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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.B., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.R.,

Defendant and Appellant.

E065819

(Super.Ct.No. SWJ1400037)

OPINION

APPEAL from the Superior Court of Riverside County. Timothy F. Freer, Judge.

Affirmed.

Donna P. Chirco, 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.

K.R., the mother of R.B. (mother), appeals an order terminating her parental rights.<sup>1</sup> She asserts that the juvenile court erred by failing to hold a hearing on her petition for modification of the order terminating her reunification services and by failing to apply the beneficial parent-child relationship exception to the statutory preference for adoption of children following termination of parental rights.

We will affirm the judgment.

### FACTUAL AND PROCEDURAL HISTORY

R.B. (hereafter R.) was detained at birth because she tested positive for amphetamines. A petition pursuant to Welfare and Institutions Code section 300<sup>2</sup> was filed, alleging that R. was at risk of serious physical harm because both parents abused controlled substances; mother had neglected the child's health and well-being by failing to obtain adequate prenatal care and by using controlled substances during the pregnancy; and the father had an extensive criminal history, including multiple arrests for possession of controlled substances and for unlawful intercourse with a minor.<sup>3</sup>

At the detention hearing, the juvenile court ordered reunification services for both parents, including supervised visitation, substance abuse programs and random drug testing.

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<sup>1</sup> C.B., the child's presumed and biological father, is not a party to the appeal.

<sup>2</sup> All statutory citations refer to the Welfare and Institutions Code.

<sup>3</sup> The mother was 17 years old when R.B. was born; the father was 33 years old. This criminal charge apparently arose out of their relationship.

Before the jurisdiction and disposition hearing, an amended petition was filed. Based on information received by the social worker, the allegation that the mother had failed to obtain adequate prenatal care was stricken. The allegation concerning the father's criminal history was stricken as well, although the record does not make the reason for that clear. The parents submitted on the first amended petition and the court sustained it. Based on the parents' statements, the court found that the Indian Child Welfare Act does not apply. The court found that the parents had made minimal progress in alleviating or mitigating the causes necessitating placement and ordered R. continued in foster care. Prior orders concerning visitation and reunification services were continued in effect. Mother had been unable to find an in-patient program that would accept her because of her age. The court urged her to make further efforts to find a program that would accept her.

Reunification services were ordered for an additional six months at the six-month review hearing. The child was continued in foster care.

Mother gave birth to a second child in January 2015. The baby was delivered very prematurely, at 24 weeks' gestation. Mother had not advised the social worker that she was pregnant and had denied being pregnant when she was asked.

During the six- to 12-month reporting period, the parents had two supervised visits a week. They visited consistently, except when mother was ill, and R. appeared to be bonding with them. The parents were otherwise in compliance with their case plan.

At the 12-month review hearing on March 23, 2015, R. was placed with her parents with family maintenance services. The court ordered that R. was not to be left alone with the maternal grandmother, although the record does not reveal the reason for this order.

In July 2015, the Department of Public Social Services began an investigation into allegations of general neglect of R. When social workers made an unannounced visit, they found R. alone with the maternal grandmother. The maternal grandmother reported that she had “kicked” father out of the house two weeks earlier. She also reported that mother had taken the medically fragile newborn to visit the maternal grandfather in Lakewood and had been there over a week because she did not have transportation to come home. Mother later reported that she and father were no longer in a relationship and asked to be placed in a drug program because caring for the two children on her own was causing her a great deal of stress.

On August 3, 2015, the maternal grandmother called the social worker to report that she had had a physical altercation with mother the night before and that she wanted mother out of the house.

On September 9, 2015, R. was removed from her parents and a supplemental petition was filed on September 11, 2015. The petition alleged that the previous

disposition had not been effective in protecting R. and that the parents were not in compliance with their case plan. On September 16, 2015, R. was ordered detained.<sup>4</sup>

In the report prepared for the jurisdiction and disposition hearing on the supplemental petition, the social worker reported that she had had great difficulty in contacting mother. When she finally did contact her, mother stated that she had been in a deep depression and was not doing well. She reported that she did not have a stable home and had been staying with the maternal grandmother and with friends. She denied any drug use, however, and said that she was not with R.'s father. The maternal grandmother reported that mother was not staying with her but was staying with different friends. Father reported that mother had been hanging out with known drug users. Father also reported that he was unemployed and living in his car. He admitted that he had been using methamphetamine and heroin.

At the jurisdiction and disposition hearing, the court sustained the petition and continued R. as a dependent of the court. The court denied further reunification services to the parents because reunification was not in R.'s best interest and because they had exceeded the statutory time limits. The court set a hearing pursuant to section 366.26.

