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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

E064067

(Super.Ct.Nos. J252765 &  
J252766)

OPINION

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

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

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County  
Counsel, for Plaintiff and Respondent.

M.B. (mother) appeals from orders terminating her parental rights to R.B. and N.B. (the children). Before the juvenile court conducted a permanency and planning hearing and terminated mother's parental rights, mother petitioned the juvenile court pursuant to Welfare and Institutions Code section 388 to set aside an order terminating reunification services. On appeal, mother contends the juvenile court abused its discretion by denying the petition without conducting an evidentiary hearing. We conclude mother did not make a prima facie showing of entitlement to relief and, therefore, the juvenile court did not abuse its discretion. Having found no error, we affirm the orders denying mother's petition and terminating mother's parental rights.

## I.

### FACTS AND PROCEDURAL BACKGROUND

A social worker with the San Bernardino County Children and Family Services (CFS) responded to a Victorville hospital to investigate a report that mother and her newborn daughter R.S. tested positive for methamphetamine at the time of birth. A nurse informed the social worker that mother and the alleged father to R.S. appeared to be under the influence of a drug, and that the parents had mentioned surrendering R.S. Mother told the social worker that she used methamphetamine throughout her pregnancy. Mother also told the social worker she was considering giving up R.S. for an open adoption. Interviews with the children's grandparents showed the children had an unstable living environment and were regularly shuttled from family member to family member. Based on the parents' drug use and the children's unstable living environment,

CFS determined the children were at risk of significant harm and obtained a warrant for their detention.

CFS filed petitions in the juvenile court alleging the children were dependents within the meaning of Welfare and Institutions Code section 300, subdivision (b). (Allegations under subd. (g) regarding the alleged father are irrelevant to the issues in this appeal. All additional statutory references are to the Welf. & Inst. Code.) The petitions alleged mother failed or was unable to adequately protect and care for the children, to wit: mother placed R.S. at risk of harm by testing positive for methamphetamine at birth; mother's unstable lifestyle, lack of knowledge, and lack of parenting skills placed the children at substantial risk of being abused or neglected; and mother's substance abuse affected her ability to adequately parent the children.

At a detention hearing, the juvenile court found a prima facie showing the children were dependents under section 300 and ordered them detained. Mother told the juvenile court she had not used methamphetamine for at least a week and a half. The court ordered mother to not use controlled substances and to submit to a drug test that same day.

In a report prepared for the jurisdictional/dispositional hearing, the social worker reported mother admitted to having a drug problem and expressed a willingness to enter an inpatient or outpatient drug rehabilitation program. Mother told the social worker she used methamphetamine monthly while she was pregnant with R.S. and about every two weeks before becoming pregnant. Further, in contrast to what she told the juvenile court, mother told the social worker she had last used methamphetamine four days before the

detention hearing. Mother denied drinking alcohol and told the social worker she and the alleged father used methamphetamine while in their car and away from the children. Although mother denied the allegations of neglect and failure to provide for the children, she conceded she would benefit from parenting classes and drug rehabilitation. The social worker also reported mother and the alleged father relinquished R.S. to her prospective adoptive parents, and agreed to the termination of their parental rights as to R.S.

At the jurisdictional/dispositional hearing, the juvenile court dismissed the petition regarding R.S. based on her relinquishment by both parents. The juvenile court declared R.B. and N.B. dependents of the court. Mother informed the juvenile court she did not comply with the court's order to submit to a drug test the day of the detention hearing because she "knew it would be positive." Mother nonetheless assured the juvenile court she would not test positive that day, and the juvenile court ordered her to take a drug test forthwith. The juvenile court found continuance of the children in mother's home would not be in their best interests; ordered the children to remain detained and in the custody of CFS; and set a six-month review hearing.

Sixty days after the jurisdictional/dispositional hearing, CFS updated the juvenile court on mother's progress in drug treatment. CFS reported mother was referred to the outpatient program at Inland Behavioral Health Services but had not yet engaged in their services. CFS also reported mother had been on a waitlist for residential treatment at St. John of God Health Care Services but mother had not been in contact with the provider

for three days and was at risk of being removed from the waitlist. Finally, CFS reported mother was not on the waitlist for other nearby residential treatment programs.

In the status report filed for the six-month review hearing, CFS reported mother engaged in some of her case plan but had made minimal progress in her drug treatment. The social worker reported her concern that mother had not been forthcoming about her continued drug use, and mother had only recently engaged in her substance abuse program. Mother tested positive for drugs 10 out of 11 times, and her attendance at the program was poor. Although mother made progress in her counseling and parenting classes and had regularly visited the children, the social worker reported mother was living a transient lifestyle and had failed to remain in regular contact with CFS.

At the six-month review hearing, the juvenile court found mother had only made moderate progress in her reunification services, found that placement with mother would be detrimental to the children, and set a 12-month review hearing.

