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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.H. et al.,

Defendants and Appellants.

E062282

(Super.Ct.No. J236065-68)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A.
Buchholz, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant mother.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant father.

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

On November 4, 2014, the juvenile court denied plaintiffs and appellants K.H. (mother) and B.H.'s (father) (collectively parents) Welfare and Institutions Code section 388¹ petitions and terminated parents' parental rights to C.H. (born 2009), H.H. (born 2007), T.H. (born 2006), and A.H. (born 2002) (collectively the children). On appeal, mother contends the court erred in failing to place the children with relatives and provide her reasonable services regarding her purported mental health issues. Both parents maintain the court abused its discretion by denying their section 388 petitions and that insufficient evidence supports the court's order that the beneficial parental relationship exception to termination of parental rights did not apply. We affirm the juvenile court's orders.

FACTS AND PROCEDURAL HISTORY

On November 12, 2010, a police officer noticed then eight-year-old A.H. walking home alone in the dark from school. He gave her a ride home. After knocking on parents' door for 10 minutes, father answered. Father said he was aware A.H. walked home daily but believed it built independence. When the officer expressed concern that it might not be safe, father became angry and uncooperative.

The officer found the home "very filthy with dirty clothing thrown throughout the home and dirty dishes in the kitchen sink. The home reeked of a strong foul smell and

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

the toilet was not operational.” When mother arrived home with the three other children “she became irate and emotionally unstable.” As the officer tried to speak with her about the condition of the home “she became totally irrational and started taking off her clothing completely.” The officer arrested parents for placing the children in a situation where their health was endangered (Pen. Code, § 273a, subd. (a)).

A social worker responded to the jail on an immediate response referral. The holding cell containing parents “had a strong foul smell from the poor hygiene of the parents and the mother was observed to be lying underneath a table with handcuffs on and was facing down.” Mother “began to sing the ABC song and appeared to be experiencing a psychotic break.” “[T]he children all had a strong foul odor due to poor hygiene. The children . . . were observed to have matted hair and dirty clothing.” The social worker later learned “the children all had lice and nits.”

Parents had 12 prior Children and Family Services (CFS) referrals against them beginning in March 1994. One for general neglect was substantiated on July 8, 2005. Two in 1994 and 2007 were found inconclusive. The rest were deemed unfounded. Parents had received reunification services as to an older sibling between February and November 1997, with whom they reunified.

The previous May, a social worker responding to a referral found then four-year-old T.H. wandering outside the home unsupervised. The home was “extremely cluttered and poorly maintained.” The social worker asked parents to clean the house and returned several days later to find parents had cleaned and organized the house.

Previous investigations found mother suffered from an anxiety disorder. She had been hospitalized on three occasions since 1997. Mother stated she had once injected mercury into her arm after father said he wanted a divorce. She said her latest hospitalization was for taking sleeping pills. Mother said she attempted to commit suicide after getting into a fight with father. She reported suffering from anxiety and depression and took medication for both. Father had previously been arrested for endangering the health of a child (Pen. Code, § 273a, subd. (b)) which was dismissed when he was convicted for misdemeanor challenging someone to fight (Pen. Code, § 415).

CFS filed juvenile dependency petitions alleging parents had maintained the home in a filthy, unsanitary manner which was unfit for human habitation (B-1 & B-4); parents had improperly cared for the children allowing them to become filthy with poor hygiene and head lice (B-2 & B-3); mother suffered from mental health issues and an anxiety disorder which affected her ability to care for the children (B-5); parents had been arrested for child endangerment without leaving the children means of support (G-6 & G-7); and parents had allowed A.H. to walk home in the dark placing her and her siblings at risk (J-8 & J-9).

On November 17, 2010, the juvenile court detained the children. The court ordered father to submit to drug testing or an approved substance abuse treatment program. Father's failure to test would be a deemed positive result.

In the December 2, 2010, jurisdiction and disposition report, the social worker recommended the juvenile court find the G-6 and G-7 allegations untrue as parents had

been released from custody and the charges had been dismissed. Mother reported experimenting with numerous drugs including marijuana, methamphetamine, PCP, cocaine, crack, and heroin. Mother said that she and father used drugs together in the past, but denied any recent use or addiction. Father denied any current substance abuse. Parents both tested positive for amphetamines on December 8, 2010.

