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

In re AALIYAH A., a Person Coming Under the  
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

AIMEE A.,

Defendant and Appellant.

F063829

(Super. Ct. No. JD116163-01)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Jon E. Stuebbe,  
Judge.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant  
and Appellant.

\* Before Cornell, Acting P.J., Kane, J. and Franson, J.

Theresa A. Goldner, County Counsel, and Kelli R. Falk, Deputy County Counsel,  
for Plaintiff and Respondent.

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Aimee A. appeals from a juvenile dependency order denying her petition filed pursuant to Welfare and Institutions Code section 388<sup>1</sup> seeking reunification services as to her six-year-old daughter, Aaliyah. She contends the juvenile court erred in denying her petition. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Aaliyah, now six years old, has been removed twice from the custody of her mother, Aimee, for physical abuse. Aaliyah was first removed in November 2007 at the age of 20 months after Aimee struck her “as hard as [she] could” with an electrical cord, causing bruising on her forearm, thigh and buttocks. Aimee is mildly mentally retarded with antisocial personality disorder and a propensity for abusive behavior. Aimee identified Byron T. as Aaliyah’s father. In March 2008, the juvenile court adjudged Aaliyah a dependent child pursuant to section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect) and ordered reunification services for Aimee and Byron, who had been elevated to presumed father status. In January 2009, the juvenile court returned Aaliyah to Aimee’s custody with family maintenance services and in July of that year terminated its dependency jurisdiction.

On September 21, 2010, an emergency response social worker from the Kern County Department of Human Services (department) responded to a call from the hospital concerning then four-year-old Aaliyah who was being treated for a basilar skull

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

fracture and bilateral ruptured tympanic membranes. Aaliyah told the social worker, “My mommy ran me over.”

Aimee initially told the police that Aaliyah ran across the street and was hit by a car. During the same interview, however, she admitted that she became upset after Aaliyah refused to get in the car so she decided to teach Aaliyah a lesson. Aimee got in the car, started it and moved it a short distance so that Aaliyah would think she was going to leave her unattended. Aaliyah tried to open the rear passenger door but it was locked. Aaliyah began hitting the side of the door and Aimee told her to move away and that she was going to leave. Aaliyah yelled that she wanted to get in the car but Aimee pressed the gas pedal “a little bit” to move forward. As she did, she felt the car run over something like a “bump.” She immediately got out and saw Aaliyah face down in a kneeling position with her knees, elbows and hands on the pavement. Aaliyah stated, “[M]ommy you ran over my head.”

While the police were at Aimee’s residence, a neighbor approached and told the police that she observed Aimee grabbing Aaliyah by both of her arms and legs and dragging her in the front yard of the apartment on nearly a daily basis. She also said that she frequently saw Aimee yanking Aaliyah by her arms and legs and yelling and cussing at her.

Aimee was arrested and Aaliyah was taken into protective custody at the hospital. Aaliyah ultimately recovered from her injuries without any physical deficits.

The department filed a dependency petition alleging allegations under section 300, subdivisions (a), (b) and (g) (no provision for support). The juvenile court ordered Aaliyah detained and the department placed her in foster care. The department provided Aimee referrals for parenting classes and counseling for perpetrators of physical abuse. Byron was notified of the proceedings and requested paternity testing.

In December 2010, Aimee pled guilty to one count of willful cruelty to a child and one count of misdemeanor providing false information to a police officer. She was sentenced to approximately one year in prison.

In January 2011, the juvenile court sustained the allegations, ordered paternity testing for Byron and set the dispositional hearing, which was continued and conducted in May 2011. Meanwhile, the juvenile court declared that Byron was not Aaliyah's father and ordered paternity testing for alleged father, Kenneth S., who was incarcerated

In April 2011, Aaliyah visited Aimee at the pretrial facility. When Aaliyah saw Aimee, she put both hands on the glass window and Aimee did the same. While waiting to speak to Aimee on the phone, Aaliyah cried and stated that she did not like the jail because she could not touch her mother. Once she had the phone, Aaliyah cried to Aimee that she wanted to be with her but did not want her to run over her again. She cried while being transported to preschool.

In May 2011, at the dispositional hearing, the juvenile court denied Aimee and Kenneth reunification services pursuant to section 361.5, subdivision (b)(3) (additional physical abuse) and subdivision (a) (no benefit to child), respectively. The court ordered monthly one-hour supervised visits for Aimee and set a section 366.26 hearing for September 7, 2011.

On June 9, 2011, Aaliyah visited Aimee in prison. They greeted each other with a hug and visited in a small visitation room where they put puzzles together and read books. At the end of the visit, Aaliyah hugged Aimee and kissed her goodbye.

