

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

MELISSA Z.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE  
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Real Party in Interest.

F065949

(Super. Ct. No. J05-60010)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jennifer Conn Shirk, Judge.

Melissa Z., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Jason G. Chu, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

---

\*Before Levy, Acting P.J., Kane, J., and Poochigian, J.

Melissa Z., in propria persona, seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders denying her petition filed under Welfare and Institutions Code section 388<sup>1</sup> seeking reinstatement of reunification services as to her eight-, six-, and four-year-old daughters and setting a section 366.26 hearing. She contends the juvenile court erred in finding that she made poor progress and that there were not changed circumstances. We disagree and deny the petition.

### **DISCUSSION**

These dependency proceedings were initiated in September 2010 after the authorities discovered Melissa and Daniel smoking marijuana in the presence of Melissa's four children ranging in age from 21 months to six years. Daniel is the father of Melissa's three youngest children.

This was not Melissa's first experience with the dependency system. In 2005, her two eldest children, a one-year-old daughter and a newborn son, were removed from her custody because of her drug use. Melissa successfully completed reunification services and the children were returned to her custody under family maintenance services. In October 2006, the juvenile court terminated its dependency jurisdiction.

In September 2010, the juvenile court ordered the children detained pursuant to an original dependency petition filed on their behalf by the Tulare County Health and Human Services Agency (agency) and ordered reunification services for Melissa. The agency placed the children together in foster care.

The juvenile court provided Melissa reunification services over the ensuing year. During that time, Melissa struggled with her drug abuse. She completed drug treatment in January 2011 but continued to test positive for methamphetamine. In addition, she exhibited inappropriate behavior with the children who by this time were in separate placements because of their disruptive behavior.

---

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

In October 2011, the juvenile court conducted a contested 12-month review hearing on the agency's recommendation to terminate Melissa's reunification services. County counsel advised the juvenile court that Melissa was re-enrolled in drug treatment but had a pattern of not maintaining her sobriety. In addition, the children exhibited extreme behavior and Melissa was unable to assert any parental control even though she participated in an in-home parenting program. At the conclusion of the hearing, the juvenile court found that Melissa made minimal progress, terminated her reunification services, and set a section 366.26 hearing for February 2012.

In February 2012, prior to the section 366.26 hearing, Melissa filed a section 388 petition asking the juvenile court to either return the children to her or reopen reunification services. The section 366.26 hearing was vacated and advanced to April 2012. Meanwhile, in March 2012, the juvenile court conducted a section 366.26 hearing as to Melissa's son and terminated her parental rights as to him.<sup>2</sup> At the same hearing, the juvenile court denied Melissa's section 388 petition after finding there was not a change of circumstances to warrant reinstatement of reunification services and that reinstatement of services would not serve the children's best interests.

In April 2012, the juvenile court conducted the section 366.26 hearing as to Melissa's three daughters. The juvenile court ordered legal guardianship for the older two and foster placement with a goal of relative placement for the youngest. The juvenile court also set a post-permanency plan review hearing (§ 366.3, subd. (a)) for October 2012.

In September 2012, Melissa filed a section 388 petition asking the juvenile court to return all four children to her custody or reinstate reunification services. In her petition, she stated that she completed substance abuse treatment including aftercare and attended Narcotics/Alcoholics Anonymous meetings and previously completed a

---

<sup>2</sup>Melissa filed a notice of appeal from the termination order, and her appeal is pending before this court (F064604).

parenting program. By this time, the three children were placed together with a relative who was willing to adopt them.

In October 2012, the juvenile court convened a combined hearing on Melissa's section 388 petition and the review of the post-permanency plan. The juvenile court struck Melissa's son from the petition since her parental rights as to him had been terminated. Melissa testified, after which the juvenile court denied her petition, finding that there was not a change of circumstances and reinstatement of reunification services was not in the children's best interest. The juvenile court also continued the post-permanency plan review hearing for a week because Melissa had not received a copy of the agency's report.

On October 10, 2012, the juvenile court convened the post-permanency review hearing. Melissa's attorney did not challenge the setting of a section 366.26 hearing but asked the court to find that Melissa made moderate if not substantial progress in alleviating the problem that required her children's removal.

At the conclusion of the hearing, the juvenile court set a section 366.26 hearing and advised Melissa of her writ rights. This petition ensued.

## **DISCUSSION**

Melissa, in essence, 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 her children's best interests. As evidence of changed circumstances, she cites her completion of substance abuse treatment and aftercare as well as parenting classes.

Any party may petition the juvenile court to modify or set aside a prior dependency order pursuant to section 388 on grounds of changed circumstance or new evidence. (§ 388, subd. (a).) The party bringing the section 388 petition must also show the proposed change is in the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Section 388 provides a means for the court to address a legitimate change of circumstances, even at the permanency planning stage, while protecting a

child's need for prompt resolution of his or her custody status. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Whether the juvenile court *should* modify a previously made order rests within its discretion, and its determination will not be disturbed absent a clear abuse of discretion. (*In re Stephanie M., supra*, at p. 318.)

We conclude the juvenile court properly ruled in denying Melissa's section 388 petition. First, Melissa failed to establish a legitimate change of circumstances. The fact that she completed drug treatment was not a changed circumstance. According to the record, she completed drug treatment several times only to relapse into drug use. Further, even assuming that Melissa presented sufficient evidence of changed circumstances, there is no evidence that the children's best interests would be served by another attempt at reunification. After much effort, Melissa's three daughters were placed together in the home of a paternal relative who wanted to adopt them. This placement allowed them both permanency and the ability to be raised as siblings. In addition, according to the record, Melissa's eldest daughter refused to visit her and the other two were either reluctant to visit or reacted adversely to visits. Under the circumstances, we cannot conclude that the juvenile court abused its discretion in denying Melissa's section 388 petition. Thus, we find no error.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.