The social worker reported that T.H. “has not asked about his parents and does not appear affected by the separation.” He does “not get excited when he is told he will be seeing them.” C.H. and H.H. cried the first few nights after being taken into protective custody, but had since adjusted well. H.H. became “upset over separating from the parents after a visit.” Parents had two visits with children: “The children were happy to see the parents and appeared to engage equally with both.” “The children were sad to leave at the end of the visit.” Father told the social worker his sister in Arizona would be willing to take the children if reunification services failed.

The social worker noted that parents had been offered services over several years during various visits by social workers which the parents had declined. Parents had yet to clean their home.

After mediation, parents agreed to submit to the B-1 and B-4 allegations. Mother submitted on the B-5 allegation after it was amended to eliminate the reference to mental health issues. CFS agreed to dismiss the G-6 and G-7 allegations. Parents would contest the J-8 and J-9 allegations. Parents agreed to engage in individual counseling, anger management, outpatient substance abuse programs, and drug testing. Parents reported they had “no relatives to consider for placement.”

In a March 1, 2011, report, the social worker recounted that father had tested positive for marijuana on January 24, 2011. He tested negative on February 11, 2011. Mother tested negative on both January 24, and February 11, 2011. Parents visited with the children once weekly. They had participated in five sessions of a 16-session anger management course. Mother had participated in a 10-session cooperative parenting program.

At the hearing on March 10, 2011, CFS dropped the J-8 and J-9 allegations. The court found the B-1, B-4, and B-5 allegations true and dismissed the G-6, G-7, J-8, and J-9 allegations. CFS requested the court order a psychiatric assessment of mother for anxiety disorder and medical monitoring. Mother agreed, but reserved any objection if medication was recommended. The court granted the requested order. The court noted, "There are no known maternal or paternal relatives available for concurrently planning home placement." The court declared the children dependents of the court, removed them from the custody of parents, and ordered reunification services for parents.

In the April 22, 2011, interim review report, the social worker noted parents failed to appear for drug testing on February 16, 2011. Father tested positive for marijuana on March 24, 2011. He tested negative on April 15, 2011. Mother tested negative on March 22, and April 6, 2011. The parents had supervised weekly visitation with the children for an hour. A therapist reported mother did not require a psychiatric evaluation.

At a hearing on April 25, 2011, mother's counsel requested confirmation that no psychiatric evaluation was required. The court noted "we need something in writing from a doctor as to whether or not Mom needs further testing."²

On July 11, 2011, the social worker requested the court's approval to begin a gradual transition from supervised visitation to unsupervised, overnight and weekend visits beginning with two-hour unsupervised visits. Mother had completed her cooperative parenting program and graduated from a substance abuse program in which she continually tested negative. Mother had completed 12 sessions of individual counseling. Father had graduated from a substance abuse treatment program and had been referred to a 16-week aftercare program. The court granted CFS' request.

In the August 31, 2011, status review report, the social worker noted both C.H. and H.H. were "found to have had possible intrauterine drug exposure to methamphetamines." Nonetheless, the social worker noted mother was deemed "at low risk for relapse if she continued to participate in aftercare and 12-step meetings." Parents had begun unsupervised visits on July 23, 2011, which had been extended to day-long unsupervised visits. The visits were described as having gone well. The social worker recommended the children be returned home once there was evidence of appropriate unsupervised day and weekend visitation.

On September 30, 2011, the social worker requested the court allow the children to spend the weekend of October 7, 2011, at parents' home. The court granted the

² No such confirmation was apparently ever forthcoming.

request. On October 19, 2011, the social worker requested the court allow T.H. to return home on October 21, 2011. The court granted the request. On January 13, 2012, A.H. was returned to parents' home.

In a status review report filed February 28, 2012, the social worker reported that all four children were now residing in parents' home. C.H. and H.H. had moved back with parents on February 24, 2012. Parents had consistent negative random drug tests from September 2011 through February 2012. The social worker recommended the children remain dependents of the juvenile court while residing in parents' home.

On March 12, 2012, the court continued the children as dependents of the court in parents' custody. The court authorized the social worker to dismiss the case by approval packet.

On June 14, 2012, the social worker reported father had testified positive for amphetamines on May 17, and 25, 2012. Mother tested negative on May 17, 2012. Father decided he needed to participate in an inpatient substance abuse program. The social worker was concerned that due to mother's past mental health history, she would be unable to care for all four children alone. Thus, it was decided to split up the children. T.H. and H.H. went with father to the inpatient program and the others stayed with mother.

In the status review report of September 10, 2012, the social worker noted mother continued to provide negative drug tests. Father had been testing negative and graduated from his treatment program on September 3, 2012. Parents had completed their services.