In July 2011, the department filed a section 388 petition asking the juvenile court to terminate visitation between Aimee and Aaliyah because of the adverse effects on Aaliyah. According to Aaliyah's foster mother, following visitation Aaliyah had violent outbursts during which she attacked other children, urinated on herself and on her bed, and pulled out her hair and the hair of others. She also punched her foster parent and pulled at her clothes until there was no elastic. She used two dolls which she designated

a mother and baby doll and simulated the mother doll cutting the baby doll. She had nightmares from which she awoke saying, "Don't let Aimee get me." That same month the juvenile court suspended visits pending the hearing on the department's section 388 petition.

In August 2011, Aimee's attorney filed a section 388 petition informing the juvenile court that Aimee had completed programs while incarcerated and was scheduled to be released in September 2011. Attached to the petition were Aimee's certificates of completion for the 90-day trauma informed substance abuse treatment program and three classes included in the program: parenting skills, relapse and life skills. Aimee's attorney asked the court to order reunification services for Aimee, stating it would be in Aaliyah's best interest to do so, given their strong bond and Aimee's willingness to complete all programs necessary to regain custody of Aaliyah. The juvenile court set the hearing to adjudicate both section 388 petitions on September 7, 2011, to coincide with the section 366.26 hearing.

In late August 2011, the department filed a supplemental report recommending that the juvenile court deny Aimee's section 388 petition. The department reported that Aaliyah experienced fear and anxiety associated with visitation and acted out violently. She was observed hitting a child who took her toy and then kicking the child repeatedly in the head after the child fell to the ground. She was given a hamster as a gift and squeezed it to death. The department reported that Aaliyah was diagnosed with adjustment disorder with disturbance of conduct, disruptive behavior disorder and posttraumatic stress disorder and was receiving ongoing mental health services. The department informed the court that a family in Nevada was interested in adopting Aaliyah and recommended that the court proceed with adoption planning.

The hearing originally scheduled for September 7, 2011, was continued until November 2011. Meanwhile, on September 21, 2011, Aimee was released from custody

and obtained a furnished apartment suitable for her and Aaliyah. In October, she began counseling classes, including one for physical abuse as a perpetrator.

On November 3, 2011, the juvenile court conducted a combined hearing on the section 388 petitions and the section 366.26 hearing. Aimee testified and acknowledged that she made a mistake and felt guilty. However, she stated that she wanted to reunify and did not believe there was anything preventing her from completing a family reunification plan. She said she was willing to drug test and participate in conjoint counseling to reunify with Aaliyah.

During argument on Aimee's section 388 petition, her attorney argued that her circumstances had changed since the juvenile court denied her reunification services; namely, she was released from custody and participated in counseling to become a better parent. In addition, he argued it was in Aaliyah's best interest to provide Aimee reunification services because she and Aimee were bonded.

Following argument the juvenile court denied Aimee's section 388 petition and proceeded to adjudicate the section 366.26 hearing. The court found that Aaliyah was adoptable and terminated Aimee and Kenneth's parental rights. The court denied the department's section 388 petition as moot. This appeal ensued.<sup>2</sup>

## **DISCUSSION**

Aimee contends that the juvenile court erred in denying her section 388 petition because she presented sufficient evidence that her circumstances had changed such that an order for reunification services would serve Aaliyah's best interest. We disagree.

Any party to a dependency proceeding may petition the court to modify or set aside a prior order on the grounds of change of circumstance or new evidence. (§ 388, subd. (a).) The party must also show the proposed change would promote the child's best

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<sup>2</sup> Kenneth also filed an appeal, which is pending before this court in *In re Aaliyah A.*, case No. F063861.

interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Whether the juvenile court should modify a previously made order rests within its discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*Id.* at p. 318.)

Even assuming without deciding that Aimee presented sufficient evidence of changed circumstances, there is overwhelming evidence that providing Aimee reunification services would not be in Aaliyah's best interest. Aaliyah suffered ongoing and serious physical abuse in Aimee's care. It is a miracle that Aaliyah was not more seriously injured or killed from being run over and though Aaliyah apparently did not sustain any permanent physical damage as a result, she clearly suffered emotional damage. Moreover, the fact that Aaliyah loves Aimee and is bonded to her does not mean that it is in Aaliyah's best interest to be reunified. Rather, Aaliyah's best interest lies in being in a safe and loving home. Aimee was given a chance to demonstrate that she could provide such a home and instead injured Aaliyah more severely. Under the circumstances, we find no error in the juvenile court's decision not to offer Aimee reunification services.

#### **DISPOSITION**

The juvenile court's November 3, 2011 order denying Aimee's section 388 petition is affirmed.