospital when MeB was born; NB became belligerent when Mother was advised that MeB was going to be detained. Mother claimed that she had not completed her services in the Los Angeles case because her social worker was a “douche bag” and was against her. MeB was placed with MGM. At the detention hearing on January 30, 2013, the San Bernardino juvenile court found a prima facie case and ordered MeB be detained.

A jurisdiction/disposition report was filed by the Department for MeB. MeB and the other children all were living with MGM. Mother had completed anger management classes and parenting classes while incarcerated.

On May 8, 2013, the jurisdiction/disposition hearing for MeB was held in San Bernardino juvenile court. The juvenile court found the allegations in the petition true after the section 300, subdivision (a) allegation was changed to a section 300, subdivision (b) allegation. Mother was granted six months of reunification services.

E. 12-MONTH STATUS REVIEW REPORTS/TRANSFER TO SAN BERNARDINO COUNTY AND HEARING

LADCFS filed a status review report on March 29, 2013, for NB, MD, CD, MB, HD and MA. They remained with MGM and had been so since November 19, 2012. When Mother was released from prison on January 3, 2013, she failed to contact LADCFS. Mother finally made contact with LADCFS on January 29, 2013. Mother had moved into a two-bedroom home. Mother had not seen NB, MD, CD, MB, HD or MA since May 2012. She resumed visitation in February 2013 and the visits went well. Mother was enrolled in an outpatient drug program. Father had no contact with LADCFS during the reporting period. Mother had completed anger management and parenting classes but not a drug treatment or individual counseling program. All the children were developing normally and doing well in MGM's care.

LADCFS recommended that reunification services be terminated and that a section 366.26 hearing be set. The Department recommended legal guardianship with MGM because she was not willing to adopt the children. If the juvenile court ordered

more reunification services, the case should be transferred to San Bernardino County. At a hearing concluded in Los Angeles juvenile court, the court ordered that the matter be transferred to San Bernardino County. The San Bernardino Juvenile Court accepted the matter.

On July 1, 2013, the Department filed an initial interim review report. The children remained with MGM. The children were interviewed and wanted to remain with MGM; several of them did not want to live with Mother. Mother claimed to have completed all of her services but did not produce any certificates of completion.

On August 23, 2013, the Department filed an additional report. It recommended that services be terminated for Mother and a section 366.26 hearing be scheduled. Mother had not completed her case plan for any of the children, including MeB. She had been terminated from the outpatient drug treatment program and had a positive test for marijuana. Mother had engaged in a violent altercation with two men at her residence on July 3, 2013, and she had been arrested. When Mother was told by the social worker about the recommendation, Mother stated, “I’m going to keep having babies until I can keep one. I want a family; I’m lonely without my kids. If I can’t get them back I’ll make a new family.” Mother had not been consistent with visitation. The concurrent plan was adoption or legal guardianship with MGM.

On September 6, 2013, the Department filed a notice of motion for special hearing. They sought to obtain a restraining order against Mother. According to the motion, on September 4, 2013, Mother went to MGM’s home and jumped the fence. She assaulted NB by hitting her in the face. The matter was heard on September 9, 2013.

The social worker related that Mother had threatened to kill MGM. The children were all scared and did not want to stay in MGM's home. A temporary restraining order was granted. Visitation was suspended. Mother objected to a permanent restraining order. The Department provided further information that MGM only wanted to be the legal guardian and did not want to adopt.

On October 7, 2013, the review hearing for NB, MD, CD, MB, HD and MA, and the restraining order, were heard. The Department withdrew the request for the restraining order because MGM and the children no longer wanted the restraining order. Mother objected to setting the section 366.26 hearing. The juvenile court terminated Mother's services as to all the children. The matter was set for a section 366.26 hearing.

The Department filed a status review report for MeB on November 5, 2013. It was recommended that reunification services be terminated and that a plan of legal guardianship with MGM be ordered. Mother had been inconsistent in her visitation and had a positive drug test on October 15, 2013. Mother had been disruptive in her domestic violence class. The matter was continued several times.