Mother filed a section 388 petition for modification of the order terminating reunification services and setting the section 366.26 hearing. The petition was filed on the day before the scheduled hearing date. The hearing was continued for three days because mother was unable to attend on the original date. At the hearing, the court

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<sup>4</sup> R.'s sibling is not a party to this appeal. Consequently, we omit any discussion of the proceedings as they pertain to her.

denied the section 388 petition. The court also found that none of the exceptions to the statutory preference for adoption were present and terminated parental rights.

Mother filed a timely notice of appeal.

## LEGAL ANALYSIS

1.

### PETITION FOR MODIFICATION

Immediately before the selection and implementation hearing, mother filed a petition, pursuant to section 388, seeking an order vacating the section 366.26 hearing and reinstating services. On appeal, she contends that the order terminating parental rights must be reversed because the juvenile court abused its discretion when it denied the petition without an evidentiary hearing.

Section 388 provides, in pertinent part:

“(a)(1) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall . . . set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.

“[¶] . . . [¶]

“(d) If it appears that the best interests of the child . . . may be promoted by the proposed change of order . . . the court shall order that a hearing be held.”

In order to warrant a hearing, the petition must show that new evidence or a genuine change in circumstances exists and it must set forth in detail how the proposed modification will benefit the child. While the petition must be liberally construed in

favor of its sufficiency (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; Cal. Rules of Court, rule 5.570(a)), the allegations must nonetheless describe specifically how the order sought in the petition will advance the child's best interests. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; *In re Zachary G.*, at p. 806.) In addition, once reunification services have been terminated, the focus of the proceedings shifts from reunification of the family to the child's needs for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) At that point, there is a rebuttable presumption that continued foster care is in the best interest of the child. (*Ibid.*) Accordingly, in order to make a prima facie showing warranting a hearing at that point in the proceedings, the petition must state facts which would support the conclusion that the requested order would promote the child's interest in permanence and stability. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) If the petition fails to do so, the court may deny it summarily. (*Ibid.*) In the alternative, if the court does not deny the petition summarily, it may hold a hearing for the purpose of allowing counsel to argue whether the petition's allegations are sufficient to warrant an evidentiary hearing. (Cal. Rules of Court, rule 5.570(f).) That is what the court did in this case.

We review an order denying a section 388 petition for abuse of discretion. (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 525-526.)

Here, denying the petition without an evidentiary hearing was not an abuse of discretion. Neither the petition nor the argument of counsel at the hearing addressed how the requested order would promote R.'s best interest. The petition stated only that mother and R. shared a strong bond, and counsel did not address the question at all in his

argument at the hearing. The juvenile court relied on the preliminary adoption report to conclude that R. was doing well and that mother had failed to state facts that would show that R. would benefit from being removed from that placement. We would add to that analysis that the mere existence of a bond between mother and R. does not address the question of how reinstating reunification services would promote R's interest in permanency and stability, particularly in light of the fact that R. had already been removed once from the prospective adoptive home and then returned after several months when the placement with mother failed.

Mother does not explain how that was an abuse of discretion. She merely argues the evidence that was favorable to her and which, in her view, entitled her to an evidentiary hearing. She also does not address the fact that at the jurisdiction and disposition hearing on the supplemental petition, the court denied further reunification services in part because the statutory time for reunification had elapsed. Neither her petition nor her appellate briefing explains how any change in her circumstances could overcome that hurdle to reinstatement of services.

## 2.

### THE BENEFICIAL PARENT-CHILD RELATIONSHIP EXCEPTION

Mother contends that the court erred by failing to apply the beneficial parent-child relationship exception to the statutory preference for adoption as the child's permanent plan. She contends that substantial evidence supported a finding that the exception applies and that the order terminated her parental rights must be reversed.

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . .’ (§ 366.26, subd. (c)(1)(B)[(i)].)” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*)) Under these provisions, “the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a *compelling* reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances . . . ‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’” (*In re Celine R.* (2003) 31 Cal.4th 45, 53, italics added (*Celine R.*)) “Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.” (*Ibid.*)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*Id.* at pp. 1314-1315.) A parental relationship is “beneficial” within the meaning of the exception if it promotes the well-being of the child to such a degree as to outweigh the benefit the child would gain in a permanent home with adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court’s finding that the beneficial parental relationship exception does

not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a "compelling reason" (*Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*Bailey J.*, at pp. 1314-1315.)

Because it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence *compels* such a finding as a matter of law. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Mother argues that "compelling" evidence supports the conclusion that a beneficial parental relationship existed because she had visited with R. regularly and consistently throughout the dependency, she was loving and attentive during visits, and she had had R. in her care for approximately six months before R. was removed again and the supplemental petition was filed. This evidence is not sufficient to compel the conclusion that the exception applies. Accordingly, mother's argument fails.

DISPOSITION

The judgment is affirmed.

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McKINSTER  
Acting P. J.

We concur:

CODRINGTON  
J.

SLOUGH  
J.