In a report prepared for the 12-month review hearing, CFS recommended the juvenile court terminate reunification services to mother and set a permanency and planning hearing under section 366.26 for the termination of mother's parental rights. The social worker reported mother failed to successfully complete any component of her case plan and failed to maintain regular contact with CFS. Mother visited with the children every week, actively looked for work, was attending school to complete her high school general education diploma and completed nine out of 12 required counseling and parenting sessions. However, the social worker reported mother failed to complete any of the substance abuse programs she was previously enrolled in. At the time of the

report, mother had been enrolled in a substance abuse program at Central Valley Regional Recovery Center for less than six months, but mother's attendance was poor and inconsistent. Less than one month into the program, mother tested positive for methamphetamine. She was completely absent from the program for an entire month and had missed seven group meetings the following month. She also failed to participate in a 12-step program. The social worker opined mother's relapses were attributable to mother's ongoing "toxic" relationship with the alleged father, who also had a serious drug problem.

Mother's counsel objected to termination of reunification services at a contested 12-month review hearing, and informed the court mother intended to complete her case plan and petition the juvenile court under section 388 for reinstatement of reunification services. The juvenile court found by clear and convincing evidence mother failed to complete her case plan and her progress so far was "minimal"; returning the children to mother would be detrimental to them and they should remain in their current placement; and there was no substantial probability the children could be returned to mother within the statutory time frames. Therefore, the juvenile court terminated mother's reunification services and set a permanency and planning hearing under section 366.26.

In a petition under section 388, mother requested the juvenile court return the children to her care and custody or, in the alternative, reinstate reunification services and vacate the permanency and planning hearing. Mother argued she had made significant progress in addressing the causes of the dependency and the removal of the children from her care; she and the children had a bonded relationship; and termination of mother's

parental rights would not be in the children's best interests. In a supporting declaration, mother's counsel stated mother had terminated her relationship with the alleged father. Moreover, mother supported her petition with evidence of her progress in parenting classes, counseling, and substance abuse treatment. This evidence showed mother regularly attended Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings and tested negative for drugs over the previous two months.

At the initial permanency and planning hearing, counsel for CFS informed the juvenile court she had just received mother's section 388 petition and the supporting documentation. Mother's counsel informed the juvenile court mother had just completed her substance abuse program and was going to graduate that very same day. He suggested the court continue the hearing to give CFS an opportunity to review the petition. The juvenile court continued the hearing and ordered mother to appear at the continued hearing. Although mother was present for the initial permanency and planning hearing and had notice of the continued hearing, she did not appear at a continued permanency and planning hearing. When asked if he wished to withdraw mother's section 388 petition, mother's counsel told the juvenile court he did not know why mother did not appear, and he requested a continuance. The juvenile court denied the requested continuance.

Mother's counsel asked the juvenile court to consider the evidence submitted with the section 388 petition, and argued mother's recent completion of her program was a changed circumstance warranting an evidentiary hearing. Mother's counsel also argued

mother's strong relationship with the children demonstrated that granting additional reunification services would be in the children's best interests.

Counsel for the children argued the petition should be denied without a hearing because, although "mother has completed some programs," the petition merely stated mother was bonded to the children and did not demonstrate reinstating reunification services would be in the children's best interests. Counsel for CFS also opposed the petition. Although mother had recently completed an outpatient substance abuse program, CFS argued mother had been previously enrolled in four different outpatient programs and failed to complete them, "[s]o the stability and the length of [mother's] sobriety at this point is certainly questionable." Counsel for CFS also argued mother had not yet completed her counseling and parenting classes and had not addressed how to control her emotions, which showed "mother's circumstances are changing, but have not changed." Finally, CFS agreed with counsel for the children that mother had not demonstrated reinstatement of reunification services would be in the children's best interests.

The juvenile court found mother did not make a prima facie showing under section 388 and denied the petition without a hearing. The court stated, "Mother has not been consistent in attending or completing substance-abuse classes, parenting [classes], or therapy." Despite mother having enrolled in multiple programs through the life of the case, the juvenile court concluded mother "has not demonstrated a period of sobriety." With respect to the permanency and planning hearing, mother's counsel renewed his request for a continuance, stating mother was his only witness. Counsel for the children

and for CFS submitted on the social worker's report. The juvenile court found clear and convincing evidence that the children were likely to be adopted, that their current placement was necessary and appropriate, and terminated mother's parental rights.

Mother timely appealed from the orders terminating her parental rights.

## II.

### DISCUSSION

“Under section 388, a parent may petition to change or set aside a prior order ‘upon grounds of change of circumstances or new evidence.’ (§ 388, subd. (a)(1); see Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where ‘it appears that the best interests of the child . . . may be promoted . . .’ by the new order. (§ 388, subd. (d).) Thus, the parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child's best interests. [Citation.] [¶] A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests. [Citations.]” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157, fn. omitted.)

