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

In re CATALINA C., a Person Coming Under  
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

VICTORIA C.,

Defendant and Appellant.

F071008

(Super. Ct. No. 516717)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.  
Ameral, Judge.

Marsha F. Levine, 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 Kane, Acting P.J., Franson, J. and Smith, J.

Victoria C. (mother) brought a petition under Welfare and Institutions Code section 388,<sup>1</sup> seeking a modification of the juvenile court's order terminating her reunification services as to her daughter Catalina. The court denied mother's section 388 petition without conducting an evidentiary hearing, finding that she failed to establish a prima facie showing in support of modification. On appeal, mother contends the court abused its discretion. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

These dependency proceedings were initiated in July 2013 after then seven-year-old Catalina caught her dress on fire while playing with a lighter. At the time, she was staying with her maternal grandmother. Mother was incarcerated and charged with armed robbery, conspiracy and committing a crime while on bail.

Catalina was hospitalized and treated for third degree burns over 50 percent of her torso. She had burns on her front chest and down her stomach, her upper and lower back, the lower part of both of her arms, the front and back of her legs and the right side of her forehead.

At the time of this incident, mother was receiving family maintenance services through the Stanislaus County Community Services Agency (agency). The agency opened her case in October 2012 after mother's partner bit, choked and beat mother and threw Catalina on top of her. Before that, the agency received reports over the years beginning in 2008 that mother hit Catalina. In 2009, mother disclosed to a mandated reporter that she was overwhelmed and having suicidal and homicidal thoughts. She said she was sick and tired of dealing with then three-year-old Catalina. A friend of mother's reported that mother hit Catalina in the face with a closed fist. In 2010, mother was seen beating Catalina. In 2011, Catalina began to report her own abuse. She said mother hit

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

her, pulled her hair and “busted” her lip causing it to bleed. She also said mother hit her with a piece of wood she kept on a shelf and threatened to cut off her hair or shave her head. Catalina was reportedly seen with a black and blue face from being hit. In 2012, Catalina stated that mother slapped her when mother got mad, sometimes so hard that her nose bled.

In October 2013, the juvenile court exercised its dependency jurisdiction over Catalina and removed her from mother’s custody. The court also ordered mother to participate in mental health and substance abuse services and complete parenting instruction.

Mother appealed from the juvenile court’s dispositional order removing Catalina from her custody. We affirmed the order. (*In re Catalina C.* (July 11, 2014, F068475) [nonpub. opn.] )

In November 2013, Catalina was discharged from the hospital and placed in a foster home. Thereafter, mother and Catalina visited weekly for two hours at the agency’s facility.

In January 2014, the juvenile court appointed a special advocate (CASA) for Catalina.

Over the ensuing months, mother initiated her reunification services. She began taking psychotropic medication and completed a clinical assessment. The clinician recommended that she complete a psychological evaluation. The agency did not believe Catalina could be safely returned to mother’s custody and recommended the juvenile court continue reunification services for her.

In March 2014, at the six-month review hearing, the juvenile court amended mother’s services plan to include a psychological evaluation and anger management treatment and continued reunification services. During the hearing, mother’s attorney requested increased visitation somewhere other than the agency’s visitation facility. County counsel made an offer of proof that social worker Christine Shahbazian would

testify that the quality of interaction between mother and Catalina was poor. As an example, Catalina tried to hug and engage mother and mother did not reciprocate. At another visit, Catalina was facing the corner crying and mother refused to engage her. The court left the visitation order unchanged but granted the agency discretion to arrange offsite visits and advance to unsupervised and daylong and overnight visitation.

In March 2014, following the six-month review hearing, mother met with Dr. Philip Trompetter for a psychological evaluation. Dr. Trompetter concluded that mother did not have a mental disorder that interfered with her ability to benefit from reunification services. However, Dr. Trompetter diagnosed her with major depressive disorder and stated that she displayed the essential features of posttraumatic stress disorder and many borderline personality traits.

Dr. Trompetter opined that mother's greatest obstacle to successful reunification was her maladaptive approach in dealing with life stressors. This maladaptation was the result of multiple traumas she experienced and would require intensive psychotherapy to confront.

In July 2014, Catalina shared with the CASA that she called her grandmother and her grandmother told her that her mother didn't ever want to see her again and told Catalina never to call her again. During a visit in August 2014, Catalina was hesitant to see her mother. She cried and said "You didn't want to see me anymore." Mother hugged her and said she was sorry. Catalina repeatedly told the CASA she was afraid of mother and wanted to remain in her foster home.

In its report for the 12-month review hearing, the agency recommended the juvenile court terminate mother's reunification services because she had not made significant progress. In addition, the agency continued to conduct visitation at the agency's facility because Catalina stated she was afraid mother would hit her if there was no one else there. The agency opined that the prognosis for returning Catalina to mother's custody was poor. Despite 12 months of reunification services, mother was

unable to control her anger or attend to Catalina's needs for love and physical safety. Mother was verbally hurtful to Catalina and blamed her for her arrest and Catalina's placement in foster care. The report also stated that mother's criminal charges had been dropped.

In October 2014, the juvenile court convened the 12-month review hearing. Mother appeared with counsel who submitted the matter on the agency's reports. The court terminated mother's reunification services and set a section 366.26 hearing for February 2015.

In its report for the section 366.26 hearing, the agency recommended the juvenile court terminate mother's parental rights and select adoption as Catalina's permanent plan. According to the report, Catalina was making progress, but needed intensive care for her physical and emotional needs. Catalina was placed with foster parents who were committed to adopting her. Meanwhile, mother continued to blame others for her circumstances and even blamed Catalina for the termination of her reunification services.

