

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re A.L. et al., Persons Coming Under the
Juvenile Court Law.

KINGS COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

G.H.,

Defendant and Appellant.

F070296

(Super. Ct. No. 03JD0070)

OPINION

APPEAL from an order of the Superior Court of Kings County. Jennifer L. Giuliani, Judge.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Colleen Carlson, County Counsel, and Risé A. Donlon, Deputy County Counsel, for Plaintiff and Respondent.

G.H. (father) appeals from the juvenile court's order under Welfare and Institutions Code section 366.26¹ selecting a permanent plan of long-term foster care for three of his children, A.L. (born Dec. 1997), A.H.1 (born Oct. 2000), and D.L. (born Oct. 2003), and a permanent plan of legal guardianship for two of his children, G.H. (born Jan. 2005) and A.H.2 (born Apr. 2007).² Although the juvenile court found G.H. and A.H.2 were likely to be adopted, it did not order termination of parental rights pursuant to the exception to termination contained in section 366.26, subdivision (c)(1)(B)(iv). Father now contends: (1) the juvenile court abused its discretion in denying his petitions under section 388 to reinstate reunification services; and (2) there was insufficient evidence to support the court's finding of adoptability as to G.H. and A.H.2. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2012, the children were taken into protective custody after father was arrested for committing domestic violence against his girlfriend and for violating parole. In order to prevent the need for the children's further detention and/or to facilitate their future return, the detention report filed by the Kings County Human Services Agency (the agency) recommended that father complete a domestic violence program and follow all of the recommendations.

In August 2012, the juvenile court exercised its dependency jurisdiction over the children (§ 300, subds. (b) & (g)), ordered them removed from parental custody, and granted father reunification services. Father's case plan required him to complete a domestic violence program, a parenting program, and an anger management program.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² In this opinion, certain persons are identified by initials, abbreviated names and/or by status in accordance with our Supreme Court's policy regarding protective nondisclosure. No disrespect is intended.

Father was also required to complete a mental health assessment and follow all the recommendations.

In January 2013, father was arrested on a warrant for violating Penal Code section 71 (threatening a school officer/employee) and, in February 2013, was sentenced to a two-year prison term. Father's reunification services were subsequently terminated at the 12-month review hearing in July 2013. The juvenile court in turn set a section 366.26 hearing to select and implement a permanent plan for the children.

At the first section 366.26 hearing, which occurred in November 2013, the juvenile court found that it was not likely the children would be adopted and selected a permanent plan of long-term foster care for the children.

In June 2014, father filed a section 388 petition for each of the five children requesting that the juvenile court order family maintenance or reunification services on the ground that, since his release from prison, he had independently engaged services through the Kings View mental health clinic (hereafter, Kings View) and was currently participating in programs required by his original case plan. Father further alleged that such order would benefit the children because "[t]he children have indicated to social workers that they would like to maintain a relationship with their father."

In August 2014, the agency filed an interim report recommending that the juvenile court deny father's section 388 petitions. The agency reported that, following his release from prison, father enrolled himself in Kings View in March 2014. However, he did not start individual therapy until April 2014, and group classes until May 2014. Father was reportedly doing well in his anger management and parenting classes. However, he was not participating in any classes pertaining to domestic violence.

The agency further reported that the children had established stability in their respective foster home placements with foster parents who were providing for their physical, emotional, mental, and educational needs. A.L. and A.H.1 had been in their

current placement since July 2012, and D.H. had recently joined them in September 2012. Their care providers were pleased to have D.H. in their home and to be part of the family and wanted the three sisters to grow into loving and productive adults.

G.H. and A.H.2 lived together in a different foster home from the other three children. G.H. and A.H.2 reportedly had formed a loving bond with their care providers, who wanted to be their legal guardians and to adopt them. Both G.H. and A.H.2 had expressed the wish to remain in their current placement and G.H. had told a social worker that he did not want to live with father.

The agency noted that, at the time of their removal from father's care, all the children suffered from trauma and displayed behavioral, social, and emotional issues, which would disrupt their placements. After father was incarcerated, their behavioral issues began to dissipate and they became stabilized in their placements. However, when father was released from prison and started having monthly supervised visits with the children, the visits had an adverse influence on the children's emotional, psychological, and social well-being in their placements and at school. The visits had also confused the children into thinking they were going to be returned to father.

The Section 366.26 Hearing

The second section 366.26 hearing was conducted between October 7 and October 8, 2014, and was combined with the hearing on father's section 388 petition.

Two clinicians and father's personal therapist from Kings View testified that father had been attending personal therapy sessions and had successfully completed his parenting and anger management classes.