The social worker recommended the children remain in parents' home, be discharged as dependents of the court, and that the petition be dismissed.

In an addendum report the following day, the social worker noted that on August 24, 2012, CFS received a referral alleging mother had become overwhelmed due to T.H.'s "escalating behaviors." The referral was deemed unfounded; however, the social worker found the hygiene of the children and condition of the home did not meet basic safety and health standards. The social worker indicated a new allegation of general neglect would be added.³ At the hearing on September 12, 2012, the court continued the matter for six months giving the social worker authorization to dismiss the case by packet.

The social worker reported in the March 4, 2013, status review report, that while parents had multiple negative drug tests over the reporting period, they each had one positive test for methamphetamine on December 3, 2012. Personal and household cleanliness also continued to be an issue. Following their positive tests, parents had resumed attendance thrice weekly at 12-step meetings. Mother had completed anger management, general counseling, parenting education, an in-home services homemaker class, an outpatient substance abuse treatment program, and participated with the children in and graduated from Wraparound services.

Parents began parent child interactive therapy (PCIT) with the children in September 2012, but had difficulty maintaining appointments. However, since January

³ No such additional allegations were made until January 16, 2014.

15, 2013, parents had consistently been making their appointments. The social worker noted, "Parents are putting forth great effort in participating in services and meeting the needs of their children." She recommended the children remain in parents' home with the dependency continued.

On March 8, 2013, the social worker reported father tested positive for methamphetamine on February 25, 2013. Mother had a negative test. The social worker referred father to an outpatient treatment program. On March 11, 2013, the court continued the matter for six months.

On May 30, 2013, the social worker reported the parents continued to have negative drug tests. Nevertheless, hygiene and housekeeping issues persisted. In a status review report filed August 29, 2013, the social worker noted mother continued to drug test negative. Parents had completed PCIT. Father completed the additional outpatient treatment program on June 8, 2013. However, on August 10, 2013, father admitted using marijuana. On August 16, 2013, he tested positive for marijuana. Housekeeping issues continued to persist as parents only cleaned when requested to do so by the social worker. The social worker recommended the children remain with parents and the case be dismissed.

On September 11, 2013, the social worker provided additional information to the court that mother had failed to drug test on August 28, 2013, saying she had forgotten. When mother did test on September 9, 2013, the result was positive for amphetamines. The home was found to be cluttered and messy with trash.

At a hearing on September 11, 2013, CFS changed its recommendation from dismissal to continuance of the children in parents' home under family maintenance services. The court adopted CFS's recommendation. The court ordered parents to drug test that day.⁴ Mother stated she was on medication for anxiety. CFS requested release of mother's medical information to confirm her medication. The court ordered mother to advise CFS of all the medications she was taking.

On January 16, 2014, CFS filed a supplemental dependency petition alleging parents had failed to regularly participate in and show benefit from reunification services as evidenced by their continued substance use and failure to maintain the children's hygiene and the home's sanitation (S-1 & S-2). The detention report reflected parents admitted to alcohol use, did not enter an aftercare drug treatment program within the statutory time frame, admitted using physical discipline on the children, and had not maintained the children's hygiene or a sanitary home. Both parents had completed a 60-day outpatient drug program on or about December 17, 2013, but failed to enroll in aftercare. The home was found to have been consistently unclean and infested with cockroaches.

A meeting on January 14, 2014, "had to be ended abruptly as the police were called to assess the mother as she became hysterical, screaming at the top of [her] lungs for an extended period of time and reported that she wanted to kill herself. When the police arrived she reported that she had attempted suicide in the past, and was taken to

⁴ There is no indication in the record that parents drug tested that day or, if they did, what the results of the tests were.

the hospital. She is currently on a mental health hold.” Father signed a release and the children were placed in a foster home. On January 17, 2014, the court detained the children from father and ordered he drug test that day.⁵

At a hearing on January 22, 2014, father’s counsel noted father had “several relatives interested in placement that are out of state. I’d ask that ICPC placement be initiated with them. First one is . . . a paternal aunt. She resides in Pennsylvania. [¶] Father’s going to have to get more contact information after the hearing, to the department.” Father’s counsel also indicated father had a paternal aunt living in Utah who was interested in placement. Father’s counsel further indicated father had a paternal aunt living in Arizona and a paternal uncle living locally in Muscoy, both of whom were also interested in placement.

