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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

In re L.S., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

E065422

(Super.Ct.No. RIJ1400965)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Judge. Affirmed.

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

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and  
Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

J.S. (mother) appeals from the juvenile court's order denying her Welfare and Institutions Code section 388 petition and the judgment terminating her parental rights (§ 366.26)<sup>1</sup> with respect to her child, L.S. Mother contends the trial court abused its discretion by denying her section 388 petition.<sup>2</sup> Finding no abuse of discretion, we affirm.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Jurisdiction and Removal*

Mother and her newborn daughter, L.S., came to the attention of the Riverside County Department of Public Social Services (the Department) on August 6, 2014, by way of a referral for general neglect.

A social worker visited mother and child in the hospital the same day. At the time, mother was 27 years old. Mother told the social worker she did not feel a bond with the baby and did not intend to keep her. She admitted to past intravenous methamphetamine and marijuana use. She said she had used methamphetamines through the seventh month of her pregnancy because she wanted to induce termination. When she was about seven months pregnant she decided to get prenatal care and stop using drugs. She reported she was no longer in a relationship with the father, she harbored negative feelings toward

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<sup>1</sup> Unlabeled statutory citations refer to the Welfare and Institutions Code.

<sup>2</sup> Mother's challenge to the judgment terminating her parental rights is based on the success of her challenge to the court's denial of her section 388 petition.

him, and that he was incarcerated. She said she had been staying with her own father, but he had asked her to leave and she was homeless. Mother reported L.S.'s maternal grandmother wanted to take custody of the baby and become her legal guardian and that she agreed with this arrangement.

On August 8, 2014, the hospital discharged L.S. and she went home with her grandmother. Grandmother reported to the social worker that she and mother had agreed grandmother would keep L.S. and file for legal guardianship, and that she had begun to fill out the guardianship paperwork. The Department approved the grandmother's home and approved grandmother for placement.

On August 22, 2014, grandmother reported mother no longer wished to relinquish the child, but wanted to reunify with her. On September 5, 2014, mother failed to appear at a family services meeting and the social worker was unable to contact her. On September 8, 2014, the social worker determined mother had been arrested four days earlier for being under the influence and in possession of a controlled substance.

On September 9, 2014, the Department filed a dependency petition on the basis that L.S. suffered or is at substantial risk of suffering serious physical harm or illness (§ 300, subd. (b)) and that her parents are incarcerated and cannot arrange for her care (§ 300, subd. (g)). The Department made the following allegations supported by the social worker's report. "Mother neglected the health and safety of [L.S.] in that she abused methamphetamine and marijuana during pregnancy and received limited prenatal care" (allegation b-1). She had "an extensive and unresolved history of abusing

controlled substances including but not limited to methamphetamine” (allegation b-1). Mother was homeless, led “a transient lifestyle[,] and is unable to provide the child with a safe and stable home environment” (allegation b-2). Mother also had “a criminal history for arrests and/or convictions for multiple drug related charges” (allegation b-3). Finally, the Department alleged mother was “currently incarcerated . . . and . . . unable to provide care and support” for L.S. (allegation g-1).<sup>3</sup>

On September 10, 2014, based on the social worker’s report, the juvenile court found the Department had established a prima facie case L.S. came within section 300, subdivisions (b) and (g), and ordered her detained. The court ordered two-hour bi-weekly supervised visits for mother.

On October 17, 2014, the social worker met with mother in advance of the jurisdictional and dispositional hearing and prepared a report setting out the following facts. Mother admitted all the allegations in the Department’s petition, except allegation g-1. She told the social worker that L.S.’s father “introduced her to methamphetamines when she was 12 years old.” She admitted she abused methamphetamine and marijuana during pregnancy and received limited prenatal care, had a history of abusing controlled substances including methamphetamine, led a transient lifestyle and could not provide L.S. with a safe and stable home, and had a history of arrests and convictions for drug

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<sup>3</sup> L.S.’s father also had an extensive history of drug abuse, arrests, and incarceration, and the juvenile court also terminated his parental rights. However, father is not a party to this appeal.

offenses. However, she denied she was incarcerated, but admitted “she had been arrested on two occasions in the past two months.”