The clinician who taught the parenting class testified that, although the topic of domestic violence sometimes came up in class, she did not teach the effects of domestic violence on children in parenting situations. That subject was addressed in a different class and had never been part of the parenting class. Similarly, the clinician who taught

the anger management class testified that the anger management class was different from the domestic violence class.

Father's personal therapist from Kings View testified that he had seen father a total of seven times for individual therapy sessions between April and October of 2014. The therapist did not consider father's therapy complete and considered father still to be a patient. Father had a diagnosis of intermittent explosive disorder and expressive disorder, not otherwise specified, and that the typical length of treatment for the disorder was six months to one year. Father had missed five of his scheduled therapy sessions, canceling one session and failing to show up for four sessions. Of the seven sessions father had attended, two were cut short to around 15 or 20 minutes because one day he came late, and the other time, he came on the wrong day and the clinic "squeezed him in, for a check in."

The therapist further testified that, while there might be some overlap, taking the anger management class was not the same as taking the domestic violence class. The therapist explained:

"Well, domestic violence typically involves some anger and loss of control so there would be a slight overlap; however, there can be quite a different dynamic in domestic violence. So some people are, for example, only violent with their partner. And, so that would be half of the group, just a general estimate, I would say half of the material might be overlapped and half of it might be a unique one to another."

All of the children testified except for A.H.2. A.L. testified that her foster parents were really great and that she liked them a lot. She also felt great about her monthly visits with father and just wished they could be longer and more frequent. Father listened to her and she could talk to him about topics like friends and school. When asked how much time "ideally" she would like to spend with father, A.L. testified "two or three

hours would be nice.” A.L. confirmed she wanted to try to live at father’s house again and testified she had no concerns about doing so.

A.L. also testified regarding father’s interactions with some of the other children. According to A.L.’s testimony, father paid more attention to G.H. because he was the only boy. They were always playing together with the soccer ball or football. A.L. thought G.H. regarded father as both a father and a playmate. A.L. also observed father playing along with A.H.2, who was always climbing on him. A.L. thought A.H.2 wanted to live with father because after visits, G.H. and A.H.2 were always telling A.L. they wanted to go home with him. A.L. confirmed she had heard all four of the other children say at some point that they want to go home with father. Father would get excited and happy when they would say this and he would talk to A.L. about how he was planning to get a home so that everyone could return to live with him.

D.H. testified her foster parents were nice and she liked living in their home. The monthly visits with father went pretty well and she was able to talk to him about what was going on in her life. However, even though she looked forward to visits with father, D.H. testified she did not want to visit father at his house.

G.H. testified his foster parents were nice to him and it was good living with them. He also felt good about his monthly visits with father. G.H. was on a football team and he and father would talk about that during visits. G.H. confirmed he remembered living in father’s house when he was little and that he would want to do that again. He wanted to spend time at father’s house, but he did not want the supervised visits to be longer because he did not like visiting with so many people around him and wanted more time alone with father. G.H. could not remember talking to someone and telling them he did not want to go back and live with father.

A.H.1 testified she was happy at her new foster home, where she had recently been placed after running away from the foster home where she had lived with A.L. for

two years. A.H.1 explained that she and her former foster mother had always had disagreements throughout the placement.

A.H.1 further testified she wanted to live with father and to be with him “24/7.” A.H.1 did not agree she needed to be in a stable home environment because “not everyone is perfect.” Although they had been in and out of foster care a lot, every time she was asked if she would want to go back to live with father she “would a hundred percent say yes” because “no matter whether it’s stable or not it’s family” and “better than living in a random person’s house.”

A.H.1 believed father could now provide a stable home for them because it felt like this time he was “actually trying” and had shown them more affection. The realization he might “lose [them] forever” seemed to have “knock[ed] sense into him.” A.H.1’s impression of father was that he would always be there for her. She wanted to live with him and all her other siblings, who always looked like they were having a good time when they were spending time with father. A.H.1 knew that G.H., A.L., and D.H. wanted to live with father too.

Following A.H.1’s testimony, father testified, inter alia, that he did not inquire at Kings View about taking a domestic violence class but was willing to take one and would do so if the court reinstated reunification services. When asked if any part of his anger management class pertained to domestic violence, father testified: “I would say no. Maybe just like relationships period in the world. As far as one-on-one partnership I would say no.” Father also confirmed that he did not talk about domestic violence with his therapist, explaining: “I don’t have no domestic issues to talk about right now so we never talk about anything in the past or nothing that happened yesterday. That never came up.”

