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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re H.F. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINE F.,

Defendant and Appellant.

F063259

(Super. Ct. Nos. 515821 & 515822)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Amaral, Judge.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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*Before Dawson, Acting P.J., Kane, J. and Franson, J.

Christine F. (mother) is the mother of children found to be dependents of the juvenile court. At the six-month review hearing, the court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26.¹ Four months later, mother filed a petition for modification pursuant to section 388. The juvenile court denied the section 388 petition without a hearing and proceeded with the section 366.26 hearing. Mother appeals from the denial of the section 388 petition. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has four children; the youngest two, H. and A., are the subject of this appeal. The fathers of H. and A. are unknown.

When A. was born in January of 2010, both he and mother tested positive for methamphetamine. Mother admitted using the drug two days prior to A.'s birth. She also admitted to being a convicted drug felon and that she was arrested in 2007 for child endangerment. Mother, who was 29, admitted using methamphetamine since she was 15.

Mother agreed to, but did not immediately begin, voluntary services. She continued to use methamphetamine. In February 2010, mother placed her four children with various friends and family: B., age 11, was placed with her grandmother; S. age four, and A., age one month, were placed with mother's aunt; and H., age two, was left with family friends who had maintained almost constant custody of her since birth. When the children were placed with the voluntary caretakers, it became immediately apparent that the children's medical and dental care had been neglected. H. had a high fever, but mother had failed to provide the caretaker with either a Medi-Cal card or an authorization for consent to medical care, so the caretaker was unable to obtain medical treatment for her.

During the six-month voluntary service period, mother was arrested twice. Mother claimed she got herself arrested because it was the only way to maintain sobriety.

¹All statutory references are to the Welfare and Institutions Code.

Both times after she left jail she again began using methamphetamine. She entered a residential drug treatment program in June of 2010 and graduated a month later, but soon relapsed.

In July of 2010, the Stanislaus County Community Services Agency (the agency) filed a section 300, subdivision (b) petition alleging that voluntary services had been unsuccessful and that, due to her drug use and criminal behavior, mother was unable to care for her children. At the time of the detention hearing, B. remained with her grandmother and S. was placed with his father. H. was allowed to remain with the family friends who had cared for her most of her life. A. was placed in foster care.

In August of 2010, S. was found to be a dependent of the court, was placed with his father, and jurisdiction as to him was dismissed. In September of 2010, mother waived her rights and submitted on the petition and reports. The matter was set for a contested disposition hearing.

The addendum report filed in anticipation of the disposition hearing requested a clinical assessment of mother to determine whether there was a mental health component to her inability to remain drug free and parent her children. The report also noted mother's continued desire to have A. placed with an aunt. But according to the report, the aunt was unable to pass the background investigation, she had ongoing contact with appellant, and she was no longer interested in placement of A.

In October of 2010, the juvenile court declared the remaining three minors to be dependents. B. remained with her grandmother, but services were ordered for mother and B.'s father who was being released from prison. Services for B. were ordered for a year because she was over the age of three and was not placed with her siblings. Services for A. and H. were limited to six months. Services consisted of visitation, a parenting class, individual counseling, random drug tests, and a substance abuse assessment and appropriate treatment.

An interim review report prepared in December of 2010 stated that mother had entered and completed a residential treatment program but had failed to appear for her aftercare program. The children were doing well in their placements.

The report filed in anticipation of the six-month review hearing recommended that services for mother as to H. and A. be terminated. Mother was noncompliant with all aspects of her reunification plan. She failed to appear to set up her parenting class and counseling sessions, she drug tested dirty, and she had not re-entered drug treatment. Mother's visits with the children were sporadic. She was hesitant to visit the children alone and abruptly left one visit without saying good-bye to the children because she did not want to attend a team decision meeting to be held that day. Mother remained homeless and had no means to care for her children. A. was bonding with his foster parents and calling them "mama" and "dada." There was no update on how H. was doing.

At the April 14, 2011, review hearing, the juvenile court terminated services to mother regarding H. and A. and set a section 366.26 hearing for August 11, 2011. Services were continued for B. At that time, mother had been assessed at Nirvana, a treatment facility, and had tested positive for methamphetamine, marijuana, and alcohol. She was on a two-week wait list for a bed at the facility. The court noted its disappointment with mother's "lack of progress" and for her failure to maintain sobriety after completing treatment and failure to attend "even the first day of outpatient treatment." The court stated further:

"[M]other does need to know that if she really, really is serious and gets into Nirvana right away, and gets into a program, and then thereafter actually engages in—seriously engages in an intensive outpatient treatment program or gets into [an alternate program] or does something, it is always possible to file a modification to come back into court before a .26 hearing. [¶] A .26 hearing will be the time when the Court would terminate your parental rights. But you know you have had some options, and you didn't use them when you really should of [*sic*], and that's the difficulty.... [¶] ... [¶] If you can manage to do it and keep yourself clean and show that you are really serious and you file a modification, you can still come back and

try and reopen services if you can show that you are deserving of that, but you are going to have to show that you are serious.”

The August 1, 2011, report filed in anticipation of the section 366.26 hearing stated that H.’s caretakers had been providing for her care most of her life, had been her official placement for over a year, and that they wished to adopt her. A.’s foster parents also wished to adopt him. He had been placed with them since he was six months old and had “only known his current caregivers as his parents due to his young age.” The agency recommended that mother’s parental rights be terminated and H. and A. be placed for adoption with their current caregivers. The contested section 366.26 hearing was eventually scheduled for September 6, 2011.

