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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.R.,

Defendant and Appellant.

E062053

(Super.Ct.No. J248284)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Marissa Coffey, 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.

Konrad S. Lee, under appointment by the Court of Appeal, for minor.

E.R. (Mother) appeals from an order terminating her parental rights as to her two-year-old son, M.R. (child).¹ On appeal, Mother contends the juvenile court erred in denying her Welfare and Institutions Code² section 388 petition and failing to find the “beneficial parental relationship” exception to termination applied.³ We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of San Bernardino County Children and Family Services (CFS) on January 16, 2013, when a referral was received alleging sexual abuse to the child’s older half siblings by Father.⁴ The referral stated that Father touched the private parts of his stepchildren when he drank alcohol and that Mother tells Father to

¹ The father of the child, M.R.P. (Father), is not a party to this appeal.

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

³ Mother also filed a petition for writ of habeas corpus, claiming ineffective assistance of counsel for counsel’s failure to file a writ petition from the juvenile court’s order terminating reunification services. In an order dated January 7, 2015, this court indicated that Mother’s writ petition would be considered with this appeal for the sole purposes of determining whether an order to show cause should be issued.

⁴ The child’s half siblings are then 10-year-old D.R., seven-year-old S.G., and four-year-old F.R.

stop.⁵ It was also reported that Mother hits the children with a belt and leaves bruises on them.

Both Mother and Father denied any sexual or physical abuse of the children. They reported that the half siblings preferred to live with their biological father because he had more money and bought them things. Mother believed that the children were being told what to say so that they could live with her ex-husband/their biological father full-time. Father reported that he drank three beers about one time per week in the living room while the children were in their own room. Mother reported that she and Father slept in the living room while the children slept in one bedroom and her nephew slept in a second separate bedroom.

D.R. denied any physical abuse or sexual abuse. S.G. reported that Father would drink beer and touch her “private part,” pointing to her vagina, over her clothes. S.G. also stated that during the touching, Mother was in the kitchen while S.G. was in the living room. S.G. further noted that she saw Father touch her sister D.R. and brother F.R., but that D.R. does not like to talk about it. A police officer reported that S.G. had disclosed Father had fondled her, but that F.R. and D.R. both denied it had occurred.

After the social worker informed Mother that S.G. disclosed the allegations which had occurred, Mother continued to deny the allegations, stating they were false and that the half siblings’ biological father wanted to make her life miserable. Mother had unwillingly agreed to a safety plan whereby Father could not be around the children until

⁵ The half siblings are not parties to this appeal.

the conclusion of the criminal/CFS investigation. On January 17, 2013, CFS informed law enforcement that the children were not in danger and would not be removed from the residence.

On February 15, 2013, S.G. was examined at the Children's Assessment Center (CAC). During the examination, S.G. reported that Father would touch her "private area" when he drank beer. She explained that Father drank often and only touched her when "he gets 'crazy' from drinking." She stated that Father would leave his hands on her vaginal area while she was clothed and not move them until she told him to stop. S.G. further reported that D.R. was also being touched by Father, explaining that at times Father would hug D.R. from behind with both arms and touch her vaginal area with one hand. S.G. indicated that D.R. was not being truthful when talking to the police and CFS because she was afraid they might take Mother away. S.G. believed that her brother F.R. was being touched inappropriately by Father. S.G. also stated that Mother "[j]ust tells him to stop" and that Mother had witnessed Father touching her and her siblings. A medical examination could neither confirm nor negate the sexual molestation. S.G. also reported that Father was still in the home when she visited Mother.

Mother had continued to deny the allegations, stating "her husband would never do that." CFS was concerned that the child was at risk for similar abuse and that Mother would be unwilling to protect him. As such, following a team decision making (TDM) meeting on February 28, 2013, CFS removed the child from parental custody and placed him in the care of Mr. and Mrs. R. The child was five months old when he was removed

from parental custody. The child's half siblings were also removed from Mother's care and placed in their biological father's care under a family maintenance plan.

On March 4, 2013, CFS filed a section 300 petition on behalf of the child pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The child was formally detained the following day at the detention hearing.