Although father admittedly pled guilty to inflicting corporal injury on a spouse or cohabitant in December 2012, he denied inflicting injury on anyone. According to father,

“[i]t was a lie” and he only pled guilty to receive probation. Father confirmed he had two prior felony convictions for domestic violence in the 1990’s, but testified, “I’ve never done domestic violence counseling in my life.”

After listening to the witnesses’ testimony and arguments of counsel, the juvenile court denied father’s section 388 petition to reinstate reunification services, explaining:

“The recitation by counsel of what the law is with regard to the filing of a 388 petition is correct. The first requirement or the first prong to the test is that the Court must find there has been a change of circumstance or new evidence. Although there is a suggestion by [father’s counsel] that there has been changed circumstance, I don’t believe that the Court can make a finding that attending a 16-week parenting class and a 16-week anger management class results in a change of circumstances based upon the actual issue that the Court must review which is the looking at the resolution of the issues that led to the children being removed and those being addressed.

“The children were removed because of domestic violence issues. Arguably he may not have been sent to prison with regard to domestic violence issues but that is the reason why the children were removed. He testified today there have been three felony arrests for domestic violence issues and convictions that have resulted from those domestic violence issues. Yet he has not completed any domestic violence classes. The suggestion by [father’s counsel] that the components of domestic violence were somehow addressed in the anger management class that was taken certainly is not persuasive to the Court. It was testified to by two of her witnesses that a domestic violence class is different from an anger management class. [The Kings View witnesses] indicated that those are two separate classes and although some of the things may overlap in those classes there is a specific issue with regard to the domestic violence class or specific issues related to the domestic violence class that are not addressed in the anger management class.

“I cannot find based upon the information that there has been a change of circumstance. I believe there is a changing circumstance. It is to be commended that [father] understands that when he was released from custody that he needed to take steps to bring himself back before the Court and find himself in a position where he could, in fact, address the Court as to the return of his children and/or the request for implementation of further

reunification services. But based upon what the Court has before it, it cannot find there has been a change of circumstance.

“Even if I could, that would take me to the second prong and that is that the proposed change would promote the best interest of the children. Again, the Court would struggle with making that finding because the Court is required to determine how the change in court order would advance the children’s needs for permanency and stability. And the request for reunification services or returning the children home does not address the need for the children’s permanency and stability.

“I listened to the children testify ... and I believe there is no question in my mind that [father] loves his children and that all of his children love him very, very much. However, the difficult decision that the Court has to make is to not look at what the children actually want but it’s actually what is in the children’s best interest and that Supreme Court has been very clear that the issue of permanency and stability for the children is what is paramount when we get to this stage.

“Previously, [father] has always been in a position where he’s receiving family reunification services. This time he’s before the Court and his family reunification services have been terminated. So we find ourselves in a situation where his interests and the family interest to reunify are kind of divergent. The children have the right to have permanency and that is paramount, not [father’s] right to reunify with his children. That occurs at the time when family reunification services are terminated and the children are moved into sort of a permanent plan track based upon what the California law is.

“Based upon those things and I could get into the arguments with regard to whether or not he’s complied with what the services were originally required in his case plan and I don’t believe that that is really the issue. I think it’s commendable he did some of the things he would have been asked to do had he not been in custody. There are still things that have not been tended to be based upon the testimony that has been provided.

“The Court is going to deny the [section 388 petition] based upon the fact I don’t believe there have been changed circumstances but there are changing circumstances which are not sufficient at this time to warrant a modification to the Court’s order.... The Court has read and considered the ...Section 388 petition filed by [father], report of the social worker,

attachments, recommendations, and has considered other evidence presented in arriving at the following findings and orders:

“I will find that there has not been a change of circumstance. I will find that the best interest of the children is not promoted by the order requested in the ... Section 388 petition. I will order that the 388 petitions filed in each one of the cases on June 10th, 2014, will be denied.”

DISCUSSION

I. Section 388 Petitions

Father contends the juvenile court abused its discretion in denying his June 2014 section 388 petitions seeking reinstatement of reunification services. Father claims he met his burden of demonstrating both a change of circumstances and that reinstatement of reunification services was in the children’s best interests. We disagree.

Any parent or other interested 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)(1).) The party bringing a section 388 petition has the burden to prove that the proposed change is in the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*))

After the termination of family reunification services, a parent’s interest in the care, custody, and companionship of her children is no longer paramount. “Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) A court deciding a section 388 petition “at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*Stephanie M.*, at p. 317.) Further, “[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." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

We review a juvenile court's decision on a section 388 petition for an abuse of discretion. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) "The appropriate test for abuse of discretion is whether the trial court 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." (*Id.* at pp. 318–319.)