The juvenile court held a jurisdictional and dispositional hearing on November 25, 2014. Based on the social worker’s two reports, the juvenile court found all the subdivision (b) allegations true by a preponderance of the evidence. The court found the allegation that mother was incarcerated to be not proven. The court sustained the petition and adjudged L.S. a dependent of the court. The court removed L.S. from her parents, ordered the Department to provide mother with reunification services, and approved mother’s case plan.

*B. The Reunification Period*

Mother received reunification services for about six months. Initially, she made limited progress on her case plan. Although she completed a five-week inpatient recovery program on January 19, 2015, she reported to the social worker on May 5, 2015 that she had relapsed “two months ago.” She reported being “unemployed and currently looking for work.” She also reported she lived with her father, but “was told her father . . . could not be around [L.S.]” and she was “working with mental health [services]” for assistance that will allow her “to move out” of her father’s home.

As of May 5, 2015, mother was on probation and was required to complete an aftercare program and take random drug tests. She had enrolled in aftercare services at Riverside County Department of Mental Health, “a six month program that meets once a

week.” The program told the social worker mother had “a future appointment scheduled with [a therapist] on May 12, 2015.”

Mother also reported that as of May 5, 2015 she had not visited L.S. for two to three months. She reported grandmother made it difficult to visit, and she “does not like to call her because she ‘makes her feel bad’.” However, the social worker noted grandmother took L.S. to weekly visits when mother resided at the recovery center. At those meetings, mother interacted with L.S., was attentive to her needs, and helped with feedings and diaper changes.

Meanwhile, the social worker reported “grandmother has provided a safe, secure and nurturing environment for [L.S.] She is able to meet [L.S.’s] emotional, physical and educational needs. She is cooperative with the Department<sup>[1]</sup>s directives and has been open to accommodating the mother’s visitation by transporting the child to the visits when they did occur.” According to the social worker, L.S. was thriving in grandmother’s home, called the grandmother “ma ma,” and appeared to have developed a strong bond with her.

According to an addendum report the social worker submitted on June 2, 2015, mother’s compliance with her program subsequently deteriorated. The social worker reported that, though mother enrolled in a recovery program on January 22, 2015, she “was discharged from the . . . [p]rogram for ‘*lack of participation*’ on February 4, 2015.” Mother’s therapist at the Riverside County Department of Mental Health told the social worker that mother “came in ‘*two weeks ago and asked for a transfer to the Day*

*reporting Center in Temecula.”* The therapist also said “she met with [mother] on May 20, 2015 when she attended relapse prevention class[.] However, she missed her groups on May 4, 2015, and May 11, 2015. She also shared that mother *‘failed to complete her psychological intake assessment and was advised to seek prenatal care as it is believed that she is about 2 1/2 months pregnant.’*” Grandmother told the social worker mother “had been with [L.S.] for the past three weekends. She stated . . . *‘[mother] is not attached to [L.S.], and should not be forced to visit with her if she doesn’t want to.’*” The Department recommended terminating mother’s reunification services and setting a section 366.26 hearing.

At the six-month review hearing on June 2, 2015, based on the social worker’s reports, the juvenile court found “[b]y a preponderance of the evidence, the return of this child to the parent would create a substantial risk of detriment to the safety, protection, physical, or emotional well-being of the child” and ordered L.S. “continued as a dependent of this court within the provisions of 300(b) and (g) of the Welfare and Institutions Code.” The court found “[m]other’s progress has been minimal towards alleviating or mitigating the causes that necessitated the placement. [¶] This child was under three years of age at the date of the initial removal from the home. [¶] I . . . find by clear and convincing evidence that [m]other has failed to participate regularly and make substantive progress in the court-ordered treatment plan. There’s no substantial probability of return if given an additional six months of services; therefore, reunification

services are terminated.” The juvenile court ordered a section 366.26 hearing “to select the most appropriate permanent plan for this child.”

C. *Section 366.26 Reports and Mother’s Section 388 Petition*

In the section 366.26 report filed on September 16, 2015, the social worker reported mother had “failed to maintain contact with the Department” and concluded her “ability to meet the needs of the child is unknown and prognosis of returning the child to [her] care is poor.” The social worker reported L.S. had continued living with her grandmother, continued to have a strong bond with her, and was enrolled in preschool. The social worker reported grandmother “has been cooperative and compliant with the Department. She has expressed that she looks forward to providing her granddaughter with a permanent home and has expressed that she will do what is best for her grandchild. [L.S.] is thriving in her current placement and it appears to be in her best interest to continue in placement with the prospective adoptive parent.” The Department concluded L.S. is adoptable and that grandmother expressed interest in adopting her.

