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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.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.M. et al.,

Defendants and Appellants.

E064912

(Super.Ct.No. INJ020870)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.

Affirmed.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant Mother.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant and Appellant Father.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman and

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

## I

### INTRODUCTION

M.M. (mother) and M.R.Sr. (father) appeal termination of their parental rights to their son, M.R. (born in 2014), and denial of their petitions seeking placement of M.R. in their home or alternatively reinstatement of reunification services under Welfare and Institutions Code section 388.<sup>1</sup> We conclude, as did the trial court, that mother and father (parents) did not sufficiently demonstrate changed circumstances or that it was in M.R.'s best interest to grant parents' section 388 petitions. We therefore affirm the orders denying the section 388 petitions and terminating parental rights.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

In March 2014, before M.R.'s birth, the Riverside County Department of Public Social Services (DPSS) investigated a general neglect referral regarding mother's older children, Ro.D., Ri.D., and A.D.<sup>2</sup> At the time, mother was participating in a Family Preservation Court (FPC) program since July 2013. Mother missed two drug tests in March 2014. DPSS, assisted by law enforcement, investigated the referral.

During the investigation in April 2014, parents admitted using methamphetamine during the past two weeks and were under the influence of the drug. Ro.D., Ri.D., and

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

<sup>2</sup> These three children are not parties to this appeal.

A.D. (the half-siblings) were removed from mother. Ultimately, the petition was dismissed and custody of the three children was awarded to their biological father.<sup>3</sup> Parents were charged with being under the influence of a controlled substance. Mother was also charged with child endangerment but was not arrested because she was eight-months pregnant with M.R.

Parents had been in a relationship with each other during the past year. Parents lived together, sometimes in the maternal grandmother's home. Father, born in 1987, admitted using methamphetamine since he was 15 years old. He used the drug at least twice a day. Father also smoked marijuana daily. Father had a five-year-old daughter he visited once a month. He also had a nine-year-old child and 10-year-old child he never visited. Father had a criminal history consisting of a conviction for domestic violence in 2011. He had one class left to complete of a 52-week anger management program. Father denied he had been involved in any domestic violence with mother. Father was unemployed and received disability.

Mother also had a criminal history consisting of a shoplifting conviction. In 2009, mother's drug use led to the detention of two of her children. After mother received reunification services, the two children reunified with mother and their father. Mother, born in 1988, admitted first using methamphetamine when she was 17 years old. During the juvenile dependency proceedings in 2009, mother attended three substance abuse treatment programs. Before entering substance abuse treatment, mother had been using

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<sup>3</sup> Father is not Ro.D., Ri.D., and A.D.'s biological father.

methamphetamine daily for almost a year and a half. Her longest period of sobriety was one year.

In April 2014, mother enrolled in a substance abuse program but stopped attending the program when her doctor placed her on bed rest. Mother gave birth to M.R. in June 2014. Mother and M.R. tested negative for drugs. However, parents' hair follicle drug test results were positive for amphetamine and methamphetamine. M.R. was detained in protective custody on June 20, 2014. M.R. was placed with his paternal aunt (aunt).

### **Juvenile Dependency Petition**

On June 24, 2014, DPSS filed a juvenile dependency petition on behalf of M.R. (petition), alleging parents failed to protect and adequately care for M.R. The petition stated mother had a history of abusing methamphetamine, including using methamphetamine during her pregnancy with M.R. The petition also alleged there were charges pending against mother for being under the influence of a controlled substance and child endangerment; mother had a conviction for shoplifting and was on summary probation until April 2014; and mother had a history with Child Protective Services, resulting in removal of M.R.'s half-siblings from mother's custody and placement with their father in June 2014, because of mother's drug abuse. The petition alleged as to M.R.'s father that he also abused controlled substances, including methamphetamine and marijuana, was arrested in April 2014 for being under the influence of controlled substance and child endangerment, and was arrested in 2014 and charged with domestic violence.

The juvenile court ordered M.R. detained and placed with his paternal aunt and uncle. The court found father to be M.R.'s presumed father. The court ordered reunification services and visitation for parents. In July 2014, mother began attending a substance abuse program and therapy. At the jurisdiction hearing on September 5, 2014, parents submitted on the petition. The court ordered that M.R. remain with his paternal aunt and uncle.

### **Six-Month Status Review Hearing**

DPSS reported that on February 8, 2015, parents admitted they had been using marijuana and methamphetamine during the past five months. Immediately after mother completed a 45-day inpatient substance abuse program, she began using controlled substances again. Parents acknowledged this contributed to their loss of employment, income, transportation, and their apartment. They currently were living in a studio apartment. Parents did not visit M.R. during a three and a half month period during which parents had relapsed. On April 10, 2015, mother was terminated from the FPC program because she forged her Narcotics Anonymous/Alcoholics Anonymous meeting card.

During the six-month status review hearing on April 15, 2015, the court terminated parents' reunification services, scheduled a section 366.26 hearing, and reduced supervised visitation to once a month. M.R.'s aunt wished to adopt M.R.