Contrary to his assertions on appeal, father did not show a genuine change of circumstances and therefore the juvenile court did not abuse its discretion in finding that father had only demonstrated changing circumstances. Although father completed the parenting and anger management components of his case plan, he failed to complete or enroll in a domestic violence program. This failure was significant because father's commission of domestic violence was the primary basis for the children's dependency. The record thus reflects that, as early as the detention hearing in June 2012, the agency was recommending that father complete a domestic violence program as a means of facilitating the children's return. Despite this recommendation, father never sought to enroll in a domestic violence program at any time during the proceedings and expressed the view that such program was unnecessary as he did not perceive himself as having a problem with domestic violence. Notwithstanding father's suggestion that the parenting and anger management classes sufficiently addressed his domestic violence issues, the evidence presented at the October 2014 hearing, including father's own testimony, established that, despite some overlap, they were distinctly separate programs, covered different topics, and could not substitute for one another.

Father also relies on *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly F.*), in which the court identified three principle factors relevant to the juvenile court's evaluation of best interests in the context of a section 388 petition: "(1) the seriousness

of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*Kimberly F.*, at p. 532, italics omitted.)

The facts of this case are easily distinguishable from the facts of *Kimberly F.* First, in *Kimberly F.*, the court concluded that the reason for the dependency—a dirty home—“was not as serious as other, more typical reasons for dependency jurisdiction, such as ... illegal drug use.” (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 522.) Here, the reasons for the dependency included serious domestic violence issues which remained unaddressed at the time of the hearing. Second, in *Kimberly F.*, the petitioning mother demonstrated an undisputedly strong bond with her children and also had a substantial amount of unmonitored visitation. (*Id.* at p. 532.) Here, the evidence of a parent-child bond was more equivocal. Although the children appeared to love father and enjoy visiting him, there was evidence that three of them had, at different times, made statements expressing that they did not want to live with him. On the other hand, all the children reported liking and being happy living with their foster parents. Further, father did not have substantial or unmonitored visitation with the children. He saw the children in supervised visitation only once a month and there was evidence that, following these visits, the children exhibited behavioral problems which jeopardized the stability of their current placements. Third, in *Kimberly F.*, the unsanitary conditions that led to removal had been eliminated, and the appellate court rejected the juvenile court’s other rationale for denying the mother’s section 388 motion—the mother’s alleged “narcissistic personality.”” (*Kimberly F.*, at p. 533 [observing this was description of human personality, not mental illness].) Here, father failed to show the problems that led to the

children’s dependency had been eliminated as he failed to participate, and saw no need to participate in, services addressing his longstanding issues with domestic violence.

Under all these circumstances, we cannot say the juvenile court abused its discretion in denying father’s request under section 388 for reinstatement of family reunification services.

II. Adoptability Finding

Father’s other contention on appeal is that there was insufficient evidence to support the juvenile court’s finding that G.H. and A.H.2 were likely to be adopted when it selected guardianship as their permanent plan but did not order termination of parental rights pursuant to section 366.26, subdivision (c)(1)(B)(iv).³ We agree with the agency’s argument that we need not reach this issue because father has failed to show he was aggrieved by the court’s finding. (See *In re D.M.* (2012) 205 Cal.App.4th 283, 293–294 [“To be aggrieved, a party must have a *legally cognizable interest* that is injuriously affected by the court’s decision. [Citation.] The injury must be immediate and substantial, and not nominal or remote.”].)

Father suggests but fails to explain exactly how a prior finding of a likelihood of adoption would prejudice him in subsequent proceedings, particularly where the juvenile court ultimately found that termination of parental rights would be detrimental and established legal guardianship as their permanent plan. Whether the court found G.H.

³ Section 366.26, subdivision (c) provides, in relevant part: “(1) If the court determines..., by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.... Under these circumstances, the court shall terminate parental rights unless ...: [¶] ... [¶] (B) 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: [¶] ... [¶] (iv) The child is living with a foster parent ... who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her foster parent ... would be detrimental to the emotional well-being of the child.” (§ 366.26, subd. (c)(1)(B)(iv).)

and A.H.2 likely were adoptable in October 2014 will shed no light on whether they are likely to be adopted at some future date and has no effect on subsequent proceedings.

DISPOSITION

The order selecting legal guardianship as the permanent plan for G.H. and A.H.2 and long-term foster care as the permanent plan for A.L., A.H.1, and D.L. is affirmed.

HILL, P.J.

WE CONCUR:

LEVY, J.

PEÑA, J.