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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.S.,

Defendant and Appellant.

E062024

(Super.Ct.Nos. J-246092, J-246093,  
J-246094, J-246095)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher  
Marshall, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant O.S. (mother) is the mother of five children. The four youngest are the subjects of this appeal. As of the date of the challenged orders, the children were ages 16 (L.S.), 13 (I.R.), 8 (R.R.), 6 (E.R.) and 5 (B.R.). Mother challenges the juvenile court's order of September 29, 2014 denying her petition under Welfare and Institutions Code section 388.<sup>1</sup> We affirm. Because mother argues an issue on appeal that she did not raise in her section 388 petition, we find she forfeited the issue.

#### **STATEMENT OF FACTS AND PROCEDURE**

##### *Removal and Detention*

The oldest child, L.S.,<sup>2</sup> reported to her middle school that both mother and the father (father) of her younger siblings had physically abused her and that, until a few years prior, father sexually abused her on a regular basis without intervention from mother. Both parents were interviewed, arrested and jailed and the children were placed together in foster care. When the younger four children were questioned as a group, the oldest, I.R., would only say "we get smacked."

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<sup>1</sup> All section references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> L.S. is not a subject of this appeal because the juvenile court set a planned permanent living arrangement as her permanent plan and so did not terminate mother's parental rights.

At the detention hearing held on September 26, 2012, both parents were present, in custody. The court ordered all five children detained and authorized visits for mother with all of the children and for father with the four youngest children.

*Jurisdiction and Disposition*

In the report filed October 12, 2012, CFS recommended both parents receive reunification services and visitation. The social worker reported that the parents often engaged in domestic violence in front of the children. Additional information was obtained that father had sexually abused all of the children. Father was charged with felony child abuse, lewd acts with a child, and continuous sexual abuse of a child under 14. Mother was charged with child cruelty and willful harm to a child. Both parents continued to deny the abuse. Each parent had an INS hold because of their undocumented legal status.

On October 17, 2012, CFS changed its recommendation to no reunification services for both parents.

In an addendum report filed November 8, 2012, CFS clarified that the parents had physically abused each of the children, including hitting them with a belt.

On October 16, 2012, CFS filed amended section 300 petitions as to the four youngest children to include allegations under subdivisions: (b) (failure to protect) to reflect domestic violence between the parents and mother's failure to protect her children from sexual abuse; (d) (sexual abuse) to reflect that father abused the children's oldest half-sibling, L.S. and that mother allowed this; (g) (no provision for support) that both

parents were incarcerated and unable to support the children; and (j) (abuse of sibling) to reflect that mother and father repeatedly struck the children's half-sister L.S., and father sexually abused her.

The jurisdiction and disposition hearing was held on November 9, 2012. Both parents were present, in custody. The juvenile court found true the allegations in the amended section 300 petition and denied reunification services to both parents because they were incarcerated and "by all appearances, the time to reunify would expire before the parents get out of custody, given the charges that they are facing." The court noted that mother could file a section 388 petition "if something changes and she gets out of custody." The court set a section 366.26 hearing for March 11, 2013.

#### *Section 366.26 Hearing*

In the report filed March 6, 2013, CFS recommended a planned permanent living arrangement (PPLA) for the children. This is because the two oldest children, L.S. and I.R., were not U.S. citizens and would need citizenship before being placed for adoption. All five children had been placed together in a foster home. The foster mother was interested in becoming their legal guardian. However, on February 21, 2013, the foster mother and the four youngest children were in a car accident. The foster mother sustained neck fractures and had to be hospitalized, with a two-to-three month recovery period anticipated, so was not available to care for the children. The children also received injuries, but were released the same day. The children were placed in three separate foster homes while the foster agency looked for a placement for all five children.

Mother was apparently released from custody because she began to have weekend visits with the children in January 2013 before she was detained by immigration.

The section 366.26 hearing set for March 11, 2013, was continued to give CFS time to secure a stable placement for the children. Mother's counsel informed the court that mother was in INS custody and that she would be deported.

On April 5, 2013, the social worker informed the court that all five children returned to the foster mother's home on March 28. The foster mother had arranged for her sister and best friend to move into the home and care for the children while she recovered.

At the further section 366.26 hearing held on April 9, 2013, mother's counsel informed the court that mother had been deported the previous day and was believed to be in Mexico. The court ordered a PPLA with the foster mother for all five children.

#### *Permanent Plan Review*

In the status review report filed September 25, 2013, CFS recommended continuing the PPLA. Mother had not contacted the social worker during the reporting period and was believed to be in Mexico. The foster mother expressed interest in adopting all five children once the oldest two had received Special Immigration Juvenile Status (SIJS). Mother had spoken with the children by telephone.