On August 23, 2011, mother filed a section 388 petition seeking to reopen reunification services for H. and A. She alleged that, as of August 15, 2011, she had been clean for 95 days, she lived in a clean and sober living center, she attended First Step outpatient program, attended Narcotics Anonymous regularly, and continued to visit the children and that visits “go well.” She attached letters from providers to substantiate these allegations. Specifically, mother alleged:

“It is in the children’s best interests to reunify with a parent when at [*sic*] possible, as this request will allow them the opportunity to be returned to their mother. Moreover, the ultimate goal for dependency court is return children to a parent, and mother can provide the safe & stable permanent home for children if given additional time. The children have, and will, benefit from continued contact with mother & other siblings.”

The petition noted that the social worker and A.’s attorney disagreed with this request.

On August 25, 2011, the juvenile court summarily denied the petition without a hearing, checking the box which indicates, “The proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child.” A contested section 366.26 hearing was held on September 6 and 7, 2011. The matter was taken under submission for ruling in writing by the court.

DISCUSSION

Mother now contends that the juvenile court abused its discretion when it summarily denied her section 388 petition because she made a prima facie showing entitling her to a hearing. We disagree.

“Under section 388,^[2] a parent may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that there is a change of circumstances or new evidence, and the proposed modification is in the minor’s best interests. [Citations.]” (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.)

The petition for modification under section 388 must contain a “concise statement of any change of circumstance or new evidence that requires changing the [prior] order.” (Cal. Rules of Court, rule 5.570(a)(7).) The parent seeking modification must “make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) Thus, “[t]here are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

When determining whether the petition makes the necessary showing, the juvenile court must liberally construe it in favor of its sufficiency. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) Section 388 specifies that the court must order a hearing to be held, “[i]f it appears that the best interests of the child may be promoted by the proposed change of order” (§ 388, subd. (d).) “The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a

²Section 388, subdivision (a) reads, in relevant part: “Any parent or other person having an interest in a child ... 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 be verified and ... 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.”

favorable decision on the petition.’ [Citations.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

We apply the abuse of discretion standard in our review of the juvenile court’s decision to deny the section 388 petition without a hearing. (*In re Brittany K.*, *supra*, 127 Cal.App.4th at p. 1505.) We affirm the order unless it ““exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*Ibid.*) The juvenile court’s decision will not be disturbed ““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.”” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

In the present matter, the trial court did not abuse its discretion in concluding that mother did not make a prima facie showing entitling her to a hearing on the petition. Mother’s petition stated that she had been drug free for 95 days as of August 11, 2011, that she was living in the Redwood Family Center’s clean and sober living center, that she was attending First Step outpatient program, and that she was attending Narcotics Anonymous regularly. She attached letters from these providers to substantiate these allegations.

While each of the steps taken by mother are positive ones, when “determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) Here, the juvenile court had before it evidence of mother’s long-time substance abuse, her repeated attempts to get sober, and her repeated relapses. It also had before it evidence that mother waited until the “last minute” to begin making the necessary changes. Thus, even if these allegations are accepted at face value, the fact that mother is continuing in her recovery from drug abuse does not suffice to meet her burden of establishing a prima facie case of changed circumstances. Given the severity of mother’s drug use and history of relapse, as well as abandoning her children when parenting becomes too overwhelming, the juvenile court could reasonably find that these short-term

gains were not particularly compelling. (E.g., *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [“[father’s] seven months of sobriety since his relapse . . . , while commendable, was nothing new”].)

Moreover, mother’s conclusory statements in her section 388 petition that “[i]t is in the children’s best interests to reunify with a parent,” that she could provide “the safe & stable permanent home for [the] children if given additional time,” and that “[t]he children have, and will, benefit from continued contact with mother & other siblings,” do not, by themselves, support a finding that the children’s best interests would have been promoted by granting her additional reunification services. The only mention of visits with the children in the petition states that “[m]other continues to visit with her children and the visits go well.” No mention is made of the minors’ progress or her relationship with them. The petition failed to address in any way the strength of the relative bonds of the minors to mother and to their prospective adoptive parents.

“At this point in the proceedings, on the eve of the selection and implementation hearing, the children’s interest in stability was the court’s foremost concern, outweighing any interest mother may have in reunification.” (*In re Anthony W.*, *supra*, 87 Cal.App.4th at pp. 251-252; see *In re Aaron R.* (2005) 130 Cal.App.4th 697, 706 [petitioner’s conclusory allegation that she formed bond with child held insufficient “to rebut the mass of evidence in the record indicating that (the child) was thriving under (his foster mother’s) care].)

H. and A. had never really been parented by mother. H. was left by her mother more often than not with her current caretakers from the time she was born until she was officially placed with them by the agency in 2010. At age four, her proposed adoptive family is the family she has known all her life. Mother placed A. with a relative at age one month and he had been with his current proposed adoptive parents for over a year.

““[C]hildhood does not wait for the parent to become adequate.” [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) “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.]" (*Ibid.*)

The juvenile court properly concluded that mother's section 388 petition did not make a prima facie showing necessary to warrant an evidentiary hearing.

DISPOSITION

The order denying mother's section 388 petition is affirmed.