### **Section 388 Petitions and Section 366.26 Hearing**

In August 2015, DPSS reported parents were regularly visiting M.R. and their visits were positive. They missed some visits because DPSS no longer provided

transportation. M.R.'s aunt reported that, as a child, father received a mental health diagnosis and took medication, which he was not currently taking. M.R.'s aunt and uncle were willing to allow postadoption contact between M.R. and parents. DPSS reported M.R. was happy and thriving in his prospective adoptive home.

On October 21, 2015, mother filed a section 388 petition requesting to set aside the order on August 13, 2015, continuing the section 366.26 hearing.<sup>4</sup> Mother alleged in her petition that circumstances had changed in that she was beginning phase three of her FPC program, she anticipated completing a parenting class in October 2015, mother tested negatively for drugs since February 2015, she consistently attended group therapy, and she actively participated in a 12-step program. She also regularly visited M.R. and had suitable housing and a source of income. Mother's petition requested placing M.R. with her or, alternatively, reinstating reunification services. She believed this was in M.R.'s best interest because she was living a sober, healthy lifestyle and was prepared to raise M.R. in a responsible, loving home. Mother acknowledged she had experienced serious drug addiction and requested another chance to parent M.R. now that she was sober. Mother filed supplemental supporting documents, which included a letter from her employer confirming that, as of August 10, 2015, mother had been working part time.

On November 6, 2015, father also filed a section 388 petition. Father's section 388 petition requested setting aside the order on April 15, 2015, terminating reunification

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<sup>4</sup> It appears from the record that mother actually intended to set aside the order on April 15, 2015, terminating reunification services and setting the section 366.26 hearing, not the August 13, 2015 order continuing the section 366.26 hearing.

services and setting the section 366.26 hearing. Father alleged circumstances had changed in that he was in phase three of his FPC program, and had completed a parenting course and his case plan requirements. Father requested family maintenance services or reinstatement of reunification services. Father alleged this was in M.R.'s best interest because M.R. would benefit from being raised by parents who had addressed the issues that brought M.R. before the court. Father attached to his petition documents showing that he had enrolled in FPC courses to assist him in maintaining sobriety, was working on phase four of the FPC program, and was doing well in treatment.

DPSS reported in the November 2015 section 366.26 report that parents were making progress in their FPC programs and had maintained sobriety, with the exception of father admitting a relapse on marijuana in September 2015. Parents were employed and father received disability income. Parents lived with maternal grandmother. Parents had regularly visited M.R., with the exception of when visits conflicted with their FPC programs. Visits went well and were appropriate. When mother requested the social worker to allow more visits, the social worker told parents to clear their arrest warrants. Father became argumentative and acknowledged arguing with M.R.'s aunt regarding possible adoption by the aunt. The aunt reported she did not feel safe monitoring father's visits because of his anger. She no longer wanted to supervise his visits after receiving upsetting, threatening texts from father and because of his past anger issues, mental health history, and medication history. The aunt also reported parents had told paternal grandmother that parents had broken up several times. Another relative expressed concern about the aunt's safety.

In November 2015, DPSS provided a preliminary adoptive parent assessment, finding paternal aunt and uncle appropriate to adopt M.R. DPSS's addendum report stated that paternal grandmother told DPSS that father was diagnosed at four years old as an "Aphasic child." This impaired his ability to control his response to anxiety and stress, and prevented him from understanding his physical strength.

Paternal grandmother also reported that she routinely received calls from parents (every three days) about their fighting. Parents were continually fighting and sometimes the fights got out of hand. The fights involved father "punching holes in walls, hitting and physically fighting with each other, throwing chairs and furniture around and out of the home, yelling, screaming, swearing, threatening, and leaving one another." Parents had separated on multiple occasions. Grandmother further stated that, when she had supervised father's visits with his daughter, he had used physical discipline that could hurt the child, requiring grandmother to intervene. Father's aphasia qualified father to receive disability income. When father was 15 or 16 years old, he was diagnosed with bipolar disorder, had two involuntary commitments, and was prescribed medication, which he refused taking.

DPSS acknowledged that parents had been sober for 10 months, were actively participating in FPC programs, had completed parenting courses, and had the support of both of M.R.'s grandmothers. DPSS believed mother did well when supervised but tended to relapse on drugs and engage in domestic violence after case closure. DPSS concluded it was unlikely parents would remain sober and not engage in domestic violence in the absence of DPSS management and supervision. DPSS recommended

denying the section 388 petitions because parents engaged in domestic violence and fighting.

On November 30, 2015, the juvenile court heard and denied parents' section 388 petitions. During the hearing, parents denied paternal grandmother's allegations regarding parents' conduct. The court acknowledged that parents had made some significant changes in their behavior. Nevertheless, the court did not "see in practice substantial change in [their] home environment." The court therefore found parents had not substantially changed their circumstances and granting parents' petitions was not in M.R.'s best interest. After denying the petitions, the court denied mother's request for legal guardianship, selected adoption as M.R.'s permanent plan, and terminated parental rights.