At the permanent plan review hearing held on October 4, 2013, the court continued the PPLA.

In the status review report filed March 25, 2014, the social worker recommended the oldest child, L.S., continue in the permanent plan of PPLA, but that the court set a section 366.26 hearing for the four youngest children to consider selecting adoption as their permanent plan. L.S. and the foster mother were not getting along, and both requested a placement change. The SIJS process had been completed for the two oldest children and the foster mother was just awaiting receipt of I.R.'s green card so she could proceed with adoption. Mother occasionally called the foster mother to speak to the children, although both the oldest, L.S., and the youngest, B.R., would not speak with her. Mother introduced the children to her new boyfriend. The foster mother ended the conversations when they became inappropriate.

At the status review hearing held on April 4, 2014, the court continued the PPLA as the permanent plan for L.S. and set a section 366.26 hearing for the four younger children for August 4.

*Section 366.26 Hearing and Mother's Section 388 Petition*

In the section 366.26 report filed July 24, 2014, CFS recommended parental rights be terminated as to the four youngest children and that they be adopted by the foster mother. The children appeared to be comfortable and happy with the foster mother and the oldest boy, I.R., stated that he wanted to be adopted. The youngest boy also stated he wanted to be adopted, but was not able to verbalize his understanding of that term. The children were visiting with their oldest sister, L.S., and had monthly telephone contact with mother.

The section 366.26 hearing was continued to allow mother to file a section 388 petition, which she did on September 17, 2014. Mother sought placement of the children with her in Mexico, or, in the alternative, reunification services. Mother stated as a new circumstance that she had completed services such as parenting and domestic violence classes, counseling, therapy, and community service, that these services have helped her be a better parent, and that she is living with her parents and has room for the children. Mother stated the proposed change would be in the children's best interest because they miss her and would be happier with her because she is their mother. Mother attached the following documents to the petition, translated from Spanish to English by a certified translator—a letter from mother to her children, a letter from mother's employer stating her salary, two adult education certificates and two other certificates from programs whose purposes are unclear as translated.

On September 26, 2014, CFS filed an interim review report to recommend the court deny the section 388 petition. CFS pointed out that mother did not submit any proof that she had attended individual therapy or a progress report from a therapist stating she was taking responsibility for the harm inflicted on the children. Also there was no proof of a domestic violence class. CFS acknowledged that one of the unidentified certificates could have been from a parenting program, but argued the issues mother needed to address to regain custody of her children are far more serious than those covered in a parenting class. The social worker stated she had spoken with mother twice over the telephone through a translator. Although mother stated she loves the children

and wants them back, mother never expressed that she was sorry for physically abusing the children or allowing their father to sexually abuse them, and did not give any indication that she would protect them in the future.

The hearing on the petition and the section 366.26 hearing were held on September 29, 2014. After reviewing the petition and the CFS response and hearing argument from the parties, the court denied the section 388 petition without an evidentiary hearing. The court found that mother did not put anything in her petition to indicate that she had addressed the very serious abuse issues that led to the dependency. The court then terminated parental rights and chose adoption as the children's permanent plan.

This appeal followed.

### **DISCUSSION**

Mother contends the trial court erred when it denied her section 388 petition seeking to have the children placed with her in Mexico or, in the alternative, to be granted reunification services. Specifically, she argues that the court should have granted her petition because the fact that she was released from jail fewer than three weeks after the November 9, 2012, disposition hearing, at which the court denied her reunification services under section 361.5, subdivision (e)(1), was new evidence. CFS counters that this ground for appeal—mother's release from jail—was not one of the new circumstances mother argued or even mentioned in her petition, and therefore she forfeited the right to raise this argument on appeal.

We agree that this argument was not raised in the juvenile court and is therefore forfeited. If a parent fails to object or raise an issue in the juvenile court, the parent is prevented from presenting the issue on appeal. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330; *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) Raising an issue on appeal that was not asserted in the lower court “amounts to nothing more than an attempted sandbagging of the trial court.” (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 813.) Here, the basis for mother’s section 388 petition was the completion of services on her own that had helped her to become a better parent. Mother’s argument on appeal, that she had been released from incarceration, was not even mentioned in the section 388 petition. Mother simply did not alert the juvenile court to this potential issue so the court could attempt to resolve it at that time. For this reason, we find that mother forfeited this argument on appeal.

**DISPOSITION**

The juvenile court’s orders are affirmed.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

CODRINGTON  
J.