The report recommended L.S. “remain[] a dependent of the Riverside Juvenile Court . . . and the parental rights of the mother . . . be terminated.” The report also “requested that the child remain[] in the care of the prospective adoptive parent and that adoption remain[s] as the most appropriate plan.” On December 29, 2015, mother requested a contested hearing and the juvenile court set a hearing for January 28, 2016.

On January 19, 2016, mother filed a section 388 petition asking the juvenile court to change its June 2, 2015 order terminating her reunification services and setting a

section 366.26 hearing.<sup>4</sup> Mother based her request on the fact that “On November 13, 2015, [she] was accepted in the Family Preservation Court program. . . . [She] has tested clean each time she has been asked to drug test. Additionally, on 10/26/2015, [she] gave birth to [a new child]. An Add-Sibling Petition was filed 10/30/2016, requesting the child remain with [m]other. Currently, [the child] is with [m]other in Family Maintenance.” Mother asserted the change of order would be better for L.S. because “[m]other has had regular visits with [L.S.]” and her “sibling is living with [m]other.”

Mother attached to her petition a letter from Mental Health Systems stating, as of December 28, 2015, that mother “was formally accepted in the Family Preservation Court (FPC) on 11/13/15 and is in compliance. [Mother] has been attending FPC court sessions for progress review and is required to attend NA/AA meetings three times a week and has been drug testing regularly.” The program lasts for one year, and mother “is currently in Phase 1 and attends treatment 3x a week. [Mother] is currently and has been participating in relapse prevention and recovery workshops, Personal Growth Skills workshops, reunification planning, educational and vocational support, and frequent/random drug testing.” According to the letter, as of December 28, 2015, mother had “tested 9 times in the program . . . [and] continues to test with negative results[,] . . . has a good attitude and continues to participate well in her groups.” Mother also attached a report showing eight negative drug tests over the period between November 13, 2015 and December 21, 2015.

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<sup>4</sup> Mother listed the order as occurring on June 2, 2016.

On January 25, 2016, the Department filed an addendum report. The social worker reported mother had given birth to a new baby and that “[m]edical records for [mother] regarding [the baby] show that on June 5, 2015, [mother] had a prenatal appointment and admitted at that time to being three weeks clean from Methamphetamines.” The social worker “met with [mother] after being assigned as her social worker for her [new baby]. . . . She informed me that she was attending Riverside Mental Health Substance Abuse Program, parenting classes and submitting to random drug tests. [M]other stated that she was in a better place now and determined to take care of her son.” The social worker also reported mother “had one visit with [L.S.] in September and has had several visits with [L.S.] since the beginning of November 2015, due to the caregiver/maternal grandmother, taking her to the mother’s home to visit with [the new] baby[.] . . . [Mother] has not initiated any visits with [L.S.] on her own.” The Department continued to recommend terminating mother’s parental rights.

*D. Hearing on Mother’s 388 Petition and Termination of Parental Rights*

The court held a hearing on mother’s section 388 petition and on termination of parental rights on February 9, 2016. The parties presented argument, but no testimony. The court reviewed and admitted into evidence the social worker reports and mother’s 388 motion and attachments. The juvenile court found no change in circumstances. It noted “mother is on the right track. She’s in a drug program. She’s currently in the process of changing her circumstances. It looks like she’s doing well, and I applaud her in that she’s making changes. I cannot find changed circumstances at this time. [¶]

Additionally, I don't believe that it is in the best interest of the child to grant the motion. The child is in . . . the only home [she] knows for the last year-and-a-half. . . . So it is not in the best interest to grant the motion.”

The court then found a sufficient basis for terminating mother's parental rights and that adoption is in the best interests of the child. The juvenile court ordered mother's parental rights severed, referred L.S. to the county adoption agency for placement, and ordered that an application for adoption by grandmother be given preference over any other application.

## II

### DISCUSSION

Mother contends the juvenile court abused its discretion by denying her section 388 petition to modify the order terminating reunification services and setting a section 366.26 hearing. We disagree.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a “legitimate change of circumstances” and that undoing the prior order would be in the best interest of the child. [Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959.) To support a section 388 petition, the change in circumstances must be substantial. (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577.)