D.R. and F.R. were interviewed at CAC on March 13, 2013. D.R. initially made no disclosures about sexual abuse. D.R. later reported that Father had touched her vaginal area with his hand over her clothes only once while she was doing her homework and Mother was in another room changing the child's diaper. Mother told Father to " 'stop' " and to " 'not do it again.' " D.R. noted that Mother was mad and yelled at Father and that she did not disclose the incident earlier because she was afraid she would not see her mother again. D.R. never saw Father touch her siblings. A medical examination of D.R. could neither confirm nor negate sexual abuse. F.R. reported that he did not like Father because he had thrown him on the bed and that Father had touched him in his genital area. He also stated that his sisters did not like Father and that Father drank a lot of beer. All the children also reported that Mother had disciplined them with a belt by hitting them on their backs, shoulders, arms, and with an open hand.

On March 18, 2013, Mother again denied the allegations. She stated that Father did drink once in a while but not a lot and that she was not aware of any touching. She explained she believed her daughters, but also believed Father and that until she saw evidence, she did not believe anything happened. Father also denied the allegations. He

believed his stepchildren's father desired custody of the children and that he was upset with Mother when she had struck F.R. in the face for spilling chips on the floor. Father was arrested on March 21, 2013, for two counts of violating Penal Code section 288.

The social worker opined that the prognosis for Mother and Father's reunification with the child was "guarded" as they were in complete denial that anything could have happened to the children. The social worker, however, noted that the parents were cooperative and eager to begin their services. In addition, Mother had visited the child two times per week for one hour, was allowed to breastfeed the child, and the visits went well. The social worker believed that "something did happen" and may have been a result of Father drinking too much; and she stated that the abuse may not have been severe, but the children's well-being suffered because Mother had chosen Father over her children and had stated she believed the children were lying. The social worker felt that if Mother did not believe her older children, then she would also not believe the child if he told her someday that Father was touching him as well.

Mother had no real support system in this country, except Father, as her family lived in Mexico. She appeared unable to accept that Father could act inappropriately even under the influence of alcohol. The social worker noted that "culture plays an important role in this case as it is common and accepted for the husband to drink alcohol if he so chooses," and Mother had appeared horrified when the social worker had "brought up the idea that she tell her husband not to drink around the children as his drinking may cause him to behave inappropriately with them." Mother had also stated to

the older children that she could not leave or divorce Father as it is not acceptable under her religious beliefs.

At the April 16, 2013 jurisdictional/dispositional hearing, the juvenile court sustained the dependency petition and declared the child a dependent of the court.⁶ The parents were offered reunification services and ordered to participate in their case plans. Mother's case plan required Mother to participate in counseling, attend a parenting education program to develop skills in child safety and protection, comply with the court orders, and show she will not permit others to sexually abuse her children.

The child had been placed with Mr. and Mrs. R. on February 28, 2013, was adjusting well in his placement and had formed a close bond to his foster mother. When first placed in the home, the child had been overweight and had difficulty breathing. However, since his placement, the child had lost the appropriate weight and had been able to sleep normally and had become more active.

Meanwhile, by the six-month review hearing, Mother had completed her parenting education program on July 31, 2013. In addition, Mother had received counseling services from therapist Dolores A. Grajeda. Initially, she had a difficult time understanding her family's involvement with CFS due to cultural barriers. However, after consulting with her therapist, Mother was able to understand her involvement with CFS and to communicate with her therapist. She was an active participant and had

⁶ Dependency as to the child's half siblings was terminated with their biological father having full custody of them.

completed individual counseling on July 12, 2013. Mother had also consistently visited the child with Father supervised by Mrs. R. one hour per week. The visits were reportedly going well, and both parents were attentive to the child. The social worker had initially recommended the visits be unmonitored.

However, when the social worker met with Mother and Father on September 30, 2013, to discuss a possible safety plan for the child's return home, both parents had continued to deny the sexual abuse allegations and blamed the child's half siblings. The social worker informed the parents the child would be able to return home only if Father moved out of the home due to the sexual abuse allegations. The parents failed to acknowledge that Father was at fault, and Mother again blamed her ex-husband. The social worker therefore opined that the parents did not benefit from their services despite completing their case plans and recommended that further reunification services be provided to the parents with visits to remain supervised.

At the October 16, 2013 six-month review hearing, the juvenile court continued reunification services for the parents and ordered further counseling services to address the sexual abuse allegations. The court also ordered that the therapist receive the reports regarding the sexual abuse allegations. The court found that CFS had provided reasonable services designed to overcome the problems leading to the child's removal and continued custody of the child. Mother was provided with supervised visits, a minimum of two times per week for two hours, with CFS having authorization to liberalize the visits.