F. SECTION 387 PETITION

On December 16, 2013, the Department filed a section 387 petition seeking removal of all of the children from MGM's custody. It was alleged that MGM failed to protect the children from Mother. The children had been detained on December 12, 2013.

According to the detention report, MeB, MD, CD, MB, HD and MA had been placed in a confidential foster home. NB had run away and was missing.

On December 12, 2013, MGM and the children were visiting a relative. Mother came to the home and offered them a ride back to MGM's house. MGM agreed. En route to MGM's house, Mother kicked MGM and forced MGM out of the car; Mother took the children. Mother apparently later returned to MGM's home with the children. At some point, NB ran away and could not be located. The children were finally located by the police and were placed in two separate foster homes.

The detention hearing on the section 387 petition was heard on December 19, 2013. Mother was present but in custody. Father was represented by counsel and was reported to still be in custody out of state. The juvenile court found a prima facie case for detention of all the children and removal from MGM's home. A warrant of apprehension of NB was issued. Visitation was suspended for Mother.

A jurisdiction/disposition report was filed on January 3, 2014. Further details were provided that when Mother was apprehended with the children, they were playing in the snow. MA and MeB had no shoes and their diapers were full of feces. There were no car seats in the car and Mother had no provisions for the children. The Department alleged MGM allowed unauthorized contact between the children and Mother, and that she could not protect them.

On December 30, 2013, a maternal cousin, RB, had contacted the Department and wanted to take permanent placement of the children. All of the children had reported that they did not want to see Mother and they were afraid of her. The Department had tried to locate Father and were awaiting the results of a search. Mother had been charged with assault with a deadly weapon but no further information was provided.

A contested jurisdiction/disposition hearing was to be held on January 22, 2014, on the section 387 petition. The Department noted that Father had been released from prison; it had conducted a search for him. The day prior to the hearing, a social worker at the Department received a telephone call from a man claiming to be Father. Father was unable to attend the hearing and wanted it continued. At the hearing, the Department tried to contact Father but the phone number he provided has been disconnected. The matter was continued to serve notice on Father.

The jurisdiction/disposition hearing on the section 387 petition was finally conducted on February 24, 2014. It was also a review hearing for MeB. The children had been placed with RB, their maternal cousin, and his fiancée, AL, in the prior week. MGM testified. Mother was arrested on a warrant during the hearing. The juvenile court found the allegations in the section 387 petition to be true for MA, NB, HD, MB, CD and MD. A warrant of apprehension remained for NB. The section 387 petition was found true for MeB and reunification services for Mother were terminated. A section 366.26 hearing was set.

Mother filed a notice of appeal from the 387 petition. MGM filed a section 388 petition on June 19, 2014, which was denied.

G. FATHER'S SECTION 388 PETITION

On February 18, 2014, Father filed his section 388 petition on behalf of MD, CD, MB and HD. A hearing was held on April 3, 2014. Father's section 388 petition was denied, as will be set forth in more detail, *post*. On April 15, 2014, Father filed a notice of appeal from the denial of the section 388 petition.

H. SECTION 366.26 REPORTS

On June 17, 2014, a section 366.26 report was filed for NB in which a planned permanent living arrangement be adopted as the appropriate plan. NB's whereabouts were unknown so adoption was not possible.

The Department filed a section 366.26 report for MD, CD, MB, HD, MA and MeB on June 20, 2014. It was recommended that parental rights be terminated and that the permanent plan of adoption be implemented. RB and AL wanted to adopt all six children; the children had been in their home since February 20, 2014. The children were all developing normally, were happy and healthy.

RB and AL loved all of the children and wanted to provide a permanent home. MD, MB, CD and MA all reported liking living with them. RB and AL had a five bedroom home. AL had three children from a prior relationship that also lived in the home. RB and AL were bonded to all six children.

I. SECTION 366.26 HEARING

The hearing was conducted on August 14, 2014, as will be set forth in more detail, *post*. The juvenile court terminated the parental rights of Mother to MD, CD, MB, HD, MA and MeB. Father's parental rights to MD, MB, CD and HD were terminated. The juvenile court found clear and convincing evidence that the children would be adopted. Mother's parental rights to NB were not terminated because NB was absent. A permanency planning program was implemented and a warrant remained for NB's apprehension.

