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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.R. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.H.,

Defendant and Appellant.

E061612

(Super.Ct.No. RIJ113201)

O P I N I O N

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

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, and Julie Koons Jarvi, Deputy County
Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant C.H. (Father) is the father of six children who were ages 2, 4, 5, 6, 10, and 11 when they were detained outside his custody in September 2013. The juvenile court terminated parental rights and placed the children for adoption after summarily denying Father's Welfare and Institutions Code section 388¹ petition seeking the return of the children to his care or, alternatively, six months of reunification services. (§ 388.)

Father appeals from the order denying his section 388 petition, claiming the court erred in summarily denying his petition without a hearing. He claims he made a prima facie showing of changed circumstances and that granting the relief he was requesting might serve the best interests of the children. Thus, he argues, the juvenile court was required to conduct an evidentiary hearing on his petition.

We conclude the petition was properly denied without an evidentiary hearing. We therefore affirm the order denying the petition, along with the concurrent section 366.26 orders terminating parental rights and placing the children for adoption.

II. FACTS AND PROCEDURAL HISTORY

A. *Events Underlying the Children's Current Dependency*

On September 2, 2013, plaintiff and respondent Riverside County Department of Public Social Services (DPSS) received a referral alleging Father's six children were

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

being physically abused, neglected, and subjected to domestic violence between Father and their mother (Mother).² On August 30, Father called the children's maternal great-aunt, Sandra, and told her to "come and get the kids" and do whatever she wanted with them because he "could not do this anymore" and was going to Mexico. Mother had "taken off" again, as she had often done in the past.

According to Sandra, Father was "extremely drunk" when she arrived to pick up the children. Father reportedly spanked his oldest child J., then age 11, on her butt, repeatedly, with his hand. Father often took his anger out on J. because Mother would take J. with her when she left the house; Father would accuse Mother of cheating on him and would accuse J. of covering for Mother. Sandra said the children were tired of Mother leaving, being hungry, being hit, and being placed "in the middle of the parent's drama." They did not want to return home and were fearful of Father because he drank a lot and spanked them.

Father denied spanking J., and claimed he only asked Sandra to babysit the children because he did not know when Mother would be back, and he had to work for the next several days. Mother reported Father came home drunk the night he spanked J., and J. said Father "always" got drunk on Fridays.

According to J., Mother and Father had a verbal confrontation, Father then went into the backyard and knocked down a barbecue pit Mother built, and while he was doing that, Mother left the house. Father came back into the house and J.'s younger sister V.,

² The children's mother (Mother) is not a party to this appeal.

told Father J. was afraid of him. Father said, “Oh she is is she?” and went into the bedroom and began hitting the wall with his belt in order to frighten J. J. ran out of the room, Father chased her, caught her, and spanked her repeatedly with his hand, “with ‘all his force.’” J. pleaded with the social worker not to be sent back home; she was tired of all the “cussing and yelling,” and she knew Father would be angry with her for “causing trouble.”

J.’s younger sisters E., V., and K., then ages 10, 6, and 5, confirmed J.’s account of what occurred on August 30, 2013, and said they also feared Father. Several months earlier, in February 2013, Father spanked all of the children and Mother with a belt. The girls had witnessed numerous instances in which Father kicked or punched Mother. E. also pleaded with the social worker not to send her and her siblings back home with Father. E. later described how Father used A., then age 4, “to further implement fear” in the other children by allowing A. to hit the other children with a belt.

The assistant principal at J.’s school said Mother had been taking J. out of school so J. could care for the younger children while Mother slept. On September 4, 2013, Mother tested positive for methamphetamine, and Father refused to compensate Sandra for caring for the children. On September 13, 2013, the court ordered the children detained outside parental custody. Father was denied any visitation with J. but was granted twice-weekly supervised visits with the other children. The three older girls, J., V., and E., were placed with Sandra. The three younger children, K., A., and S., were placed with a nonrelated extended family member, Maricela.

B. The Family's Prior DPSS History

The family had a lengthy history with DPSS. In January 2005, a referral alleged that two men who were living with the family touched the girls on their "private parts" under their clothes; Mother was selling and using drugs in the home; and the children were being left home alone at all hours of the night. The referral was determined to be unfounded. In September 2005, a referral alleged Mother was using drugs in front of the children and spanking them on the buttocks with a belt. Mother claimed she had stopped using drugs after the last investigation. This referral was also deemed unfounded.

Then, at the time of V.'s birth in October 2006, Mother tested positive for amphetamine and V. tested positive for methamphetamine. J., E., and V. were adjudicated dependents and placed on family maintenance with Father. Mother was offered reunification services. In December 2006, the children were removed from Father and placed with relatives because Mother was residing in the family home in violation of court orders. Both parents were offered reunification services; both failed to comply with their case plans; and, as a result, K. was taken into protective custody when she was born in December 2007.

In July 2008, K. was returned to the parents' care under a family maintenance plan, but the three older girls were placed with Sandra under a plan of legal guardianship. A. was born in December 1998, but DPSS did not intervene on his behalf because the parents were doing well in their family maintenance plan. In January 2009, K.'s dependency case was terminated and the three older girls were returned to the parents

under a family maintenance plan. In May 2009, the dependency case for the three older girls was terminated.