On October 28, 2013, Mother was referred to The Center for Healing. However, due to CFS being unable to provide a licensed Spanish speaking therapist focused on sexual abuse, Mother was then referred to a licensed private Spanish-speaking therapist, Ms. Maria Luisa Cigalo.⁷ By the time of the 12-month review hearing in April 2014, the social worker was still concerned that Mother continued to deny the sexual abuse allegations. Mother continued to report that she was not aware of the allegations and was not informed by her older children regarding Father's behavior. The social worker was also concerned that Mother had continued to stay in a relationship with Father and questioned Mother's ability to protect the child. The social worker opined that Mother had not benefited from services since she had continued to deny the allegations. The social worker believed that the child had a potentially high likelihood of suffering from the same sexual abuse since Mother had a difficult time believing her older children and would likely not believe the child if he were ever to report sexual abuse. The social worker therefore recommended terminating reunification services and setting a section 366.26 hearing.

In a letter to CFS from Cigalo dated April 4, 2014, Cigalo reported that Mother had completed five sessions with treatment beginning on March 7, 2014. She noted that Mother initially displayed limited judgment and insight related to the impact of the sexual abuse on her daughter, herself, and their family, but that she had "gained significant

⁷ At the 388 hearing on September 30, 2014, Ms. Cigalo testified and was sworn in. She spelled her name "Cigalo." We use this as the correct spelling as it is spelled many ways throughout the record.

insight into the issues surrounding her daughter's disclosure of sexual abuse" through treatment. Cigalo indicated that Mother desired to be reunited with the child and to do all she could to protect her children. Cigalo recommended that Mother participate in further treatment as she was in her initial phase of treatment.

At the April 16, 2014 12-month review hearing, Mother was present and informed the court that she had hired new counsel to represent her. The hearing was set contested. Mother's new counsel was appointed to represent her on April 18, 2014.

At the May 1, 2014 contested 12-month review hearing, the court heard testimony from social worker (SW) Heather Mesa and Mother. SW Mesa testified that she had initially referred Mother to counseling at Christian Counseling after the detention hearing. SW Mesa had provided therapist Grajeda with copies of the dependency case reports, but she did not believe Grajeda addressed sexual abuse, but rather focused on cultural issues. Mother had begun therapy with Grajeda on March 11 and completed 12 sessions with that therapist by July 12, 2013. SW Mesa believed that Mother was having difficulty understanding why CFS was involved in her life and therefore she did not believe Mother was forthcoming. SW Mesa also noted that when she had visited one of Mother's sessions, she observed that the subject of sexual abuse was not discussed, and therefore she did not believe Grajeda did her job as instructed. SW Mesa then referred Mother to The Center for Healing with a non-Spanish speaking therapist. Mother was aided by a Spanish interpreter and she had never indicated that she was having difficulty understanding the therapist. Rather, Mother stated that she was having transportation

issues despite being provided with bus passes. Mother was then referred to her current therapist, Cigalo, in January 2014, but the counseling did not begin until March 2014. SW Mesa did not know why it took two months for the therapy to begin.

Mother met with Cigalo on a weekly basis and SW Mesa had informed Cigalo of the issues to focus on in therapy, such as Mother's need to acknowledge the sexual abuse and realize her role as a protective parent. Although SW Mesa believed Mother was very compliant and cooperative with Cigalo, she disagreed with Cigalo's assessment that Mother had gained significant insight into the issues of the disclosure of sexual abuse. SW Mesa explained that despite Mother's second time at counseling, Mother had continued to minimize the sexual abuse allegations. SW Mesa did not believe Cigalo was properly addressing the sexual abuse as well. SW Mesa agreed with Cigalo's report that Mother understood why CFS was involved with the family, but disagreed that Mother had actually believed the children were molested. SW Mesa believed that the likelihood of Mother reunifying with the child was poor since Mother did not benefit from the first counselor and had continued to deny the sexual abuse occurred in their monthly meetings. SW Mesa concluded that her recommendation would not change even if Mother was provided with four more months of services because in her opinion, Mother would not be able to protect the child from sexual abuse as she continued to have contact with Father. SW Mesa believed that once CFS was no longer involved with the family, Mother would continue to have contact with Father.