On August 20, 2014, Father filed a notice of appeal from the termination of his parental rights. On September 5, 2014, Mother filed a notice of appeal from the termination of her parental rights.

DISCUSSION

A. SECTION 388 PETITION

Father contends that the juvenile court erred by denying his section 388 petition in which he requested weekly visitation with MD, CD, MB and HD.

1. *ADDITIONAL FACTUAL BACKGROUND*

Father filed his section 388 petition on behalf of MD, CD, MB and HD. In the petition, Father stated that due to his in-custody status on September 27, 2011, the day of the detention hearing, Father was not granted visitation despite being the presumed father. Father stated he was enrolled in parenting class. The children had lived with him since birth until his incarceration in 2008. Father received them into his home. Father requested weekly visitation. Father claimed he and the children had an existing bond.

The Department filed a response. They recommended that the section 388 petition be denied and that the permanent plan of adoption be implemented. The Department alleged that Father had no contact with the children since his incarceration in 2008. There was no evidence of any telephone calls or letters. HD was an infant in 2008. There was nothing supporting Father's claim that the children enjoyed their time with Father. Although Father had documented that he enrolled in counseling and complete a parenting course, this did not address the domestic violence. The children had been through trauma in the dependency proceeding and had finally found a permanent home.

Father testified at the section 388 hearing. He testified that MD, CD, MB and HD had lived with him and Mother before his incarceration. He was not married to Mother. Father first went into custody in 2008. He was released on June 21, 2013. Since being released from custody, Father had completed parenting and drug classes. Father had no idea where the children were living when he was in custody so he could not contact them. Father admitted that he had been arrested numerous times for domestic violence incidents involving Mother but insisted he had never been convicted.

Father thought the children would be happy if they were allowed to visit with him. Father admitted getting notice while in custody of the dependency proceedings. When Father was released, he did not contact the children because he did not know how to contact them.

Father moved to Los Angeles after he was released in June 2013. Mother contacted him in July 2013 and told Father that the children were in San Bernardino. He did not contact the social worker from the Department to visit the children. His record showed convictions for domestic battery. Father wrote 10 letters to the children in 2010. Since 2008, Father had no phone or personal contact with the children. Father testified he did not contact the children upon his release because he had “important things for myself that I [had] to do.” However, he insisted he was finally in a position where he could be part of the children’s lives.

The social worker from the Department also testified. It was her opinion that visitation with Father would disrupt the lives of MD, CD, MB and HD. All of the children were placed together and bonded. Father did not immediately contact her when

he was released from custody. The children had been in five different placements during the dependency proceedings, including with MGM and in foster homes. The children needed stability and granting visitation with Father would disrupt this stability.

Father's counsel argued Father's circumstances had changed because he was released from prison. Father was only seeking visitation because of his release. He wanted to reestablish a relationship with MD, CD, MB and HD. It was in the best interest of the children to have a loving father in their lives. The Department argued that since reunification services had been terminated, and the section 366.36 hearing had been set, that the posture of the case was permanency.

The juvenile court noted that there were two prongs to the section 388 petition: a change of circumstances, and that it was in the best interests of the children to grant the petition. The court noted that Father had been taking classes and had been released from custody. The court stated the issue was the second prong. The court noted that the petition included allegations of domestic violence between Mother and Father and that the domestic violence had not been addressed by Father. There was no evidence of a bond between the four children and Father. Father made little or no attempts to contact them by letter or telephone. He made no contact upon his release. The juvenile court concluded it was not in the children's best interest that visitation be granted and denied the petition.

2. ANALYSIS

Initially, the Department has argued that Father cannot claim on appeal the denial of his section 388 petition was erroneous. The Department contends that since Father's

parental rights were terminated, a section 388 petition based solely on a request for visitation can no longer be raised on appeal as the issue is moot.

It is true that once parental rights are terminated, the juvenile court does not have authority to make further orders, including those regarding visitation. (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 925.)