“The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion. [Citations.]” (*In re S.J., supra*, 167 Cal.App.4th at pp. 959-960.) “[W]e 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.” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

Here, the primary problem leading to dependency was mother’s long-term abuse of methamphetamine, and it is that circumstance she claims to have changed. Mother was denied reunification services because she failed to participate regularly and make substantive progress in her treatment plan. Early in the dependency period, she participated in a one-month in-patient program. After completing the program, however, her progress deteriorated rapidly. She reported having a relapse within approximately one month. Though she enrolled in a recovery program on January 22, 2015, she “was discharged from the . . . [p]rogram for ‘*lack of participation*’ on February 4, 2015.” She also missed mental health meetings on May 4, 2015 and May 11, 2015, and failed to complete her psychological intake assessment. Moreover, she has an extensive history of substance abuse; she began using methamphetamine at age 12 and has a long history of arrests for drug possession.

Mother contends she showed a change in circumstances by enrolling and making progress in a drug treatment program after the birth of her new child. She requested modification on the basis that “On November 13, 2015, [she] was accepted in the Family

Preservation Court program” and has since “tested clean each time she has been asked to drug test.” A December 28, 2015 letter from Mental Health Systems confirms these facts. The letter indicates the treatment program lasts for a year, and mother “is currently in Phase 1” and had “tested 9 times in the program . . . [and] continues to test with negative results.”

We commend mother for enrolling in a one-year substance abuse treatment program. However, even assuming mother maintained her sobriety through the February 9, 2016 hearing, it is well established that such a short period of sobriety does not demonstrate changed circumstances. On the contrary, “[i]t is the nature of addiction that one must be ‘clean’ for a much longer period . . . to show real reform.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9; see also *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [no changed circumstances where “recent efforts at rehabilitation were only three months old at the time of the section 366.26 hearing”].) Mother’s enrollment and first group of negative drug tests demonstrated only that she has taken a first step in her long process of recovery.<sup>5</sup> The juvenile court’s conclusion these efforts were insufficient

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<sup>5</sup> The record does not support mother’s contention she has been “sober since June 2015.” On June 5, 2015, mother told a physician she had not taken methamphetamine for three weeks. However, the evidence of her recent sobriety comes from the period when she was enrolled in the Family Preservation Court, starting on November 13, 2015. Mother has not cited any record evidence to show she maintained sobriety between June 5 and November 13, 2015. In any event, even seven months of sobriety is insufficient to establish a change in circumstances where, as here, a parent has a long history of drug addiction. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423.)

to show a change in circumstances with respect to her drug addiction was not arbitrary, capricious, or patently absurd.

Mother also failed to show six more months of reunification services would be in L.S.'s best interest. L.S. was placed with her grandmother within days of her birth and has spent nearly her entire life in grandmother's care. According to the Department, L.S. has bonded with her grandmother, and grandmother has provided the stable, safe home mother could not provide. By contrast, mother admitted she did not initially bond with L.S. and she made little effort to visit her. Even during the periods when mother did visit L.S., it was the grandmother who initiated the visits. Grandmother took L.S. to visit mother between December 9, 2014 and January 19, 2015, when mother was in residential treatment. Subsequently, her visits lapsed. Mother indicates her visits resumed in late 2015. However, even then, the social worker reported grandmother took the initiative to ensure L.S. could spend time with her new baby brother, and grandmother reported that mother still had not bonded with L.S. On these facts, we cannot conclude the juvenile court abused its discretion in determining additional reunification services were not in the best interest of the child.

Nor can we conclude reunification in the same household with her new baby brother overcomes L.S.'s interest in maintaining the stability of her current home. Once the court terminated services, the child's interest in the permanency and stability she found outside mother's care was paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 [“After the termination of reunification services . . . ‘the focus shifts to the needs of

the child for permanency and stability”].) We cannot conclude the juvenile court acted unreasonably or arbitrarily in finding it would be detrimental to disturb the bond between the child and her grandmother (and prospective adoptive parent) and to introduce further delay in the process of adoption.

### III

#### DISPOSITION

We affirm the order denying mother’s section 388 petition.

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SLOUGH  
J.

We concur:

HOLLENHORST  
Acting P. J.

CODRINGTON  
J.