Mother repeatedly testified that she believed Father had molested the older children, explaining “[b]ecause if my children said so, then it happened.” She also stated that she initially had a problem believing the children, but with the therapist’s help she came to the realization and accepted that the abuse had occurred. She further asserted that she could protect the child by always being with him and not allowing another partner to be alone with him; that she had filed for divorce from Father; that she had told SW Mesa that she recognized that sexual abuse to the children had occurred; and that she did not separate from Father earlier because she did not have a job and was relying on him to support her financially and needed more time to work to pay rent. Mother claimed that she had benefited from therapy, explaining that initially she did deny the sexual abuse because she did not have the capacity to understand and that it took her many weeks to understand the sexual abuse issues. She denied that the children had told her they had been sexually abused and claimed that she only learned about the abuse through the police and social worker and that after several sessions with Grajeda she began to believe the children were being truthful. Mother was living with a married couple in Redlands and supported herself by cleaning houses. She stated that she would not have another boyfriend because she would not want to go through this again. Mother insisted that she could protect the child if he were ever to disclose sexual abuse to her; that the therapy was helping her understand the abuse the children had suffered; and that therapy was effective.

Following argument, the juvenile court noted that Mother still had not believed the sexual abuse occurred based on Mother's "wishy-washy" statements; that Mother would continue to expose her children to Father; and that Mother's filing for divorce did not necessarily mean she had separated from Father. The court found that reasonable services had been provided and that Mother's progress had been minimal. The court thereafter terminated reunification services and set a section 366.26 hearing. The court orally advised Mother of her appellate writ rights and informed her the form was available in the clerk's office.

In closing, the court stated: "One more further thing for the record. Since Mr. Vega [Mother's counsel] has raised culture as an issue, the mother has not been provided services, and based on her culture, she should get more time. And Mr. Vega, you have failed to meet any type of burden for that. The mother has constantly had Spanish interpreters, not only in services, but here in court. I know you are a Spanish-speaker, and I'm sure you have advised her in Spanish, and I don't think it is appropriate for someone to claim that they can't understand the process if they speak a different language. It is kind of a backup plan to get more services in this case since she has had every opportunity to explain herself and ask questions, ask questions of [the] therapist and participate in services. She has never been denied anything."

On September 2, 2014, CFS submitted a section 366.26 report and recommended that parental rights be terminated. The child was healthy and developing well. The child had been placed in the home of Mr. and Mrs. R. since February 28, 2013, and was

strongly attached to them. Mr. and Mrs. R. were mutually attached to the child and desired to adopt him. Mr. and Mrs. R. loved the child as their own and were committed to giving him a good future and education. They were attentive to the child's developmental, educational, and emotional needs, and he looked to them for attention, comfort, and security.

Mother continued to consistently visit the child and would oftentimes bring the child's half siblings to the visits. The visits were reported to be appropriate. Father had not been participating in visits.

On September 5, 2014, Mother filed a section 388 petition, seeking return of the child to her care, or in the alternative, reinstatement of reunification services and increased visitations. In support, Mother declared that she had completely separated herself from Father; that the divorce was almost complete; that she had become a regular and active member of her church; and that she had continued to attend counseling sessions with Cigalo despite the termination of her services. She had attended seven additional sessions with Cigalo between July 7 and August 25, 2014. Mother also declared that she had raised the child for the first six and a half months of his life, continued to regularly visit him, and had successfully assisted him in maintaining a relationship with his half siblings.

On September 23, 2014, CFS submitted a response to Mother's section 388 petition and recommended that the petition be denied. SW Mesa interviewed Mother on September 8, 2014, to discuss her request to reinstate services. Mother informed her that

she had separated from Father on January 15, 2014; that the divorce was final; and that she had no contact with Father. Mother explained that she had benefitted from counseling and learned how to protect the children, noting that if her children ever disclosed they were sexually abused, she would believe them, call the police, and “ ‘do everything that needs to be done’ ” to protect the children. When asked why she did not initially believe the children, Mother stated that the children never disclosed the sexual abuse; that she was only informed about the abuse at the February 28, 2013 TDM meeting; that she had not witnessed the abuse; that she was initially in shock; and that Father had denied all of the allegations and she had believed him.

SW Mesa also interviewed Mother’s therapist, Cigalo. Cigalo stated that Mother had made progress in therapy with respect to her desire to become a better parent and protect her children. Cigalo further stated that they had already discussed the sexual abuse and were focusing on Mother’s parenting.

