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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.C., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

E061725

(Super.Ct.No. RIJ1100190)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, Julie Koons Jarvi and Carol A. Nunes Fong,
Deputy County Counsel, for Plaintiff and Respondent.

T.R. (mother) appeals from an order terminating parental rights to her infant son, G.C. (sometimes child). Her sole appellate contention is that the trial court erred by denying her “changed circumstances” petition under Welfare and Institutions Code section 388 (section 388). We find no error. Hence, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In January 2013, the mother’s parental rights to two older children were terminated. In July 2013, she gave birth to G.C. Both mother and child tested positive for methamphetamine and marijuana.

The mother admitted using methamphetamine since she was 15 (i.e., around 2003). She also admitted using it one time while she was pregnant. Otherwise, however, she claimed that she had stopped using in 2011, when she was 23. She gave inconsistent accounts of where she and the father were living. According to the father, however, “the residence they were residing at was a home where others engaged in using methamphetamine.” Moreover, he had seen the mother use methamphetamine.

Accordingly, G.C. was detained when he was one day old.

A criminal records check revealed that the mother had a series of drug-related arrests dating back to 2008, including one resulting in diversion (Pen. Code, § 1000 et seq.) and one resulting in a conviction for possession of a controlled substance. (Health & Saf. Code, § 11377, subd. (a).)

In September 2013, at the jurisdictional/dispositional hearing, the juvenile court found jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)) and abuse of a sibling (*id.*, § 300, subd. (j)). It formally removed the child from the parents' custody. It denied the mother reunification services based on failure to reunify with, and termination of parental rights to, a sibling. (Welf. & Inst. Code, § 361.5, subds. (b)(10), (b)(11).) However, it ordered reunification services for the father.

Later in September 2013, G.C. was placed with the mother's half-sister, who was willing to adopt.

In March 2014, at a six-month review hearing, the juvenile court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26).

In July 2014, the mother filed a section 388 petition.

In August 2014, after an evidentiary hearing, the juvenile court denied the section 388 petition. It then proceeded to hold a section 366.26 hearing. It found that the child was adoptable and that there was no applicable exception to termination. Accordingly, it terminated parental rights.

II

THE DENIAL OF THE MOTHER'S SECTION 388 PETITION

A. *Additional Factual and Procedural Background.*

Under the applicable standard of review (see part II.C, *post*), the juvenile court was entitled to consider the entire factual and procedural history of the case. Moreover,

the juvenile court indicated that it had, in fact, taken “judicial notice of the entire file” Accordingly, the following facts are based on a review of the entire record.

The mother had started using drugs when she was 15; she had used drugs once a day. In connection with the dependency of her two older children, she had completed an outpatient substance abuse program; however, she had relapsed while in an after-care program.

The mother had documentary proof that in June 2014, she had completed a one-year residential substance abuse and counseling program.¹ She testified that she remained sober during and after the program. However, the program had not required her to drug-test. “They just went by [her] word that [she] was not using[.]”

She also had documentary proof that she had completed a 12-week parenting program. She and her new husband had an apartment in Los Angeles, where there was enough room for the child. Her husband made enough money to “help” support the child.

The mother had visitation once a month for one hour at a time.² She testified that she had “maintained” visitation since September 2013. Her sister (i.e., the prospective

¹ The mother had told the social worker, however, that she entered the program in October 2013. If so, she was in the program only for about nine months.

² In July 2013, the mother had been given supervised visitation “a minimum of two times a week.” She had also been ordered to drug test before any visitation. The juvenile court never modified this visitation order. Nevertheless, by September 2013, both the mother and the social worker understood that she was allowed visitation only once a month.

adoptive mother) brought the child to a park for these visits. The mother believed the child had a bond with her because he called her “Mom” and reached out for her when he saw her. At the end of visits, he would whine.

According to the social worker, however, in the penultimate reporting period (September 2013 through March 2014), the mother had had just four visits: one on September 12, 2013, one on January 23, 2014, and two on unspecified dates between January 23 and February 4, 2014. In the most recent reporting period (March through July 2014), she had not contacted the Department and, as far as the social worker knew, had had no visitation.