### III

#### DENIAL OF SECTION 388 PETITIONS

Parents contend the juvenile court abused its discretion in denying their section 388 petitions. Parents argue they demonstrated changed circumstances and that it was in M.R.'s best interest to grant their petitions. At the time of the hearing on their section 388 petitions, parents had maintained 10 months of sobriety, with the exception of father relapsing on marijuana in September 2015, two months before the hearing on the section 388 petitions. Despite evidence that parents had made progress in overcoming their substance abuse, we conclude the juvenile court did not abuse its discretion in concluding parents did not establish permanent changed circumstances or that it was in M.R.'s best interests to grant parents' section 388 petitions.

### A. *Applicable Law*

“Section 388 permits a parent to petition the juvenile court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child’s best interests. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*)) After the termination of reunification services, as in the instant case, “the parents’ interest[s] 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], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*))

The determination of whether granting a section 388 petition is in the child’s best interests is “committed to the sound discretion of the juvenile court” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318) and will not be disturbed “unless an abuse of discretion is clearly established.” (*Ibid.*) Here, by the time parents’ had filed their section 388 petitions, reunification services had been terminated and the focus had shifted from reunification to M.R.’s best interests. (*Stephanie M.*, at p. 317.)

### B. *Discussion*

The juvenile court acknowledged at the hearing on the section 388 petitions that parents had made progress in treating their substance abuse, but concluded they had not established that their sobriety was permanent. The juvenile court had the duty to evaluate parents’ 10 months of sobriety against their previous history of failing to maintain

sobriety, and to evaluate the likelihood parents would maintain a stable, sober and noncriminal lifestyle, free from domestic violence, drugs, and turmoil, for the remainder of M.R.'s childhood. Mother was in the third phase of the FPC program and father was beginning the fourth phase. Both parents' visits with M.R. were positive and appropriate.

While parents' belated progress in treating their long history of substance abuse is admirable, it was not sufficient to demonstrate permanent change necessary for setting aside the order terminating reunification services and setting the section 366.26 hearing. Mother had started using methamphetamine when she was 17 years old and had attended three different substance abuse programs during previous juvenile dependency proceedings in 2009. Immediately after completing the FPC program during the previous juvenile dependency proceedings, mother failed to maintain sobriety and relapsed. The longest mother had been sober was one year. Mother's three older children were removed from mother's custody and placed in the children's father's sole custody because of mother's substance abuse. None of M.R.'s father's children lived with him. Mother admitted using methamphetamine while pregnant with M.R., even though at the time she was participating in a FPC program. During the instant proceedings, parents relapsed during a three-month period, from November 2014 to February 2015. They did not visit M.R. during that time. Father also relapsed on marijuana in September 2015, two months before the hearing on the section 388 petitions.

The juvenile court had the duty to evaluate parents' rehabilitation efforts and sobriety during the year and a half of juvenile dependency proceedings in the instant case against their history of relapsing. Given mother's substance abuse history, the juvenile

court reasonably found that mother's 10 months of sobriety "against [her] previous failings," did not show sufficiently changed circumstances requiring a resumption of reunification services. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 918.) The trial court reasonably concluded parents, who had long-standing substance abuse problems, had not demonstrated it was likely they would maintain a stable, sober lifestyle for the remainder of M.R.'s childhood. (*Ibid.*) In addition, the juvenile court did not abuse its discretion in finding that parents' home environment had not changed. Parents' relationship with each other remained volatile and unstable. Father had a history of mental health issues and difficulty controlling his anger, and parents reportedly frequently fought with each other, resulting in parents repeatedly separating and reuniting.

We also reject parents' contention that the juvenile court abused its discretion by finding that additional reunification services would not be in M.R.'s best interests. Our limited power of review requires us to "accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*Casey D., supra*, 70 Cal.App.4th at p. 53.) By the time of the hearing on the section 388 petitions on November 30, 2015, parents were in the midst of a FCP drug treatment program. They had not progressed beyond supervised visits with M.R. who had been detained since June 2014. M.R. had lived with his prospective adoptive parents almost his entire life.

Although parents requested resumption of reunification services, the juvenile court reasonably found that parents had not demonstrated that such services would actually benefit M.R. Nor was there any evidence that M.R. was likely to suffer harm from the

denial of reunification services. Given M.R.'s need for a stable home environment, free from drugs, domestic violence, turmoil, and the uncertainty that parents would succeed in maintaining permanent sobriety, the juvenile court appropriately and reasonably concluded that parents had not sufficiently demonstrated that it would be in M.R.'s best interests to grant parents' section 388 petitions. The juvenile court therefore did not abuse its discretion in denying parents' section 388 petitions and terminating parents' parental rights.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

HOLLENHORST

Acting P. J.

SLOUGH

J.