SW Mesa continued to be skeptical about whether Mother would protect the children from potential future sexual abuse because Mother had immediately believed Father. SW Mesa also believed that Mother was being “coached” based on her responses. SW Mesa also noted that Mother was informed of the sexual abuse allegations when the referral was first generated on January 17, 2013, and when the children were interviewed by CAC. SW Mesa did not believe Mother could protect the child due to her continued denial that she had any knowledge of the sexual abuse.

A combined section 388 and section 366.26 hearing was held on September 30, 2014.⁸ At that time, Cigalo and Mother testified. Cigalo testified that she was a licensed marriage and family therapist and that she had met Mother for 10 sessions since August 25, 2014. One of the issues she addressed with Mother was Mother's understanding and acceptance of the fact that her older children had been molested. Mother told Cigalo that she had learned of the sexual abuse at the TDM meeting and that Mother understood the concept of sexual abuse and had accepted that her children's statements were true. Cigalo believed that Mother was committed to the child and opined that Mother had gained information to provide protection of the children if placed in Mother's care. Mother also informed Cigalo that she had never witnessed Father sexually abusing the children. Cigalo asserted that even if Mother had not been forthright about when she first learned of the sexual abuse, Cigalo's opinion about Mother's demonstrated progress would not change because Mother had acknowledged her error in not having Father leave the home immediately and Mother had maintained her new insight. When Cigalo was asked whether Mother had the ability to be a protective parent, she explained that she could not "speak to what she will do in the future" and that therapists equip "people to go out and do what they have to do," but whether "they do it" she could not "address that."

⁸ Father was not present at the combined hearing.

Mother testified that she had changed since July 7, 2014, in that she had increased her ability to protect the child; that she could safely care for and protect the child if he were returned to her care; and that she would do everything necessary to ensure the child is protected. Mother also stated that she had accepted the facts that Father had a problem with alcohol and had sexually molested her older children; and that she did not initially understand the problem. She explained that in therapy she had learned “that abuse is not just penetration but touching children . . . in forbidden areas.” She recognized that as the children’s mother, she had made a mistake by staying with Father. Mother noted that she cleaned houses to support herself; that no one helped to support her; that she had support from her church members to maintain her independence; and that she did not drink or smoke.

Mother further testified that she had maintained consistent visitations with the child and that the child recognized her as his mother and called her “Momma.” She believed that it would be in the child’s best interest to be returned to her care. She had a place for him to live with her and the child enjoyed a special relationship with his half siblings.

On cross-examination, Mother indicated that the social worker had come to her house prior to the TDM meeting but that she did not learn about the details until the TDM meeting. She denied that her children had told her about being sexually abused or that she had witnessed any sexual abuse.

After hearing arguments, the juvenile court noted its concern that even after the TDM meeting and being confronted with the sexual abuse allegations, Mother had continued to deny that the sexual abuse had occurred even as recently as October 2013. The court believed that Mother had witnessed the sexual abuse and that the children had told her that Father was inappropriately touching them. The court commended Mother for making progress, finding that Mother had demonstrated changing circumstances, not a change of circumstances, and believed that there was too much risk to the child “based on the evidence [it had] before [the court] because [the court was] not confident that the mother understands what has happened and is able to protect the minor.” The court found that it was not in the child’s best interest to offer Mother further services and denied the section 388 petition. The court then found that neither the beneficial parent-child relationship nor the sibling relationship exceptions to adoption applied even though Mother had maintained regular visitation with the child. The court concluded that the child was adoptable and terminated parental rights.

II

DISCUSSION

A. *Section 388 Petition*

Mother argues the juvenile court abused its discretion in denying her section 388 petition. Specifically, she claims that her circumstances had significantly changed after services were terminated and that it was in the best interest of the child to be placed in her care.

Section 388, subdivision (a), permits anyone having an interest in a dependent child to petition the juvenile court for a hearing to change, modify or set aside a previous order on the ground of changed circumstances or new evidence. A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) “Not every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order. [Citations.]” (*In re A.A.* (2012) 203 Cal.App.4th 597, 612 [Fourth Dist., Div. Two].)

Section 388 is “an ‘escape mechanism’ when parents *complete a reformation* in the short, final period after the termination of reunification services but before the actual termination of parental rights. [Citation.]” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528, italics added (*Kimberly F.*)). It is not enough for a parent to show an incomplete reformation or that he is in the process of changing the circumstances that lead to the dependency. “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount.

Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)) “ ‘A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.] “ ‘[C]hildhood does not wait for the parent to become adequate.’ ” ’ [Citation.]” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 206.)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) The juvenile court’s ruling will not be disturbed on appeal unless the trial court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*Stephanie M., supra*, 7 Cal.4th at pp. 318-319.) “ ‘ “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.” [Citations.]’ [Citations.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion” (*Kimberly F., supra*, 56 Cal.App.4th at p. 522.) Having reviewed the record as summarized above, we

conclude the juvenile court properly exercised its discretion by denying Mother's section 388 petition.

Assuming Mother established a *genuine* change in circumstances after her reunification services were terminated, Mother failed to establish that return of the child or further reunification services was in the child's best interest. "It is not enough for a parent to show just a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.] [Citation.] The fact that the parent 'makes relatively last-minute (albeit genuine) changes' does not automatically tip the scale in the parent's favor. [Citation.] Instead, 'a number of factors should be examined.' [Citation.] First, the juvenile court should consider 'the seriousness of the reason for the dependency' [Citation.] 'A second important factor . . . is the strength of the existing bond between the parent and child' [Citation.] Finally, as 'the essence of a section 388 motion is that there has been a change of circumstances,' the court should consider 'the nature of the change, the ease by which the change could be brought about, and the reason the change was not made before' [Citation.] 'While the bond to the caretaker cannot be dispositive . . . , our Supreme Court made it very clear . . . that the disruption of an existing psychological bond between dependent children and their caretakers is an extremely important factor bearing on any section 388 motion.' [Citation.]" (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512, italics omitted; see *Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.)

Here, the dependency was the result of serious problems (sexual abuse of the child's half siblings by Father) that had not been substantially addressed by Mother. Mother had consistently refused to acknowledge Father had molested her children. In April 2013, the juvenile court found that Father had sexually abused his stepchildren and that Mother knew about it and did nothing to prevent it. Then, for numerous months, even while cooperating in therapy sessions, Mother had refused to believe her children. It was not until May 2014 when faced with the prospect of losing the child did Mother eventually state that she believed Father had molested her children. However, at the section 388 hearing in September 2014, Mother had denied the children had *ever* told her about the molestations, despite her children's statements to the contrary, and claimed that the first time she found out about the abuse was at the TDM meeting with social workers. The juvenile court found these statements by Mother not credible, noting Mother "did witness the abuse on multiple occasions" and that the "children told her that [Father] was touching them inappropriately." If Mother cannot acknowledge sexual abuse occurred based on her own children's statements or having had witnessed some of the abuse, then clearly Mother is unable to protect her children. While the incidents of sexual abuse were not "severe," as Mother points out, it is alarming that Mother had continued to state the children had never told her about the molestations, despite receiving therapeutic services.

Furthermore, Mother had used extremely poor judgment in continuing to have contact with Father after she knew that contact with him placed her ability to have the child returned to her care in jeopardy. The matter came to the attention of CFS in

January 2013. The child was removed from her care in February 2013. However, Mother continued to live with Father as late as December 2013. She did not separate and file for divorce from Father until January 2014 and had continued to have contact with him in February 2014. In addition, when confronted with her older children's statements that Father had inappropriately touched them, Mother had merely told Father to stop and did not take steps to prevent the abuse.

Moreover, there is substantial evidence supporting the conclusion the child was not more bonded to Mother than the caretakers. The child was removed from Mother's care when he was five months old, and has been out of Mother's care for over 24 months to date. The child has essentially lived his entire young life with his caretakers. Mother had visited the child one time per week for two hours, but had never progressed to unsupervised visits, primarily because she had continued to disbelieve her children and had denied the child was at any risk of harm from Father. The child was in a loving home, was healthy and developing well, and attached to his caretakers. Although the visits went well and Mother indubitably loves the child, there was no evidence to suggest the child cried or tried to stay with Mother at the end of visits. The juvenile court could reasonably conclude Mother failed to show that providing additional services or return of the child to her care was in the child's best interest.

Mother analogizes this case to *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*), and claims the juvenile court inappropriately based its holding on her failure to " 'internalize' " information from the therapy sessions. She argues that "the

juvenile court deferred to the social worker's biased reporting and plainly overlooked, or chose to ignore, the testimonies of [] Cigalo and Mother.”