The court “authorize[d] the ICPC initiation to Pennsylvania, Utah, and Arizona. Any placement out of state, however, is by way of court approval packet.” The court also noted, however, that it was “concerned. I don’t know what the recommendation will be at [the disposition hearing]. I am worried if they move out of state it could impair the parents’ ability to reunify.” The court ordered the children detained from mother.

In the jurisdiction and disposition report filed February 4, 2014, the social worker noted that father reported that his job as a religious missionary required that he use drugs in order to be one of the people able to reach out to the community. All the family

⁵ Again, there is no indication in the record that father drug tested that day or, if he did, what the result of the test was.

members were infested with lice. One of the men who babysat the children when parents were away was found to have a long drug and criminal history.

Mother reported struggling with anxiety and depression, but “now has her mental health under control. She then reported that she missed her last appointment at the Phoenix Clinic. [Mother] has been on anti[-]anxiety medication during the last reporting period. When [mother] was asked to sign a release of information [] she refused”

The social worker explained to mother that without the release, the social worker could not refer mother to services or communicate with providers regarding her progress.

Mother eventually agreed to sign the release, but reported she was unable to understand what she was signing. The social worker did not have her sign the form as mother appeared to be unable to make an informed decision regarding the medical release form.

Parents visited with the children once weekly for two hours. The social worker noted, “The children were emotional when the visit was over and reported that they did not want to leave. The children all report that they miss their parents and want to visit them.”

The social worker opined, “The prognosis for the family is poor. The parents have been receiving services since November 17, 2010, and still have not sufficiently benefited from their service plans. The parents did reunify but have not been able to maintain sobriety or the home’s sanitation. [CFS] has gone above and beyond in an attempt to keep the children in the home and stabilize the family, to no avail.”

The social worker further noted, “Over the last three years [CFS] has provided the parents with parenting education, individual counseling, inpatient drug treatment,

multiple outpatient drug treatment programs, multiple WRAP services, parents partners, in home housekeeping education, drug testing, and transportation. [CFS] has now exhausted all available resources and has offered the parents every service at [CFS'] disposal. There is no evidence to suggest that completion of additional services would eliminate the need for dependency as eviden[ced] by the family's lack of sufficient progress over the past three years." The social worker recommended the court find the allegations in the supplemental petition true, remove the children from parents' custody, and deny parents reunification services.

At a hearing on February 6, 2014, mother's counsel requested appointment of a guardian ad litem (GAL) for mother due to the indication in the social worker's report that mother did not understand the medical release form. The court then queried mother regarding her understanding of the proceedings. The court determined mother did not require a GAL. A.H. reportedly wanted phone calls with parents in addition to visits; the parties stipulated to the provision of such phone calls.

On March 5, 2014, the court held the contested jurisdiction and disposition hearing on the supplemental petition. The court found the allegations true, terminated parents' reunification services, and set the section 366.26 hearing.

In the section 366.26 report filed June 25, 2014, the social worker noted the children had been moved into a prospective adoptive parents' (PAPs) home. The social worker observed, "According to case history, there has been regular supervised weekly contact with the parents and the children." The visitation was deemed appropriate. The

social worker recommend visitation be reduced to twice monthly for one hour in order to facilitate adoption.

In a subsequent section 366.26 report filed September 18, 2014, the social worker reiterated the request that visitation be reduced. The social worker reported three of the children had been placed with the PAPs on June 18, 2014, while T.H. was placed with them on July 14, 2014. The social worker noted, “The children stated they are taken care of well and want to be adopted. They said they love their birth parents. The children stated they want to stay and live with” the PAPs. The social worker recommended the court terminate parents’ parental rights.

The children’s therapist reported, in a letter dated September 22, 2014, that T.H. “has consistently told me he likes living in the home where he is at ‘with my new parents.’” A.H. had “expressed strong positive feelings towards the [PAPs] and stated she feels the [PAPs] really want what is best for her and her siblings. [A.H.] stated she understands the meaning of adoption and is in agreement with the [PAPs] being her adoptive parents.” H.H. “informed me she enjoys the visitation she has with her biological parents. When I discussed adoption with [H.H.] she indicated she understood, though it is unclear how well she comprehends the concept. [H.H.] likes the [PAPs] . . . and would like to continue living with them” The therapist opined, “It is doubtful [C.H.] has a clear understanding of the [adoption] process, though she has expressed a desire to continue to live with her ‘new parents’, the [PAPs].”