In January 2015, mother filed a section 388 petition asking the juvenile court to reinstate her reunification services for six months, to assign a new social worker and to increase her visitation. She attached photographs of herself and Catalina to the petition, as well as Catalina's drawings and notes indicating her desire to return home to mother. In a declaration in support of her request, mother explained that she did not fully understand the consequences of her actions until the court terminated her reunification services. She subsequently completed the domestic violence program, participated in other services including individual therapy and maintained stable housing for a year. As proof, she attached a certificate issued by Haven Women's Center of Stanislaus showing she completed an anger management course in October 2014 and a letter from the program manager dated January 2015 describing her ongoing participation in anger management and domestic violence counseling, individual therapy and non-violent

parenting. She also attached summaries of her individual therapy sessions from October to December 2014 and a copy of her rental agreement.

Mother also explained in her declaration that she no longer directed her anger toward other people who she felt were responsible for her situation, but took responsibility for her role in Catalina's circumstances. Further, though she felt unfairly treated, she was eager to demonstrate her ability to provide Catalina a healthy lifestyle. Mother also stated Catalina's best interests would be served by reinstatement of reunification services because it was the best possible outcome for her.

On January 27, 2015, the juvenile court summarily denied mother's section 388 petition. On the order, the court wrote: "Catalina has been in foster care for 18+ months and is in need of stability and permanency. Reopening services would only cause further delay in permanency. There is no evidence of changed circumstances, and not even a real changing of circumstances. Information provided in support of the [section] 388 [petition] indicates the mother's ongoing minimization of her actions. Finally, there is no indication the granting of the [section] 388 [petition] is actually in Catalina's best interests."

In February 2015, the juvenile court convened the contested section 366.26 hearing. Minor's counsel made an offer of proof that if called Catalina would testify that she would like to see mother weekly for two hours outside of the county office but wanted to be adopted by her foster parents.

Mother testified her last visit with Catalina was on January 23, 2015, and Catalina stated she wanted to go home.

Social worker Christine Shahbazian testified that Catalina had given her different answers when she asked her if she wanted to return to mother. Catalina told her she wanted to live with mother, but also said she would live with anybody but mother.

Following argument, the juvenile court found Catalina to be adoptable and terminated mother's parental rights. The court recognized there was a bond between mother and Catalina, but found no evidence that the detriment of terminating mother's parental rights would greatly outweigh the permanency that adoption would provide Catalina.

This appeal ensued.

### **DISCUSSION**

Mother's sole contention on appeal is that the juvenile court abused its discretion in denying her section 388 petition without an evidentiary hearing. She does not raise any issues regarding the termination of her parental rights. We find no error.

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806 (*Zachary G.*))

A prima facie showing has been met when the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. (*Zachary G., supra*, 77 Cal.App.4th at p. 806.) To be entitled to a hearing, the petitioner need not establish a probability of prevailing, but need only present evidence that might warrant a change in the court's order. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432-433; *In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) In 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.) If the liberally construed allegations of the petition do not make a prima facie showing, the court need not order a full evidentiary hearing on the petition. (*Zachary G., supra*, at p. 806.)

On appeal, we review the court's finding of no prima facie showing for abuse of discretion. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) We must uphold the order unless the court's determination was arbitrary, capricious or patently absurd. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 205.)

In mother's petition she identified her change of circumstances as the termination of her reunification services. Prior to that, she explained in her declaration, she was "blinded by anger" because she perceived the agency as treating her unjustly. Nevertheless, she concluded she would endure anything "even a change of perspective" to demonstrate her ability to safely parent Catalina. In her appeal, she contends this change of perspective was a "significant change in her life."

The juvenile court did not glean from mother's section 388 petition that she had demonstrated a changed life, nor do we. On the contrary, the only change was mother's belated decision to cooperate with the agency. She still believed, however, that the agency treated her unfairly and dealt with her dishonestly.

Mother argues nevertheless that she provided sufficient factual evidence to support a change in circumstances, referring to the documentation she attached to her petition. We disagree. At best, mother's documentation evidenced her completion and participation in specific services. It did not, however, evidence any change in her ability to effectively manage her life and parent Catalina. In that regard, contrary to mother's assertion, this case is unlike *In re Hashem H.* (1996) 45 Cal.App.4th 1791 in which a mother supported her allegations of changed circumstances by a letter from her therapist. The juvenile court summarily denied the mother a hearing and the court of appeal reversed. (*Id.* at pp. 1798-1801.) Here, mother did not provide any evidence that would support a change in the court's order terminating her reunification services. Therefore, her petition did not establish a prima facie showing of changed circumstances.

Further, mother's petition did not establish a prima facie showing that a change in the court's order would be in Catalina's best interest. In that regard, the petition alleged

that Catalina wanted to live with mother. Mother did not show, however, how Catalina's best interests would be served by the change in order she requested. Further, when one considers the entire factual history of the case, notably Catalina's physical and emotional abuse by mother, her fear of mother and her ambivalence about living with mother, one could conclude that *some* evidence that she wanted to live with mother would not be sufficient to warrant conducting a hearing.

We conclude based on the foregoing, mother failed to establish a prima facie showing that her circumstances had changed such that an order continuing her reunification services would serve Catalina's best interest. Thus, we find no error in the juvenile court's denial of her section 388 petition without conducting an evidentiary hearing and affirm.

#### **DISPOSITION**

The juvenile court's orders are affirmed.