In June 2011, DPSS received a referral alleging J. was being sexually abused by the parents' roommate, who made her sit on his lap while he touched her. When J. told Mother about the incident, Mother told J. not to go near the roommate. J. later woke in the middle of the night and found the roommate trying to lie on top of E. Mother told the girls to make sure their bedroom door was locked at night. The girls were reportedly frightened and did not want to return home, and Father was reportedly physically and verbally abusive to the children and Mother. Nonetheless, the children were not detained and the parents were again offered family maintenance services.

In August 2013, a referral was received alleging there was no food in the house and Father told the children it would be another month before they would get any. Father was relying on J. to tell him what Mother was doing during the day while he was at work; Mother would tell J. not to tell Father anything, and J. ended up getting in trouble. This referral, too, was determined to be unfounded.

Father was born in 1965 and had a misdemeanor conviction for driving under the influence in 2001, along with a misdemeanor hit and run conviction. He had another misdemeanor driving under the influence conviction in 2002, but no other criminal history.

C. The Jurisdictional/Dispositional Hearing (November 2013)

Before the jurisdictional/dispositional hearing on November 19 and 20, 2013, the three older girls, J., E., and V. told the social worker they wanted to live with Sandra because they felt safe with her, they were fed in her home, they received attention, and they were allowed to do things. J. said her parents ignored her and sometimes she did not eat; the parents made the children cook for themselves, and Father “gives us no love, he only spoils [A.]” E. said she studied more in Sandra’s home than in her parents’ home where “no one [could] help” her. V. said she wanted to stay with Sandra because, in her parents’ home “they don’t like me, every time I want to talk they ignore me and . . . hit me with a belt.”

K. was placed with Maricela from birth to age 10 months, and Maricela expected to adopt K. before the court returned her to the parents in 2009. K. said she wanted to stay with Maricela, because “she gives me food, cause my dad doesn’t buy food for us, my mom doesn’t have money to buy food for us” A. said he wanted to return home, but was “not very receptive,” and could not explain why he did not want to stay with Maricela. S. was too young to be interviewed.

Sandra believed Father neither loved nor wanted the children, and expressed that he did not believe all of the children were his. Sandra claimed neither parent provided necessary medical attention to the children; the parents were unconcerned when the children were ill, and refused to reimburse Sandra and a neighbor for expenses they incurred in taking the children to doctors. J. was born with a cleft lip and palate, the

parents never followed up with treatments, and J. was on a waiting list for surgery. S. had a recurring eye infection.³ The other children had no significant health issues.

Father submitted to a hair follicle test on September 24, 2013, and the results were negative. Father testified at the jurisdictional/dispositional hearing. He said he completely stopped drinking alcohol two months earlier; denied he ever got drunk while the children were in his care; denied any domestic violence with Mother; and denied he hit J., but admitted he spanked her because Mother said J. tried to hit Mother. Father was attending substance abuse, parenting, and anger management classes, without assistance from DPSS.⁴ Father and Mother continued to live together. Mother testified there had been no domestic violence incidents during the previous two months.

At the conclusion of the jurisdictional/dispositional hearing, the court said it believed the children but it did not believe the parents, and noted it was “incredibly unusual” for children the girls’ ages refusing to see their parents or go home. That indicated to the court there were “grave problems” in the parents’ household. The court noted the first petition was filed when J. was 4 years old, E. was 3 years old, and V. was a newborn; those girls were now ages 11, 10, and 6; the parents were “out of time” and “should have been out of time a long time ago.”

³ S. was later diagnosed with a tear duct obstruction.

⁴ The social worker was unable to confirm Father’s attendance.

The court found jurisdictional allegations true for all the children under section 300, subdivisions (b) and (j), based, in part, on Father's physical abuse of J. on August 30, 2013, his anger management issues, exacerbated by his alcohol use, and his acts of domestic violence against Mother, including hitting and kicking. The court also found Father failed to benefit from prior services. The court denied reunification services for Father (§ 361.5, subd.(b)(10)) and Mother (§ 361.5, subd. (b)(10), (b)(13)), set a section 366.26 hearing, and ordered DPSS to assess the children for adoption.

D. Father's Section 388 Petition

The section 366.26 hearing was held on July 28, 2014. At that time, the children remained with their original caretakers. Father had no contact with the three older girls during the dependency proceedings, and the older girls never wanted to visit Father. The parents had regularly visited the three younger children, who were bonded to the parents.⁵

Father filed a section 388 petition on the day of the section 366.26 hearing, asking the court to return the children to his care or provide him with six months of reunification services. The court considered the petition, and heard argument on it, before proceeding to the section 366.26 hearing.