On October 10, 2014, mother filed a section 388 petition seeking return of the children to her custody under family maintenance services or, in the alternative,

reinstatement of reunification services and increased visitation including unsupervised overnight and weekend visits. Mother alleged as changed circumstances the facts that she had completed an outpatient substance abuse program on July 2, 2014, and continues to maintain sobriety by attending aftercare groups and NA/AA (Narcotics Anonymous/Alcoholics Anonymous) meetings on a frequent basis. Mother maintained the children had a very strong attachment to parents and the children asked at visits when they might return home.

Mother attached to her petition a letter from a psychiatrist at Phoenix Community Counseling dated February 20, 2014, indicating mother had been receiving mental health services, had been compliant with appointments, had monthly follow ups, and reported medication compliance. Mother also attached a certificate of completion of an outpatient substance abuse program; negative drug test results for February 12, 21, May 10, and 16, 2014; and aftercare and NA/AA attendance cards spanning the time between February 8, and September 26, 2014.

On October 15, 2014, father filed a section 388 petition seeking return of the children to his custody under family maintenance services or, in the alternative, reinstatement of reunification services and authority of the social worker to liberalize visitation when appropriate. Father alleged as changed circumstances the facts that he had completed an outpatient substance abuse program on June 19, 2014, continued to have negative drug tests, and attended aftercare groups and NA/AA meetings. Father contended the children were strongly bonded to him and that he could provide them with a safe and loving home. Father attached to his petition a certificate of completion of the

outpatient substance abuse program; negative drug tests dated January 15, February 13, 26, March 3, 18, 27, April 1, 21, 28, May 6, and 20, 2014; AA/NA attendance cards dating between January 1, 2014, through September 26, 2014; and aftercare meeting attendance records dating between June 25, through October 1, 2014.

On October 16, 2014, the social worker recommended termination of all visits between parents and children due to emotional detriment. Parents were allegedly talking to the children about the case and upsetting them. Mother started talking loudly and crying regarding adoption during one visit. Mother did not respond to the visitation coach's direction to cease discussion of the issue. The social worker stepped in, but mother continued to cry and insist she had every right to discuss adoption with the children. Mother told the eldest child to tell the court she did not want to be adopted. Mother told the children their names would be changed if adopted. The eldest child started crying.

In CFS's response to the section 388 petitions, it was noted that parents had already received 18 months of reunification services and 23 months of family maintenance services. On October 31, 2014, the court terminated parents' visitation with the children. Another letter from the children's therapist dated November 2, 2014, reflected the children regard the PAPs as their family and call them "mom" and "dad."

At the hearing on November 4, 2014, then 12-year-old A.H. testified that after being adopted, she still wanted to visit parents. When asked if she would still want to be adopted if she knew she could no longer visit with parents, she responded, "I really don't know."

Father testified he had been clean since January 7, 2014, had completed an outpatient drug program since services were terminated, attended 12-step meetings three days weekly, completed a 16-week aftercare program, completed parenting classes, and planned to continue attending NA and aftercare meetings. Father had last drug tested negative three weeks earlier. He admitted he had completed three previous substance abuse outpatient programs after which he relapsed each time. Father testified he regularly visited the children who “give us hugs and kisses and jump on me . . .” at the beginning of visits. The older children tell him they do not wish to leave at the end of visits.

Mother testified her clean date was January 7, 2014. She had started an outpatient substance abuse treatment program after her reunification services were terminated which she completed on July 2, 2014. Mother graduated aftercare services a few weeks earlier. She had last drug tested three weeks earlier. Mother had completed two parenting classes during pendency of the case.

Mother testified she was seeing a psychiatrist between once monthly to once every three months at the Phoenix Community Counseling. “[H]e gives me medication for my major depression and anxiety and some for my insomnia.” Mother felt the medication had mentally stabilized her.

Mother visits the children regularly. The children are happy and overjoyed when they see parents. They call parents “mom” and “dad”, hug and kiss them, and are excited to see them. The children are sad when visits end and wish to stay longer. Mother conceded the children also call the PAs “mom” and “dad.” Nevertheless, mother did

not believe termination of parental rights was in the best interest of the children because they “love me and I love my children, and we’re a close unit family when we are together.”

Mother testified her drug of choice was methamphetamine which she had been using off and on again for 20 years. Mother had relapsed previously after completing an outpatient treatment program. She had completed more than one aftercare program as well. CFS conceded parents had visited regularly with the children.

