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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re H.G., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.M. et al.,

Defendants and Appellants.

E064992

(Super.Ct.No. RIJ1301197)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

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

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant D.G.

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

On October 26, 2015, the juvenile court denied defendant and respondent C.M.'s (Mother) Welfare and Institutions Code section 388¹ petition without an evidentiary hearing. On December 8, 2015, the juvenile court terminated the parental rights of Mother and defendant and respondent D.G. (Father).

On appeal, Mother contends the court erred by denying her section 388 petition without permitting an evidentiary hearing. Father argues the court erred in finding the beneficial parent relationship exception to the termination of his parental rights inapplicable. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY²

On October 28, 2013, police arrested Mother on charges of felony infliction of corporal injury after she hit Father numerous times, causing him to sustain injuries. The police indicated the parents had a significant history of domestic violence requiring police intervention on numerous occasions, including the arrest of both parents on September 7, 2012. The parents lived with the paternal grandparents (PGPs) and the

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

² Mother previously filed a petition for extraordinary writ from the order setting the section 366.26 hearing. We issued an opinion in the matter, case No. E063909, on September 9, 2015. We have considered the record in that case in the instant case. Our factual and procedural history in this case is largely derived from the opinion in case No. E063909.

paternal uncle. Mother had filed restraining orders against Father, the paternal grandfather, and the paternal uncle citing domestic violence, but later requested dismissal of the orders and moved back into the PGPs' home.

Mother had been diagnosed with bipolar disorder. Father informed the social worker Mother had stopped taking her medication. Father was on probation. There had been two prior department referrals regarding the parents for general neglect; one had been determined inconclusive and the other unfounded. The social worker took minor into protective custody.

Attorneys for plaintiff and respondent, Riverside County Department of Public Social Services (the Department), filed a juvenile dependency petition on October 30, 2013, alleging the parents had failed to protect minor in that Mother had been arrested for corporal injury to a cohabitant and the parents had engaged in domestic violence in the home (b-1 & b-2), Mother suffered from unresolved mental health issues (b-3), Father abused controlled substances (b-4), and the parents had criminal histories (b-4 & b-5). On or about October 31, 2013, the juvenile court detained minor. An amended juvenile dependency petition filed November 18, 2013, alleged Father also suffered unresolved mental health issues (b-7).

In the jurisdiction and disposition report filed November 20, 2013, the social worker indicated Mother had been released from jail "on or about October 29, 2013" and had been granted 36 months' probation. Nonetheless, Mother did not appear at the detention hearing. The social worker made numerous attempts, to no avail, to arrange a

meeting with Mother in order to interview her. Initially, the social worker could not find Mother. Later, when contacted and a meeting was arranged, Mother failed to appear.

The social worker reported Mother “was not willing to provide me with her address. She indicated she was living with her Father in Los Angeles, but again, she did not want to disclose her exact location.” Later still, the social worker was no longer able to contact Mother. The social worker noted that “as of this writing, it appears [Mother] is living a transient lifestyle. It is clear she does not have the provision[s] or the ability to adequately care for [minor] at this time.”

Father reported ““it’s true I got a cut, and [Mother] was hitting me while the baby was present. [Mother] kept hitting me, and I walked out of the room but [Mother] kept following me and hitting me.”” Father admitted he had filed a restraining order against Mother but had not followed through with completing the process.

In an addendum report dated November 25, 2013, the social worker recommended that the parents receive reunification services. The social worker spoke with Mother on the telephone on November 20, 2013. Mother admitted she and Father had a history of fighting and admitted hitting him several times on October 28, 2013. She admitted being arrested on September 7, 2012, for assault. Mother admitted withdrawing a restraining order she had previously obtained against Father. Mother said she continued to communicate with Father by telephone and text.

Father’s criminal history consists of several arrests and/or convictions for petty theft, obstructing a peace officer, and trespass. Father had additional arrests and/or

convictions for vandalism and battery. Mother's criminal history consists of convictions for battery, petty theft, and corporal injury to a cohabitant, the offense for which the instant matter was initiated.

The addendum report filed January 9, 2014, focused on Father. Father had been terminated from one substance abuse program and had inconsistently participated in a subsequent program. Father continually tested positive for marijuana, failing to provide a single negative test. He reported he was unable to enroll in a parenting class and resisted enrolling in an anger management program.

The parents failed to show for the jurisdictional and dispositional hearing on January 9, 2014. The juvenile court found the allegations in the petition true, sustained the petition, found that return of minor to the custody of parents posed a substantial danger to her safety, removed minor from parents' custody, and ordered reunification services for both parents.