In his petition, Father adduced evidence that, by April 2014, he had completed a 32-session substance abuse class, a 12-week anger management class, tested negative for

⁵ Mother tested positive for drugs during 2014, and enrolled in an inpatient substance abuse program.

drugs and alcohol since the inception of the proceedings, and had attended Alcoholics Anonymous meetings three to five times weekly. The anger management class instructor said Father participated in the class, appeared interested in applying the techniques he learned, asked for help in dealing with his anger and frustration, and acknowledged that he had not done a good job in the past of controlling his temper with his wife and children.

Father also showed he completed an eight-week parenting class on January 27, 2014. The instructor said Father appeared very interested in using the class materials, and acknowledged he needed to learn better parenting skills. The instructor believed Father benefitted from his participation in the class.

At the hearing, Father's counsel argued it was in the children's best interests to grant Father's proposed change of order because he had worked diligently to reunify with the children, he had learned a lot, he was eager to implement his newly found skills, and he loved his children and wanted them to grow up together. Father acknowledged the older girls did not want to have contact with him, but he was hoping that would change, and he was willing to "do whatever it takes." Mother would move out of the household if the children were returned to Father, though Father's counsel acknowledged that Mother and Father were still living together.

DPSS, joined by minors' counsel, asked the court to deny the petition because granting it would not serve the best interests of the children. DPSS argued the children deserved permanency and normal lives after multiple dependencies, and years of abuse

and neglect. Minors' counsel added that the case also involved medical neglect of the children.

The court found circumstances were changing, but not changed, noting Father had been offered services "for years and years" and had not benefited from them. The court also found it was not in the children's best interests to extend reunification services to Father, or be returned to Father's care. The court then denied the petition. Father did not request an evidentiary hearing on his petition, or offer any evidence in addition to what he adduced in support of his petition.

Turning to the section 366.26 hearing, the court found there was no parental bond that outweighed the benefits of adoption for any of the children, and it was likely the children would be adopted. The court terminated parental rights and selected adoption as the children's permanent plan. Father appealed.

III. DISCUSSION

Father claims the juvenile court abused its discretion in denying his section 388 petition without conducting an evidentiary hearing. We disagree, and conclude the petition was properly denied without an evidentiary hearing.

A. Applicable Law

Section 388 states, in pertinent part: "(a)(1) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made [¶] . . . [¶] (d) If it

appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held”

A section 388 petition must state a prima facie case in order to trigger the right to proceed by way of a full evidentiary hearing. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) That is, the petition must make a prima facie showing of facts sufficient to sustain a favorable decision if the facts are credited. (*Id.* at p. 593; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) The court must liberally construe the petition in favor of its sufficiency (see Cal. Rules of Court, rule 5.570(a); *In re Angel B.* (2002) 97 Cal.App.4th 454, 461), which is to say the petition must be “liberally construed in favor of granting a hearing to consider the parent’s request. [Citations.]” (*In re Marilyn H.*, *supra*, at pp. 309-310; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1414.)

““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].) “[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; *In re C.J.W.*, *supra*, at p. 1079.)

We review a juvenile court’s summary denial of a section 388 petition for an abuse of discretion. (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 382.) If the liberally

construed allegations do not make a prima facie showing of changed circumstances or new evidence, *and* that the best interests of the child would be served by granting the relief requested, the summary denial of the petition does not violate the petitioner's due process rights. (*In re Angel B.*, *supra*, 97 Cal.App.4th at pp. 460-461.)

B. *Analysis*

Father argues he made a prima facie showing of changed circumstances because he made significant progress in addressing the problems that led to the children's current dependency: he stopped consuming alcohol, he completed parenting, substance abuse, and anger management classes, and he was willing to live apart from Mother in order to have the children returned to his care.

Father also emphasizes it was his burden to show that granting his petition *might* be in the children's best interests, and claims he met this burden. He states he "would like to have his family reunited," but, "[f]rom the record it is clear he is not ready to immediately take on all six children on his own." Thus, he argues, providing him six months of reunification services would allow the court and DPSS to "see how [he] manage[s]" with the three younger children, then determine whether the older children should also be returned to him.

We disagree that the juvenile court had a duty to conduct an evidentiary hearing on the petition, and conclude it did not abuse its discretion in denying the petition without an evidentiary hearing. To be sure, Father made significant progress in addressing the problems that led to the children's dependency. Nonetheless, the court reasonably

concluded that Father did not make a prima facie showing of changed circumstances, but only showed changing circumstances. As the court said, Father had been offered services “for years and years,” but had not benefited from them, and he was still living with Mother who continued to struggle with substance abuse.

Nor did Father make a prima facie showing that granting his petition *might* serve the best interests of the children. (§ 388.) The children suffered abuse and neglect at the hands of the parents for years, and at this point in the proceeding their interest in permanency and stability was paramount. (*In re Edward H.*, *supra*, 43 Cal.App.4th at p. 594.) Simply put, allowing Father *yet another* opportunity to keep his family together would not have promoted the children’s best interests. The children were happy and stable in their adoptive placements, they were likely to be adopted, and they did not need to wait any longer for permanency and stability.

IV. DISPOSITION

The orders denying Father’s section 388 petition, terminating parental rights, and placing the children for adoption are affirmed.

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KING
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.