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.) It is not enough for a parent to show an incomplete reformation or that he or she is in the process of changing the circumstances which 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’ . . . . 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 interests of the child.” (*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 . . . 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 courts have consistently held that, when long-term drug addiction is the prime reason for a parent’s unfitness and of the dependency, it is not enough for the parent to show they have started the process of getting sober or that they have been sober for a brief period. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642; *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081; *In re Mary G.*, *supra*, 151 Cal.App.4th at p. 206; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48; *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531, fn. 9.)

“This court reviews a juvenile court’s decision to deny a section 388 petition without a hearing for abuse of discretion. [Citation.]” (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1158.) ““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

The main reason the children were detained and for the dependency was mother and her newborn baby tested positive for methamphetamine. Mother told the social worker that she used methamphetamine throughout her pregnancy. At the detention hearing, mother told the juvenile court she had not used methamphetamine for at least a week and a half, and she was ordered to take a drug test that same day. Mother later told the social worker she had used methamphetamine four days before the detention hearing, and mother told the juvenile court she failed to appear for the drug test because she knew she would test positive. Although mother told the social worker she never used methamphetamine in the presence of the children, she admitted to having a drug problem and acknowledged she needed substance abuse treatment and parenting classes.

Sixty days after the jurisdictional/dispositional hearing, the social worker reported mother had been referred for services but had not engaged in any of them. When the social worker filed a status report for the six-month review hearing, she reported mother had only made minimal progress in her substance abuse program, she had tested positive for drugs 10 out of 11 times, and her attendance at the program was poor. Six months later, the social worker reported mother tested positive for methamphetamine one month

into a substance abuse program, was completely absent from the program for weeks at a time, missed a significant number of meetings, and failed to participate in a 12-step program. Based on mother's minimal progress, the juvenile court terminated reunification services.

Mother filed her section 388 petition almost six months after the juvenile court terminated reunification services. In the petition, mother argued she had made significant progress in addressing the causes of the dependency. Evidence attached to the petition showed that, for the previous two months, mother regularly attended AA and NA meetings and had tested negative for drugs. And on the day of the initial permanency and planning hearing, mother's counsel informed the juvenile court that mother had completed her substance abuse program and was scheduled to graduate that day.

Without a doubt, mother demonstrated she was making progress toward achieving sobriety, and she should be commended for it. But mother's petition did not establish *changed* circumstances. At most, she demonstrated very recent, short term sobriety, which is merely a *changing* circumstance. Moreover, the evidence in support of the petition showed mother was still in the process of completing her parenting classes and counseling. On this record, we simply cannot conclude mother made a sufficient showing of reformation to justify an order reinstating reunification services and vacating the permanency and planning hearing.

Nor did mother make a sufficient showing that reinstating reunification services would be in the children's best interests. The petition stated mother was bonded to the children, and the record amply establishes mother maintained regular and appropriate

visits with the children. But mother presented no evidence that delaying a permanent plan for the children by providing mother with additional reunification services would outweigh the benefits to the children of a stable home. Mother had not yet established she could maintain her sobriety and adequately provide for the children over the long haul.

Mother also contends the juvenile court denied her a meaningful opportunity to present evidence at the continued permanency and planning hearing that would have demonstrated a change of circumstances. Without expressly saying so, mother appears to argue the juvenile court erred by not granting a continuance so mother could appear and testify in support of her request for an evidentiary hearing on the petition. We are not persuaded.

Mother had actual notice of the continued hearing, yet she failed to appear. Mother's counsel was unable to provide the juvenile court with any explanation for mother's absence, merely theorizing it had something to do with mother moving from one program to another. On appeal, mother simply does not explain why the juvenile court should have found there was good cause to continue the hearing a second time (e.g., a good reason why mother failed to appear) and that a continuance would be in the children's best interests (§ 352, subd. (a); Cal. Rules of Court, rule 5.550(a)(1),(2)), and mother does not explain how the juvenile court abused its discretion by denying her counsel's request for a second continuance. (*In re Emily D.* (2015) 234 Cal.App.4th 438, 448 [order granting or denying a continuance is reviewed for abuse of discretion].) We find no error in the juvenile court's denial of an additional continuance.

Nor do we agree with mother's suggestion that the juvenile court denied the petition based solely on mother's absence. When mother failed to appear, the juvenile court asked mother's counsel if he wished to withdraw the petition. By itself, this hardly suggests the juvenile court was inclined to deny the petition simply because mother failed to appear. More importantly, the juvenile court issued its ruling after reviewing the petition and supporting evidence, and after hearing the arguments of counsel.

In sum, we conclude the juvenile court did not abuse its discretion by denying mother's section 388 petition without conducting an evidentiary hearing.

III.

DISPOSITION

The orders denying mother's section 388 petition and terminating mother's parental rights are affirmed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.