In a status review report dated June 20, 2014, the social worker noted Mother was living with Father again in the PGPs' home. Father had been arrested on January 8, 2014, for assault with serious bodily injury for biting the paternal grandfather. Mother completed a 10-week parenting course, but the providers were unable to state whether she benefitted from the program. Mother failed to follow through with counseling and medical evaluation monitoring; she was discharged for chronic absences and noncompliance. The social worker twice referred Mother to domestic violence services,

but Mother left the programs and was discharged for noncompliance. Father had made appointments for services, but failed to show for them.

In an addendum report filed July 28, 2014, the social worker recommended that the juvenile court terminate the parents' reunification services. Father participated in substance abuse services, but admitted continued use of marijuana. Father failed to comply with counseling and medical health services. Father's probation terms required participation in domestic violence services; however, he had been discharged after failing to show for appointments. On January 21, 2014, the parents arrived together at the Department office. Father said they were living together at a friend's home. They changed the restraining order to provide only for no negative contact because they wished to be together.

In an addendum report filed August 21, 2014, the social worker reported that Mother was noncompliant with her visitation schedule with minor as she often missed visits or cut them short. Mother had enrolled in a 16-week anger management program and had seven sessions left to complete the program. Father had not completed, and was no longer participating in, a substance abuse program. On August 19, 2014, Father admitted smoking marijuana a week earlier. Father had enrolled in and dropped out of several anger management programs. At the six-month review hearing on August 26, 2014, the juvenile court continued the parents' reunification services for an additional six months and granted the foster parents de facto parent status.

In the status review report dated December 5, 2014, the social worker again recommended terminating the parents' reunification services. The parents were still in a relationship with one another and living with the PGPs. Father tested positive for marijuana on September 28 and November 14, 2014. Father admitted using marijuana on September 3, 2014, and the week previous to the preparation of the report: "When discussing the Department recommendation to terminate services [the social worker] explained to [Mother] it was a concern that [Father] was still using substances and it would be inappropriate to place [minor] in that situation."

Mother had just enrolled in a domestic violence class on November 10, 2014, but brought Father to classes with her. Father almost got into a fight with another class member. Father was late to visitation with minor and was observed to be emotionally abusive to Mother.

In the addendum report filed January 23, 2015, the social worker noted Father was asked to drug test on December 19, 2014, after minor smelled of marijuana after Father handled her. Father was told a failure to test would be considered as a positive result. Father failed to test. Nonetheless, Father tested negative for drugs on November 25 and December 4, 2014. Father had still failed to complete a substance abuse program. He had completed an anger management class, but did not appear to benefit from it. Father completed a 16-week parenting class, but was recommended to complete a 32-week course due to Father's estimated high rate of substance abuse recidivism. Mother had

attended four sessions of therapy in three months, missing eight out of a total of 12 scheduled sessions.

On January 28, 2015, the court ordered Father to complete a hair follicle drug test; Father failed to show. On February 26, 2015, the social worker filed an addendum report in which she indicated Father was participating in an aftercare substance abuse program.

Father had been diagnosed with severe obsessive-compulsive disorder, attention deficit disorder, and depressive disorder. Father had not seen his doctor since July 2014, when he was given a supply of medication which would have run out in September 2014. Father subsequently attended counseling on February 4, 2015, when he was given a new prescription. Mother had completed 11 out of the 52 sessions of a domestic violence class required for her probation.

On March 3, 2015, Mother testified at the 12-month contested review hearing that she had benefitted from and implemented aspects learned in a 16-week parenting class she had completed. She said she had been in counseling weekly for three months from which she benefitted. Father testified he had not tested positive for controlled substances. He visited with minor for two hours weekly. When minor first saw him during visitation, she called out “dada,” put her hands out toward him, and ran to him. When minor was first born, Father was the only one feeding and changing her diapers. The juvenile court continued the hearing to March 16, 2015.

In the addendum report filed March 11, 2015, the social worker noted that Mother had improved her attendance in therapy. Father had a negative hair follicle drug test on

February 25, 2015. The social worker observed that the quality of Father's visits with minor was poor as he often expressed anger. On March 16, 2015, at the continued 12-month hearing, the juvenile court terminated Father's reunification services, but extended Mother's for an additional six months.

On April 23, 2015, the social worker filed the 18-month review report in which she recommended that the court terminate Mother's reunification services. Mother had completed 16 out of the 52 weekly sessions of the domestic violence class required by her probation. Mother's therapist reported Mother was doing well.

On March 17, 2015, the social worker "gave [Mother] the number for shelters but she was unable to write the number [down] so I asked her to come into the office the following day. On March 18, 2015, I gave her the referral for shelters. I told her she needed to move out as soon as possible. I spoke to her about standing o[on] her own[,] being able to support herself[,] and not depending on the [PGPs]." On March 30, 2015, Mother moved into a shelter, which required her to look for employment and participate in codependency classes. On April 14, 2015, the social worker went to the shelter where she was informed Mother had not been taking her medication.