In *Blanca P.*, *supra*, 45 Cal.App.4th 1738, unsubstantiated sexual abuse allegations were made against the father. The mother participated in parenting classes as part of her reunification plan, but she “refus[ed] to believe her husband [was] a child molester.” (*Id.* at p. 1751.) The social worker and a therapist opined that the mother had “not ‘internalized’ what she ha[d] learned in parenting classes,” and recommended against reunification. (*Ibid.*) The Court of Appeal held “[t]he idea that, despite enduring countless hours of therapy and counseling (much of it predicated on the possibly erroneous assumption that her husband is a child molester), a parent who has faithfully attended required counseling and therapy sessions must still relinquish her child because she has not quite ‘internalized’ what she has been exposed to has an offensive, Orwellian odor. The failure to ‘internalize’ general parenting skills is simply too vague to constitute substantial, credible evidence of detriment.” (*Ibid.*, fn. omitted.)

The circumstances in this case have no relation to those in *Blanca P.* The juvenile court here did not rely on some vague notion of failure to internalize parenting education. Rather, it was the actions Mother took once she learned about the sexual abuse of her children. Mother had refused to believe her own children's statements that Father had touched them inappropriately up until around May 2014. And, she had continued to deny, even at the section 388 hearing, that she had any knowledge of the molestations until the TDM meeting with social workers, despite her children's statements to the

contrary. Furthermore, in *Blanca P.*, the father was *falsely* accused of sexually abusing a child, but the social worker and the juvenile court used the parents' steadfast denials of abuse, even though those allegations had been discredited by an expert, as evidence it would be detrimental to return the child to their custody. (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1752.) Indeed, citing the lack of evidence of molestation, the appellate court ordered the juvenile court to hold a new hearing on the molestation allegations. (*Id.* at p. 1759.) Here, the truth of the allegations had never been questioned. Additionally, there was evidence of Mother's actions, in addition to statements by the social worker and therapists, which demonstrated that Mother had not made sufficient progress in eliminating the underlying issues.

Despite Mother's claims to the contrary, the juvenile court could find SW Mesa more credible than the testimonies of Mother and Cigalo. We remind Mother that the reviewing court does not reweigh the evidence, evaluate credibility of witnesses, or resolve evidentiary conflicts. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We must defer to the juvenile court on questions of credibility. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) The juvenile court did not find Mother was credible in her testimony and believed that Mother had witnessed the sexual abuse and that the children had told her that Father was inappropriately touching them. In fact, Mother's testimony was contradicted by evidence in the record. As such, the juvenile court could easily agree with SW Mesa's skepticism about whether Mother could protect the children from potential future sexual abuse.

The *Blanca P.* court explicitly urged that “[o]ur comments should not be taken beyond their context,” which does not involve “the much more difficult problem of the parent who unquestionably has molested [or abused] a child, who admits the molestation [or abuse], faithfully complies with the reunification plan, says all the right things, and yet there is still doubt as to whether he or she really has reformed.” (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1752, fn. 7, italics omitted.) This case presents the “much more difficult problem” noted in *Blanca P.* The stepchildren were sexually abused, the allegations were found true, Mother eventually believed Father had molested his stepchildren and divorced Father, and Mother complied with the reunification plan, but “there is still doubt” as to whether Mother really has reformed. (*Ibid.*)

As noted above, we may reverse the juvenile court’s decision only if we find that the juvenile court “ ‘ “exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” ’ [Citations.]” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) We may not substitute our decision for that of the juvenile court. (*Id.* at pp. 318-319.) On this record, although Mother may have purportedly shown a genuine change of circumstances by the time of the section 388 hearing, we conclude that the juvenile court did not make an arbitrary, capricious, or patently absurd determination in finding that changing its prior order was not in the child’s best interest. Therefore, the court did not err in denying Mother’s section 388 petition.

B. *Beneficial Parental Relationship Exception*

Mother also contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A), did not apply to preclude the termination of parental rights.

After reunification services are denied or terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*In re Celine R., supra*, 31 Cal.4th at p. 53; see § 366.26, subd. (c)(1).) “ ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ ” (*In re Celine R., supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where “[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B)) because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i); see *In re Casey D.*

(1999) 70 Cal.App.4th 38, 50.) There is no dispute here that Mother had maintained regular visitation with the child.