By the date of the section 366.26 hearing, G.C. had been with the prospective adoptive mother for over 10 months. In one social worker’s opinion, “a strong mutually positive [p]arent-child bond exists between G[C.] and [the] prospective adoptive mother.” She was “very loving and attentive.” She “ensured that [his] needs are met in a timely and consistent manner.” He was “doing . . . extremely well” — indeed, “thriving” — in her care.

B. Additional Factual and Procedural Background.

In her section 388 petition, the mother asked the juvenile court to grant her reunification services. As changed circumstances, she alleged that: (1) she had maintained visitation with the child; (2) she had completed a one-year drug rehabilitation program; (3) she had completed a 12-week parenting program; and (4) she had secured appropriate housing.

In denying the petition, the juvenile court found that there was no change of circumstances and that granting the petition would not be in the child's best interest.

C. *Analysis.*

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. [Citation.] Generally, the petitioner must show by a preponderance of the evidence that the child's welfare requires the modification sought. [Citation.]” (*In re A.A.* (2012) 203 Cal.App.4th 597, 611-612 [Fourth Dist., Div. Two].)

“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.)

“The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion.’ [Citation.]” (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) “ . . . ‘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.)

Here, the juvenile court found that the mother’s circumstances were “changing” but not changed. This was not an abuse of discretion. “The fact that the parent ‘makes relatively last-minute (albeit genuine) changes’ does not automatically tip the scale in the parent’s favor. [Citation.]” (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

“It is only common sense that in considering whether a juvenile court abuses its discretion in denying a section 388 motion, the gravity of the problem leading to the dependency, and the reason that problem was not overcome by the final review, must be taken into account.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. omitted.) The precipitating cause of the dependency was the mother’s drug abuse. The *Kimberly F.* court “doubt[ed]” that “the parent who loses custody of a child because of the consumption of illegal drugs and whose compliance with a reunification plan is incomplete during the reunification period” could “*ever* show a sufficient change of circumstances to warrant granting a section 388 motion It is the nature of addiction that one must be ‘clean’ for a much longer period . . . to show real reform.” (*Ibid.*, fn. 9, italics added.)

For example, in *In re Amber M.* (2002) 103 Cal.App.4th 681, 685-687, the appellate court concluded that it was not an abuse of discretion to deny the mother's section 388 petition, based in part on the fact that she had a 17-year history of drug abuse, had relapsed twice previously, and had been clean for only 372 days.

Here, similarly, the mother had been abusing methamphetamine for approximately ten years. As the trial court perspicaciously noted, she had completed a substance abuse program once before, but she had relapsed. She claimed to have been sober for only about 13 months (and there was evidence in the record that it had really been only about 10 months). Most important, she had not been drug-tested at all during this time. While on the stand, she stated, “. . . I will give a hair follicle test if you guys need it.” However, there was no reason why she could not have had a hair follicle test done on her own initiative in time to submit the results at the hearing. It is axiomatic that, if a party provides weaker evidence when it could have provided stronger evidence, the trier of fact may distrust the weaker evidence. (*As You Sow v. Conbraco Industries* (2005) 135 Cal.App.4th 431, 453, fn. 11.)

The juvenile court also found that granting the mother reunification services would not be in the child's best interests. He had been placed with the prospective adoptive mother for approximately 10 months of his 13 months of life. Naturally, he regarded her as his true parent; he had “a strong . . . bond” with her. By contrast, he spent, at most, one hour a month with the mother. And, again, there was evidence that

she did not actually visit even that often.³ As the mother concedes, she is not claiming “that G.C. was psychologically bonded to her.” The juvenile court could reasonably conclude that it would not be in his best interest to delay permanency with the prospective adoptive mother solely to promote his attenuated relationship with the mother.

We therefore conclude that the juvenile court did not abuse its discretion by denying the mother’s section 388 petition.

III

DISPOSITION

The order appealed from is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.

³ An alternative inference is that she had, in fact, visited regularly, but she had concealed those visits from the social worker because the social worker would have enforced the order requiring her to drug-test before visits. If so, that would further support a finding that her drug abuse had not meaningfully changed.