We note that in this case, Father tried to appeal the denial of his section 388 petition prior to the section 366.26 hearing being held. However, since the record was not complete so that this court could review the section 388 petition, we consolidated the appeals from the section 388 petition and the termination of parental rights. We ordered Father to address both the section 388 petition and the termination of parental rights. Nonetheless, we need not determine whether the issue is moot and the appropriate remedy, as the juvenile court properly denied Father's section 388 petition.

“Section 388 allows a person having an interest in a dependent child of the court to petition the court for a hearing to change, modify, or set aside any previous order on the grounds of change of circumstance or new evidence.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) “[S]pecific allegations describing the evidence constituting the proffered changed circumstances or new evidence’ is required. [Citation.]” (*Ibid.*) It “shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.” (Former § 388, subd. (a).)

A section 388 petition must state a “prima facie case in order to trigger the right to proceed by way of a full hearing.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.)

““There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]”” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079 [Fourth Dist., Div. Two].)

“The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child’s best interests. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) After reunification efforts have terminated, the court’s focus shifts from family reunification toward promoting the child’s needs for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) A section 388 petition is addressed to the court’s discretion, and its ruling will not be disturbed on appeal absent a showing of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) “The denial of a section 388 [petition] rarely merits reversal. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Here, the juvenile court found a change in circumstance based on Father’s release from prison, and decided the petition on the second prong. Its determination that Father had not shown it would be in the best interests of MD, CD, MB and HD to have visitation with Father was not an abuse of discretion.

Initially, Father’s behavior while incarcerated and after he was released from prison showed that he did not have the children’s best interests in mind. It is clear that Father made only a feeble attempt in 2010 to contact his children. No attempts to telephone his children were ever made. Father admitted he had been notified of the dependency proceedings while incarcerated. Despite being advised about the

dependency proceedings, Father did not make any attempts to contact his children upon his release from custody and relocation to Los Angeles. Father stated that he had things he needed to do to take care of for himself. Even if Father was somehow bonded to the children prior to 2008, he made no attempt to continue that bond or reestablish the bond once he was released from custody. There was no evidence that weekly visitation was in the best interests of MD, MB, CD and HD as there was no evidence of any type of relationship between them and Father.

Father contends there was no evidence contradicting that visitation with Father would make the children happy. However, none of Father's children had ever inquired about him or expressed any interest in visiting with Father. MD, CD, HD and MB had been subjected to several years of tumultuous proceedings and circumstances. They had been in five different placements. There was equally compelling evidence that further orders to visit with family members would be disruptive to the children. The determination was what would foster the permanency and stability in the children's lives. Visits with Father did not promote this stability or permanency.

Finally, Father ignores that he had engaged in domestic violence with Mother. MD had seen Father hit Mother. MB was aware that Father was in jail because he and Mother had been fighting. Certainly, it was not in the best interests of at least MD and MB to be forced to visit with Father, who they had observed hit Mother. Moreover, Father had done nothing to address the domestic violence.

Based on the foregoing, the juvenile court properly concluded that it was not in the best interests of MD, CD, MB and HD to have weekly visitation with Father. They

needed the stability and no further disruptions to their lives. Father’s section 388 petition was properly denied.

B. BENEFICIAL RELATIONSHIP EXCEPTION OF SECTION 366.26,
SUBDIVISION (c)(1)(B)(i)

Father, joined by Mother, contends that the juvenile court erred by terminating parental rights because Mother had a bond with the children to qualify as an exception to adoption pursuant to section 366.26, subdivision (c)(1)(B)(i).

1. *ADDITIONAL FACTUAL BACKGROUND*

Mother was present in custody at the section 366.26 hearing. Father was not present. MD testified. MD understood what adoption meant. He was “okay” with Mother not being his mom once he was adopted. MD was asked if he could choose between guardianship and adoption, which one he would choose. MD wanted to be adopted because he wanted to live with RB. He was also okay with NB not being adopted with him.