In deciding whether the parent-child beneficial relationship exception applies, “the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) The parent-child relationship must “promote[] 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 parent-child relationship “exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent.” (*Id.* at p. 1350.) Even a “loving and happy relationship” with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

“The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.” (*In re Casey D.*, *supra*, 70 Cal.App.4th 38, 51.) “[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact.” (*Ibid.*) “Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction.” (*Ibid.*) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; see *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re C.B.* (2010) 190 Cal.App.4th 102, 133-134; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) A juvenile court’s finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence

standard and in part for abuse of discretion. The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a " 'compelling reason' " (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) A juvenile court's ruling on whether there is a "compelling reason" is reviewed for abuse of discretion because the court must "determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Mother argues that substantial evidence supports the conclusion that a beneficial parental relationship existed. However, since it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence compels such a finding as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is "typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*Ibid.*) When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether

substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [Mother's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [in Mother's favor].' [Citation.]" (*Ibid.*) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

Here, there is no evidence to show the child had a "substantial, positive emotional attachment" to Mother. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 299 (*S.B.*.) The child was five months old when he was removed from Mother's care on February 28, 2013, and placed with his caretakers. By the time of the section 366.26 hearing on September 30, 2014, the child had resided with his caretakers for over 19 months, most of his young life. Although Mother had visited the child, showed her commitment and love to the child, and the visits went well, the evidence regarding Mother's visitation in no way showed that she occupied a parental

role in the child's life. Furthermore, Mother failed to address her own disbelief that Father had molested his stepchildren and continued to deny that the children had ever disclosed the molestations to her. For these reasons, Mother had never progressed beyond weekly supervised visits.

Even if Mother had established the existence of a beneficial parental relationship, she cannot show the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the child as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) “ “ “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.” ’ ’ ” (*Id.* at p. 319.)

Here, Mother did not introduce any evidence showing the child would be greatly harmed by the termination of her parental rights. The child was strongly bonded to his caretakers and saw them as his parents. The caretakers loved the child as their own and were committed to giving him a good future and education. They were attentive to the child's developmental, educational, and emotional needs, and he looked to them for attention, comfort, and security. There was no evidence to show that the child was

deeply upset or always cried following his visits with Mother. Rather, the record indicates that the child was attached, happy, and well bonded to his caretakers and that he was thriving in their home. There was no evidence whatsoever that the child would suffer great detriment if parental rights were terminated. Consequently, the juvenile court could reasonably conclude that termination of Mother's parental rights would have no detrimental impact on the child.

Mother argues her case is analogous to *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*), which held that the juvenile court erred by failing to find that the parental relationship exception applied. (*Id.* at pp. 689-691.) The evidence in *Amber M.*, however, was strikingly different from the evidence here. There, a psychologist had concluded that the mother and the children shared “ ‘a primary attachment’ ” and a “ ‘primary maternal relationship’ ” and that “ ‘[i]t could be detrimental’ ” to sever their relationship. (*Id.* at p. 689.) One child's therapist believed the child had “a strong bond” and it was “important” that the relationship continue. (*Ibid.*) A court-appointed special advocate opposed adoption “due to the bond and love between Mother and the children” (*Id.* at p. 690.) Finally, the social worker, who was “the only dissenting voice among the experts,” had done “a perfunctory evaluation” of the relationship and had improperly considered the mother's current inability to provide a home for the children. (*Id.* at p. 690.)

Mother also likens this case to *S.B.*, *supra*, 164 Cal.App.4th 289. In that case, the father had been the child's primary caregiver for three years. (*Id.* at p. 298.) The father

contested the termination of his parental rights following the removal of the child due to both parents' substance abuse. During the reunification period, the father had visited the child three times per week, and the child became upset when her visits with the father ended. (*Id.* at p. 294.) The child stated that she wanted to live with the father, and the child told the father that she loved him and missed him. (*Id.* at p. 295.) During visits, the father had “ ‘demonstrate[d] empathy and the ability to put himself in his daughter’s place to recognize her needs.’ ” (*Id.* at p. 294.) A bonding study had been conducted, and the doctor concluded that “there was a potential for harm to S.B. were she to lose the parent-child relationship.” (*Id.* at p. 296.) The social worker even admitted that there would be “some detriment” to the child if parental rights were terminated. (*Id.* at p. 295.) The juvenile court found that the father and the child had “an emotionally significant relationship” (*Id.* at p. 298.) The appellate court held that under the circumstances, the juvenile court had erred by finding that the beneficial parent-child relationship exception did not apply. “The record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be greatly harmed by the loss of her significant, positive relationship with [her father]. [Citation.]” (*Id.* at pp. 300-301.) There is no similar evidence in this case.

We conclude that, in this case, the juvenile court did not err in refusing to apply the beneficial parental relationship exception.

III
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.