In the addendum report filed on May 22, 2015, the social worker noted Mother left the shelter on April 30, 2015, and said she was not sure if she was going to return; Mother asked what would happen if she moved back in with Father. Mother had, in fact, already moved back in with Father. Mother missed two sessions of counseling. During

three subsequent visits with Mother, two unsupervised, minor was injured. Mother appeared overwhelmed by any visits with minor lasting over an hour.

On June 5, 2015, the social worker filed an additional addendum report in which she noted Mother was participating in another parenting class. Mother had still completed only 16 out of the 52 weekly sessions of the domestic violence program required by her probation; however, Mother had completed 11 classes in another domestic violence program. Mother still appeared overwhelmed during visitation with minor. During the reporting period, the social worker had found Facebook picture postings of Father with alcohol,³ drugs, and a gun.

In another addendum report filed on June 23, 2015, the social worker reported Mother had ended a visit with minor on June 5, 2015, after she unsuccessfully attempted to redirect minor and minor became injured. Mother told the social worker Mother was considering returning to the shelter. She said she left the shelter because she did not get minor back. Mother inquired of the social worker how Father could get reunification services reinstated. Mother said of minor, if “we lose her together we lose her.” Minor called the de facto parent “mom” and asked her not to leave during visits with the parents.

At the section 366.22 hearing on June 24, 2015, Mother testified she had participated in parenting classes and counseling. She was still living with the PGPs. The shelter Mother had previously resided in allowed children, but she did not wish to return

³ Father was under the age of 21 at the time.

there. She had only received one referral for housing from the social worker. Mother testified she could live with a friend of Father. She was ready to be minor's Mother again.

The court explicated that minor was only three months old when detained and was now almost two years old: "That is an incredibly long time for parents to have had the opportunity to reunify on a six-month case by statute." "And so my concerns with Mother's [request] that [family maintenance services] be afforded to her is that I cannot return her to a household where services have been terminated to Father. It's an inappropriate household for [minor] to be returned to."

The court reasoned that a shelter would have been a good option if Mother had stayed; however, Mother chose to return to the PGPs' home: "It's really Father's residence as well and that creates issues that cannot be overlooked." The juvenile court found that the return of minor to Mother's custody posed a substantial risk of detriment to minor, terminated Mother's reunification services, and set the section 366.26 hearing.

Mother filed a petition for extraordinary writ in which she contended the juvenile court erred in determining there was a substantial risk of detriment to minor if returned to Mother's custody and that it was in minor's best interest to extend services to Mother to enable her to obtain suitable housing. We denied the petition.

In the section 366.26 report filed on October 6, 2015, the social worker recommended that the juvenile court terminate the parents' parental rights. The social worker observed minor had been placed with the prospective adoptive parents (PAPs)

since detention on October 28, 2013. Minor remained stable throughout placement. The PAPs had followed through with all minor's medical needs and provided her with a stable home environment. Minor was healthy, happy, and secure in the placement. The PAPs wished to adopt minor. Minor was very well bonded with the PAPs.

Father had visited weekly until after his reunification services were terminated; visits had then been reduced to once monthly. During Father's weekly visitation, he was described as being distracted by telephone calls. Father would often just sit and watch minor. However, he would sometimes talk or sing to her to get her attention.

When visitation was reduced to once monthly, Father was better able to focus his attention on minor. Father enjoyed visiting with minor but appeared overwhelmed by her energy level. Father would not get on the floor to play with minor, but would watch her play while he was seated in a chair. The PAPs reported that minor would return from visitation with Mother grumpy and with sleeping problems. Minor was injured twice during visits with Mother.

On October 20, 2015, Mother filed a section 388 petition requesting return of minor to her care with family maintenance services. Mother alleged as changed circumstances her engagement in further services, including parenting, individual counseling, and medication management. Mother asserted she had community support and maintained regular visitation with minor. Mother alleged the requested change was in minor's best interest because minor was Mother's only child, Mother had gone through

the dependency system as a foster child herself, and Mother would be a nurturing parent to minor as a result of the benefits accrued from participating in the additional services.

Mother attached to her petition a letter reflecting she had been engaged in psychiatric care from July 2014 to the present; a letter reflecting she had engaged in a total of 23 sessions of therapy beginning in September 2014 directed at parenting, coping skills, stress management, and relationship skills; an attendance sheet reflecting completion of a parenting class attended between May and July 2015; a certificate of completion of the parenting program; and a number of character letters. On October 26, 2015, the juvenile court denied Mother's petition without scheduling an evidentiary hearing. The court noted that the requested change failed to promote the best interests of minor.

