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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

H.B.,

Defendant and Appellant;

W.R. et al.,

Respondents.

E064400

(Super.Ct.No. RIJ1200970)

O P I N I O N

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

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Respondents, W.R. and L.R.

The juvenile court denied defendant and appellant, H.B.'s (Mother), Welfare and Institutions Code section 388<sup>1</sup> petitions and ordered a permanent plan of legal guardianship for A.B. (born September 2010) and E.B. (born April 2012) (collectively minors). On appeal, Mother contends the court abused its discretion in denying her petitions. We affirm.

#### I. FACTS AND PROCEDURAL HISTORY

On June 7, 2014, personnel from plaintiff and respondent, Riverside County Department of Public Social Services (the Department), received a referral alleging Mother's general neglect of minors. The maternal grandmother (MGM) had requested a welfare check of minors at the parents'<sup>2</sup> residence after Mother informed MGM Mother had relapsed on methamphetamine. Mother admitted that she had used methamphetamine on June 5, 2014. Father also admitted using methamphetamine.

E.B. had been found after wandering around the apartment complex for 30 minutes before Mother realized he was gone. Mother indicated she took prescription medication and marijuana, which made her sleepy. Mother had a current prescription and

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

<sup>2</sup> Father is not a party to this appeal.

card for medical marijuana. The social worker noted that Mother's "current substance abuse seriously impairs [her] ability to supervise, protect, or care for the children."

MGM reported Mother had a history of being taken into custody for psychological evaluations pursuant to section 5150. MGM said Mother had been diagnosed as bipolar. Mother reported being diagnosed with attention deficit/hyperactivity disorder, anxiety, and depression. Officers arrested Father at the home because Mother had a restraining order against him.

Mother had an extensive history with the Department, including five separate investigations going back to 2000, which also pertained to another of Mother's daughters for whom MGM had been named the legal guardian in 2007. On September 17, 2012, Department personnel filed a juvenile dependency petition alleging domestic violence between the parents. The juvenile court had previously detained and taken jurisdiction over minors in 2012. That court had ordered reunification services for Mother and eventually terminated the dependency case on April 9, 2014. The social worker took minors into protective custody and placed them with MGM on June 8, 2014.

On June 10, 2014, Department personnel filed a "reactivated" juvenile dependency petition alleging as to Mother that she had failed to provide proper supervision of minors due to being under the influence of marijuana and prescription medication (b-1); had an unresolved history of abusing controlled substances, including methamphetamine, marijuana, and prescription drugs (b-2); had unresolved mental health issues (b-4); and

engaged in domestic violence with Father (b-5). The juvenile court detained minors on June 11, 2014.

In the jurisdictional and dispositional report filed on July 2, 2014, Mother admitted to a long history of abusing methamphetamine going back 20 years, since she was 15 years old. She had bouts of sobriety, but had used methamphetamine a month after the last dependency case closed. Mother said she did not feel she could benefit from a drug treatment program. Mother's case plan required that she participate in a substance abuse program, refrain from using illegal drugs, and comply with any ordered drug testing.

In a letter filed July 8, 2014, Mother reported she had been accepted into a yearlong substance abuse program on June 18, 2014, had been attending Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings three times weekly, and had been drug testing randomly with no positive results. On July 8, 2014, the court found the allegations in the petition true, sustained the petition, removed minors from the parents' custody, and ordered the Department to provide the parents' with reunification services.

In a status review report filed on December 24, 2014, the social worker recommended that the court terminate the parents' reunification services. Mother reportedly continued to reside with Father. Mother had completed a substance abuse program on October 2, 2014, and a parenting class on October 15, 2014.

Mother had not started court-ordered counseling services. She tested positive for marijuana on October 21 and November 5, 2014, though she had a valid marijuana card.

Mother failed to show for drug testing ordered on November 20 and December 4, 2014. She was arrested on October 7, 2014, for driving under the influence (DUI).

In an addendum report filed on January 14, 2015, the social worker reported she had received an e-mail from Mother asking how to reinstate the restraining order against Father. Mother continued to test positive for marijuana. An active warrant for her arrest on the DUI charge had been issued. At some point she had reportedly been held for 24 hours pursuant to section 5150.

On January 22, 2015, the juvenile court terminated the parents' reunification services and set the section 366.26 hearing. In the section 366.26 report filed on May 11, 2015, the social worker noted Mother had filed a temporary restraining order against Father on March 12, 2015. Mother's visits with minors had been reduced to once monthly because she routinely discussed the dependency case with them. The social worker observed Mother still had unaddressed issues pertaining to drug use and mental health.

The social worker noted: "The maternal grandparents are meeting the needs of the children. The children appear happy and are bonded to the grandparents. The maternal grandparents are committed to providing the children with long term stability." "[T]he children have continued to grow and flourish in their current placement. The caregivers have continued to state they are very committed to providing [minors] with a safe, nurturing and consistent home. The caregivers are meeting [minors'] physical, mental and health needs."

On July 31, 2015, Mother filed section 388 petitions as to both minors. Mother alleged she had “maintained her sobriety and mental health by actively participating in a sober living program through IE recovery homes. Mother attends AA/NA meetings, submits to random drug testing, testing negative [*sic*], has a sponsor[,] and attends a parenting program through MFI; [she] maintains her medication regimen.” She attached documentation of her attendance at AA/NA meetings.