CD also testified. CD also wanted to be adopted. She liked living with RB. CD was then asked by Mother’s counsel the meaning of adoption. CD stated, “It is really hard to explain it. Adoption is like someone adopts you. You still have your parents, like your mom and dad. They are still your mom and dad, but—yeah, like—.” Mother’s counsel then explained that actually the parental rights would be terminated. Mother’s counsel told CD that what CD described was more like guardianship and if she would prefer guardianship over adoption. CD responded, “I want adoption, and I will still have my mom, like I like her and stuff. Yeah, but I still love my mom, but I want to be

adopted . . . by [RB] and [AL] because, like, they love me too, and they are glad I am there with them.” CD had been close to NB.

MB also testified. MB was asked if he knew the meaning of adoption. He responded, “I want to stay with the same family I have.” MB stated that Mother would always be his mother in his heart. MB stated that despite Mother no longer being his mom, and NB no longer being his sister, he wanted to be with RB and AL. MB was somewhat confused by questioning as to whether he wanted a guardianship rather than adoption. MB wanted RB to be his dad and AL to be his mom. He was okay with Mother not being his mom anymore.

At the end of testimony, Father disagreed with the recommendation that his parental rights be terminated and that guardianship was in the best interests of the children. Mother’s counsel argued it was clear that the children wanted to stay with RB and AL, but it was not clear they wanted to be adopted by them if it meant losing their Mother and NB. Mother’s counsel argued the sibling exception to adoption because of NB being absent and not adoptable. There was a strong bond between the siblings.

The juvenile court addressed the sibling bond exception to adoptability. The juvenile court noted that the focus was on the six children being adopted, not on NB. The juvenile court found the testimony of MD, CD and MB showed that they all preferred adoption. There was no showing of the sibling bond exception. The juvenile court terminated the parental rights of Father and Mother and freed the children for adoption.

2. ANALYSIS

At a section 366.26 hearing, the juvenile court is charged with determining the most appropriate permanent plan for a dependent child. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 50.) A section 366.26 hearing is designed to protect a dependent child's "compelling" right "to have a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. [Citation.]" (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.)

If the court finds at a section 366.26 hearing that a dependent child is adoptable, it must terminate parental rights unless it determines a specified exception to the adoption preference is applicable. (§ 366.26, subd. (c)(1)(B).)

The beneficial relationship exception applies where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) This means that "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*Ibid.*) The parents have the burden of proving that the beneficial relationship exception applies. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.)

Father claims that Mother raised the beneficial parent exception under section 366.26, subdivision (c)(1)(B)(i) in the juvenile court. He insists the juvenile court considered the exception and rejected that it applied. Father's review of the record is inaccurate. Mother only raised the sibling exception under subdivision (c)(1)(B)(v).

A parent, who fails to raise an exception to the termination of parental rights below, waives the right to raise the issue on appeal. (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.)

“The application of any of the exceptions enumerated in section 366.26, subdivision (c)(1) depends entirely on a detailed analysis of the relevant facts by the juvenile court. [Citations.] If a parent fails to raise one of the exceptions at the hearing, not only does this deprive the juvenile court of the ability to evaluate the critical facts and make the necessary findings, but it also deprives this court of a sufficient factual record from which to conclude whether the [juvenile] court's determination is supported by substantial evidence. [Citation.] Allowing [a parent] to raise the exception for the first time on appeal would be inconsistent with this court's role of reviewing orders terminating parental rights for the sufficiency of the evidence.” (*In re Erik P., supra*, 104 Cal.App.4th at p. 403.)

Mother never raised the beneficial relationship exception before the juvenile court. As a result, the juvenile court never evaluated whether Mother had been consistent with visitation and whether MD, CD, MB, HD, MA and MeB were bonded to Mother. In fact, the entire proceeding was centered on showing that there was a sibling bond with NB, and that the sibling exception applied, and that the children did not want to be adopted.

As such, Mother has forfeited the argument on appeal. Father, attempting to argue the issue on behalf of Mother, has also forfeited the issue on appeal.

Moreover, without engaging in extensive discussion of the reasons that the beneficial parent exception did not apply in this case, we have set forth Mother's behavior, which led to the detention of all of the children, and her behavior throughout the proceeding, in detail, *ante*. Mother had engaged in domestic violence with Father, stabbed Aunt, had hit the children in the past, and kidnapped them from MGM. Mother was a danger to all of the children. The beneficial parent exception was clearly not applicable in this case.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.