The juvenile court denied parents’ section 388 petitions noting, “The Court is encouraged by the parents’ behavior, but when the Court looks at the totality of the circumstances and weighs out the efforts made by the parents over the course of this case, that being almost four years, [the] Court balances it against the efforts made by the parents essentially being at the last minute, while those might be changing circumstances . . . I do not believe that they are changed circumstances.”

The court further observed parents “have successfully completed services previously, only to fall back in to their old ways” “They have just recently completed the aftercare program and it is not necessarily clear that they have benefitted from that program.” “Additionally in the big picture and based on the totality of the circumstances, the Court does not believe it would be in the best interest of the minors” It additionally noted that, “The Court having reviewed the documents does believe that it was more of a visiting relationship that the minors have with their parents and that the parents were not actively involved in the day-to-day activities of the minors and quite frankly don’t appear that they have had that connection for a significant amount of time.”

With respect to the application of the beneficial parental relationship exception to termination of parental rights, the court found the children had no objection to adoption. The court found no substantial parent-child bond. The court believed the best interest of the children was to be placed in a permanent plan that would result in adoption. The court therefore terminated parents' parental rights.

DISCUSSION

A. Relative Placement

Mother contends the court failed to exercise its mandatory duty to investigate relatives proposed by parents for placement. Nonetheless, mother fails to assert any remedy for the court's perceived failure. We hold mother lacks standing to challenge the court's placement of the children. Moreover, mother forfeited any challenge to placement by failing to raise the issue in a petition for extraordinary writ. Furthermore, parents failed to provide sufficient information regarding the relatives to enable CFS to conduct an investigation into the propriety of placement of the children with them. Finally, assuming for the sake of argument that the juvenile court erred, we hold any such error was harmless.

When a child is removed from the parents' custody, "[t]he court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child" and the social worker "shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them." (§ 361.3, subd. (a)(8).) The preference for relative placement applies only at the dispositional hearing and thereafter

whenever a new placement of the children must be made. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 854; § 361.3, subd. (d).) “Preferential consideration ‘does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child’s best interests.’ [Citation.]” (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 376.) Relative placement is subject to harmless error. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.)

“A parent’s appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child’s placement only if the placement order’s reversal advances the parent’s argument against terminating parental rights.” (*In re K.C.* (2011) 52 Cal.4th 231, 238 [Father lacked standing “to appeal because he did not contest the termination of his parental rights.”]; *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10 [Parents had standing to challenge relative placement prior to termination of [parental rights.].]; *In re J.C.* (2014) 222 Cal.App.4th 1489, 1494 [“*In re H.G.* thus does not stand for the broad proposition that a parent not receiving reunification services has standing to appeal any order that may affect the welfare of a child.”]; *In re A.S.* (2012) 205 Cal.App.4th 1332, 1339-1340 [Mother had standing to challenge juvenile court’s order regarding placement of children].) Parents forfeit challenge to placement where the issue could have been raised in a prior appeal or writ. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1318.)

First, although a parent may challenge a placement order if its reversal advances the parent’s argument against terminating parental rights, (*In re K.C.* (2011) 52 Cal.4th 231, 238) mother has failed to demonstrate here how such a reversal would advance her

argument against termination of her parental rights. Parents already engaged in consistent visitation with the children. Indeed, as the juvenile court noted, out-of-state placement might have impaired parents' ability to reunify with the children, thus making it even more likely parents' parental rights would be terminated in the future. As for father's local relative, father never came forward with any information regarding his location or circumstances. Thus, mother's failure to demonstrate that relative placement would have facilitated reunification deprives her of standing to challenge the court's failure to pursue placement with the relatives.

Second, mother failed to file a petition for extraordinary writ and challenge the issue at that point in the proceedings. Thus, mother forfeited any challenge to relative placement in this appeal.

Third, parents failed to provide the court or CFS with sufficient information to conduct an investigation into relative placement. Here, initially, father told the social worker his sister in Arizona would be willing to take the children *only if reunification services failed*. Thus, father did not request investigation of his sister for placement of the children at that time. Later, at mediation, parents reported they had "no relatives to consider for placement." The court found, "There are no known maternal or paternal relatives available for concurrently planning home placement." Thus, early in the proceedings there were no relatives to consider for placement.

Much later, after father signed a release and CFS had already placed the children in foster care, father's counsel noted father had three out-of-state relatives and one local

relative he wished to be considered for placement.⁶ Father admitted he was “going to have to get more contact information after the hearing, to [CFS].” The court “authorize[d] the ICPC initiation to Pennsylvania, Utah and Arizona. Any placement out of state, however, is by way of court approval packet.”