On December 8, 2015, the court held the section 366.26 hearing. Mother testified her weekly visitation with minor had changed to monthly visits. Mother said Father's bond with minor was a "good one" because Father is the only father minor has known. Mother reported that minor told Father she loved him at the previous visit.

The parental grandmother testified that minor was happy to see Father at the last visit. She is "a daddy's girl" and ran into his arms. Minor calls Father "daddy." Father feeds minor. The bond between Father and minor has become stronger over the last six months.

Father testified his visitation had been reduced to one hour per month. When minor sees him she runs toward him and calls him “dada.” Father believed the bond between them had become stronger as she had aged. Minor is “a daddy’s girl.”

The court observed that minor had resided with the PAPs since the age of three months: “So over two years at this point in time it’s been the only home she’s known.” The court further noted: “Although I can see a bond between mother, father, and the child, it does not outweigh the statutory preference for permanency.” The court terminated the parents’ parental rights finding that it would not be detrimental to minor.

II. DISCUSSION

A. *Mother’s Section 388 Petition*

Mother contends the court abused its discretion by denying her an evidentiary hearing on her section 388 petition. We disagree.

“To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.]” (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) “Under section 388, a party ‘need only make a prima facie showing to trigger the right to proceed by way of a full hearing.’ [Citation.] The prima facie showing is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.] In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of

the case. [Citation.] The petition must be liberally construed in favor of its sufficiency. [Citations.]” (*In re J.P.* (2014) 229 Cal.App.4th 108, 127.)

“We review a summary denial of a hearing on a modification petition for abuse of discretion. [Citation.] Under this standard of review, we will not disturb the decision of the trial court unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. [Citation.]” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.) “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.)

Here, Mother failed to establish that the requested change, a return of minor to her custody, was in minor’s best interest. Mother had only had custody of minor for the first three months of minor’s life. The Department placed minor with the PAPs when minor was only three months old, over two years before the juvenile court terminated Mother’s parental rights. The juvenile court granted the PAPs de facto parent status reflecting their “close and continuing relationship with” minor. (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66.) Minor called the prospective adoptive mother “mom” and asked her not to leave during minor’s visitation with the parents.

Minor was injured on at least three visits with Mother. Mother’s initial visitation with minor was inconsistent. Mother missed visitation with minor once, and cut short visitation with minor twice in July 2014. In contravention of the agreed upon rules, the parents brought a friend to visitation in September 2014. Mother was 29 minutes late to a

visit in October 2014. Minor reportedly returned to the PAPs grumpy with sleep problems after visitation with Mother.

In one report, the social worker wrote that minor showed no affection for Mother during visits. Moreover, the social worker noted minor “has shown a lack of bonding with her parents and mother struggles with understanding her child’s needs.”

Mother’s visits during the six months preceding termination of her parental rights had been reduced to once monthly. Mother “would often let other family members take over the visit.” Mother appeared overwhelmed when a visit lasted more than an hour. One visit was terminated early when Mother had a difficult time redirecting minor.

Minor was stable, happy, healthy, and secure in her placement with the PAPs. Minor was well bonded with them. Thus, the juvenile court acted within its discretion in determining that it was not in minor’s best interest to be returned to Mother’s custody.

B. Beneficial Parent Relationship Exception

Father contends the court erred in not applying the beneficial parent relationship exception to termination of his parental rights. 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.* (1999) 70 Cal.App.4th 38, 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 that 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” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

Here, Father has failed to demonstrate that termination of his parental rights would be detrimental to minor. Father had only had custody of minor for the first three months of her life. Minor had been in the custody of the PAPs for more than two years when the court terminated Father's parental rights.

Father's initial visitation with minor was inconsistent. Father missed visitation with minor once, and cut short visitation with minor twice in July 2014. During one visit, Father talked on the telephone and left the room. On another, the parents brought a friend to visitation in violation of an agreement that they would not do so. On yet another visit, Father was 29 minutes late.

The social worker cut the duration of visitation because of the ill effects it was having on minor. The social worker described the quality of Father's visitation with minor as "poor" because he often became distracted and angry during visits. In one report, the social worker wrote that minor showed no affection for Father. Moreover, the social worker noted minor "has shown a lack of bonding with her parents" During the last six months before Father's parental rights were terminated, his visits had been reduced to once monthly.

Minor was stable, happy, healthy, and secure in her placement with the PAPs. Minor was well bonded with them. Thus, substantial evidence supported the juvenile court's determination that any bond between Father and minor did not outweigh the security and stability minor would retain by moving toward a permanent legal status in the PAPs' home.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

SLOUGH
J.