Mother stated she was participating in individual counseling, addressing issues of domestic violence. She had a current marijuana card with a prescription for THC in rub and edible form to be taken once weekly for insomnia and anxiety. She stated she used marijuana twice a day, amounting to two grams every four days. Mother attached an undated letter from her 12-step program sponsor indicating she regularly attended meetings and was subject to random drug testing.

Mother requested the return of minors to her care with family maintenance services or reinstatement of reunification services with liberalized visitation. She alleged her request was in the best interests of minors because she had maintained visitation, was attentive to minors during visitation, minors have a strong bond with Mother, Mother shows them love and affection, and granting the petition would strengthen the child-parent relationship and bond.

In an addendum report filed on August 25, 2015, the social worker noted the maternal grandparents had legal guardianship of minors’ sibling since she was six years old. The social worker had contacted Mother’s sponsor and was told Mother had

participated in two drugs tests on June 18 and July 14, 2015. The social worker requested documentation of the drug tests.

At the hearing on the section 388 petitions on September 3, 2015, Mother testified she had participated in six sessions of a parenting program; the program was the same one she had previously completed. She enrolled in a DUI program which she had not completed. Mother had been staying in a sober living facility that required drug testing; she had drug tested negative twice. Mother had moved into a hotel on the day of the hearing in anticipation of the return of minors; she hoped to move into a sober living home which accepted children. Mother had a valid medical marijuana prescription and card and used as needed, once or twice weekly.

Mother testified she had not attended any new domestic violence classes, but that she addressed those issues through counseling. She obtained a “full stayaway [*sic*] order” against Father and had terminated her relationship with him. Mother visited minors regularly. Minors would run to her, kiss her, hug her, tell her they love her, and call her mommy. Minors missed her and she had a bond with them.

The juvenile court noted that the most glaring problem in the case was “the long-standing issues, over 20 years one of the reports indicated, with Mother’s substance abuse issues . . . .” “What Mother . . . is showing me [is] that she’s attempting to change her circumstances, and because it’s only at the start of attempting to change those circumstances . . . the previous dependency was only closed for two months before it got reopened back before this Court . . . .”

The juvenile court found no change of circumstances and that modification of the order terminating Mother's reunification services was not in minors' best interests:

"They have stability right now. They are happy, healthy, doing well . . . ." The court denied the petitions and ordered a permanent plan of legal guardianship.

## II. DISCUSSION

Mother contends the court abused its discretion in denying her 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 § 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.”]; *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 [“To support a section 388 petition, the change in circumstances must be substantial. [Citation.] [A parent’s] recent sobriety reflects ‘changing,’ not changed, circumstances. [Citation.]”].)

Here, Mother failed to establish any definitive period of sobriety, specifically with respect to methamphetamine. The date of Mother’s last documented negative drug test in the record is November 5, 2014,<sup>3</sup> 10 months prior to the hearing on the section 388 petition. Mother had failed to show for drug tests thereafter on November 20 and December 4, 2014, which typically are regarded as positive tests. Although Mother alleged she had twice tested negative while living in the sober living facility, she failed to provide any documentation of such tests. The social worker requested documentation of the tests from Mother’s sponsor, but never received it.

As the juvenile court noted, mother had a documented 20-year history abusing methamphetamine during which she had bouts of sobriety, but continually returned to using. Indeed, within a month of the closure of the previous dependency case, Mother again used methamphetamine and apparently continued to do so until the filing of the instant case, only two months after closure of the previous case. At one point, Mother said that she did not believe she would benefit from a drug treatment program. Mother was arrested for DUI during the instant proceedings just after she had completed a

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<sup>3</sup> We are assuming, for the sake of argument, that Mother’s positive results for marijuana would be excused due to her possession of a valid prescription for marijuana.

substance abuse program. Thus, Mother's lack of a documented period of sobriety, especially in context with her long-term history of abuse of controlled substances itself was sufficient to justify the court's denial of her petition.

Mother appears to contend that the juvenile court's basis for the denial of the section 388 petitions was Mother's use of marijuana, for which she had a legal prescription. We acknowledge that the mere *use* of medical marijuana will not support a jurisdictional finding bringing a minor within the jurisdiction of the juvenile court. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452-453; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 764.) However, nowhere did the court indicate that Mother's mere *use* of marijuana was the basis for its decision. Rather, the juvenile court noted that its decision was largely based on Mother's *abuse* of various substances over a 20-year period. Indeed, jurisdiction in the instant matter was taken, in part, based on Mother's substance *abuse*.

Moreover, there was at least some evidence in the record that Mother was not just using, but abusing, marijuana. In Mother's own petition she alleged she had a current marijuana card with a prescription for THC in rub and edible form to be taken *once weekly* for insomnia and anxiety. Yet, in that very same petition, she stated she used marijuana *twice a day*. Mother later testified that she used it once or *twice weekly*. Thus, even if the juvenile court's decision was based in part on Mother's marijuana use, substantial evidence supported a determination Mother was not just using, but abusing,

marijuana. The juvenile court's denials of Mother's section 388 petitions was within its discretion.

### III. DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.