However, in the jurisdiction and disposition report filed nearly two weeks later, the social worker noted that although father indicated he would provide the social worker with the relatives’ information, he had yet to do so. In fact, father indicated that any contact information he had for the relatives “was lost as it was in his broken phone. He reported that he would try and find the information and provide it to [CFS].” No further information appears to have been provided by father to CFS regarding the relatives. Thus, the court did not err in declining to consider placement of the children with relatives for whom it had no contact information. Finally, even if the court erred in failing to require CFS to conduct its own investigation into finding the relatives named by father, that error was harmless because there is no evidence the court could have placed the children with any of the relatives or that such a placement would have benefitted parents.

B. Reasonable Services

Mother contends the court erred in determining CFS had provided her reasonable reunification services because it never provided her with mental health services. We hold mother waived any complaint about the reasonableness of services by consenting to those

⁶ Contrary to mother’s contention in her opening brief, mother never indicated she had a local brother who might take T.H.

services. Moreover, mother forfeited any complaint regarding the adequacy of services by failing to challenge the services in a prior appeal or petition for extraordinary writ. Finally, we hold CFS's provision of services was reasonable.

CFS ““must make a good faith effort to develop and implement a family reunification plan. [Citation.] “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult” [Citation.]’ [Citation.] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.] ‘The applicable standard of review is sufficiency of the evidence. [Citation.]’ [Citation.]” (*In re T.G.* (2010) 188 Cal.App.4th 687, 697.) Reunification orders must take into account the special needs of parents. (See *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792.)

A parent who consents to the terms of the reunification plan waives any right to complain on appeal about the reasonableness of the plan. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476; *In re Cody W.* (1994) 31 Cal.App.4th 221, 231.) Preservation of issues must be made by the filing of a petition for extraordinary writ except where the appellate record clearly demonstrates ineffective assistance of counsel (IAC). (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077-1083 [Concession by parent's attorney that jurisdictional requirements were met on invalidly stated basis constituted IAC and failure to previously raise issue did not forfeit issue on appeal of termination of parental rights.];

In re Eileen A. (2000) 84 Cal.App.4th 1248, 1253-1263 [Failure to raise issues in section 388 petition did not forfeit issues on appeal from termination of parental rights where counsel provided IAC in failing to file petition.] disapproved of on another ground in *In re Zeth S.* (2003) 31 Cal.4th 396, 409-414.)

Here, there were certainly some indications mother suffered from some mental disability. Indeed, CFS initially filed juvenile dependency petitions alleging mother suffered from mental health issues which affected her ability to adequately care for the children (B-5). However, after mediation, the petitions were amended to eliminate the reference to mother's mental health issues. The juvenile court found true only the amended allegation that mother suffered from an anxiety disorder that could affect her ability to protect the children. The court determined mother did not require a GAL. Mother agreed to the proposed case plan including CFS's request that she receive a psychiatric evaluation, reserving objection only to any order of medication resulting therefrom. Thus, mother's consent to the terms of her reunification services waived any complaint regarding the reasonableness of those services on appeal.

Moreover, mother failed to file an appeal from the dispositional order or the order terminating her reunification services wherein she could have challenged the reasonableness of services. There is no clear indication in this record that the failure of counsel to request additional mental health services constituted IAC. Thus, mother forfeited any challenge to her services in this appeal.

Moreover, assuming for the sake of argument that mother's contention is cognizable in this appeal, we hold mother received reasonable mental health services.

Although the court expressly ordered a psychiatric evaluation, mother's therapist reported no psychiatric evaluation was necessary. Mother received individual counseling. Mother completed nearly a year of parent-child interactive therapy with the children.

Mother reported she was on medication for anxiety. Mother had apparently been seeing a psychiatrist prior to termination of her reunification services. CFS requested release of mother's medical information to confirm her medication. The court ordered mother to advise CFS of all the medications she was taking. Mother later refused to sign a medical release without which CFS could not provide additional services. Mother later testified her psychiatrist gave her medication for depression, anxiety, and insomnia. Mother felt the medication had mentally stabilized her. Thus, mother received ample mental health services.

C. Section 388 Petitions

Parents contend the court abused its discretion in denying their section 388 petitions. We disagree.

“The juvenile court may modify an order if a parent shows, by a preponderance of the evidence, changed circumstance or new evidence and that modification would promote the child's best interests. [Citations.] This is determined by the seriousness of the problem leading to the dependency and the reason for its continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner. [Citation.] After termination of services, the focus shifts from the parent's custodial interest to the child's need for permanency and stability.

[Citation.] ‘Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Section 388 can provide “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.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528.) “Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child’s need for prompt resolution of his custody status.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) However, the best interests of the child are of paramount consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) “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, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Chronic substance abuse is generally considered a serious problem and, therefore, is less likely to be satisfactorily ameliorated in the brief time between termination of services and the section 366.26 hearing. (*In re Kimberly F., supra*, 56 Cal.App.4th at pp.

528, 531, fn. 9 [“It is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.”]; *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 686 [no abuse of discretion in denying section 388 petition where mother established only a 372-day period of abstinence.]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [“seven months of sobriety since [] relapse . . . , while commendable, was nothing new.”].)

Here, parents failed to demonstrate changed circumstances and that modification of the existing orders was in the best interest of minors. With respect to father, he initially denied any substance abuse, but tested positive for amphetamines soon thereafter. Father tested positive for marijuana on January 24, 2011. Father failed to appear for drug testing on February 16, 2011, and tested positive for marijuana again on March 24, 2011. Father later graduated from a substance abuse treatment program and had been referred to a 16-week aftercare program. However, father then testified positive for amphetamines on May 17, and 25, 2012, and decided he needed to participate in another inpatient substance abuse program.

Father had been testing negative and graduated from his treatment program on September 3, 2012. However, he tested positive for methamphetamine on December 3, 2012. Father completed an additional outpatient treatment program on June 8, 2013. However, on August 10, 2013, father admitted using marijuana. On August 16, 2013, he tested positive for marijuana. Father completed another outpatient drug program on or about December 17, 2013, but failed to enroll in aftercare. In a report from February 2014, father reported that his job as a religious missionary required that he use drugs in

order to be one of the people able to reach out to the community. Father completed a fourth outpatient substance abuse program on June 19, 2014, and testified his clean date was January 7, 2014.

Mother reported experimenting with numerous drugs including marijuana, methamphetamine, PCP, cocaine, crack, and heroin. Mother testified her drug of choice was methamphetamine which she had been using off and on again for 20 years. Two of the children were found to have had possible intrauterine drug exposure to methamphetamine. Mother initially said she and father used drugs together in the past, but denied any recent use or addiction. Nevertheless, mother tested positive for amphetamines soon thereafter. Mother failed to appear for drug testing scheduled on February 16, 2011. Later that year, mother graduated from an outpatient substance abuse program.

However, on December 3, 2012, mother tested positive methamphetamine. Mother failed to drug test on August 28, 2013, saying she had forgotten. When mother did test on September 9, 2013, the result was positive for amphetamines. Mother completed a 60-day outpatient drug program on or about December 17, 2013, but failed to enroll in aftercare. It was found that one of the men who babysat the children when parents were away had a long drug and criminal history. Thus, both parents had a long history of drug use during which they had relapsed multiple times even after attending treatment programs. The court acted within its discretion in determining that parents' sobriety of less than a year when considered in the context of their personal histories did not amount to changed circumstances.

Likewise, personal hygiene and housekeeping issues constantly arose and were only remedied when the social workers intervened. Moreover, the court acted within its discretion in determining it was not in the best interest of the children to grant the petitions.

D. Beneficial Parental Relationship Exception

Parents contend insufficient evidence supported the court's determination the beneficial relationship exception to termination of parental rights did not apply. We disagree.

Once reunification services have been terminated and a child has been found adoptable, "adoption should be ordered unless exceptional circumstances exist." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists where, "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." A beneficial relationship is established if it "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The parent has the burden of proving termination would be detrimental to the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

"[T]he 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. 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.' [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

"[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; accord, *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) "We determine whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.] If the court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights [Citation.]" (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

Here, we agree with parents that they maintained regular visitation and enjoyed a bond with the children. Nevertheless, parents failed to carry their burden of demonstrating that termination of parental rights would prove detrimental to the children. Although the children loved parents and enjoyed visiting with them, they also had strong feelings towards the PAPs and enjoyed living with them. The children indicated they wanted to be adopted by the PAPs. The children had been living with the PAPs for nearly five months. The children referred to the PAPs as "mom" and "dad." Parents had already received 18 months of reunification services and 24 months of family maintenance services. Substantial evidence supported the court's determination that the

bond between the children and parents was outweighed by stability provided by an adoptive placement in the PAPs home.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.