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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ARIANNA L. et al., Persons Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. ARMANDO L., Defendant and Appellant.	F071764 & F071765 (Super. Ct. Nos. 517123 & 517124) **OPINION**

THE COURT[*]

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

Matthew I. Thue, 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., Peña, J. and Smith, J.

Appellant Armando L. (father) is the father of five-year-old Arianna L. and three-year-old A.L., the subjects of this appeal. At a dispositional hearing in January 2015, the juvenile court denied father services to reunify with the children but granted them to their mother, Alisha. In April and June of 2015, father filed petitions under Welfare and Institutions Code section 388[1] asking the juvenile court to provide him reunification services. The juvenile court summarily denied father's petitions and he filed a timely notice of appeal as to each ruling, contending the juvenile court erred in not conducting an evidentiary hearing. We consolidated the appeals and affirm.

PROCEDURAL AND FACTUAL SUMMARY

In September 2014, father and Alisha were living together and caring for their two daughters, Arianna L. and A.L., and Alisha's then four-month-old son, Michael. Michael was conceived while father was serving a prison sentence for domestic violence against Alisha. B.L. is Michael's father.

Dependency proceedings were initiated in September 2014 after Michael sustained a fractured left femur indicative of child abuse. The Stanislaus County Community Services Agency (agency) took Arianna, A.L. and Michael into protective custody and placed them in foster care. According to father's parole officer, father had difficulty taking care of a child that was "not his blood."

The juvenile court ordered the children detained, ordered the agency to refer father, Alisha, and B.L. for services and to arrange visitation. Father was referred for parenting and domestic violence offender's classes and a substance abuse assessment. In early October 2014, he entered residential drug treatment.

In January 2015, the juvenile court adjudged the children dependents under section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect) pursuant to a settled agreement by the parties. In ruling, the court found that Michael was

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

seriously injured nonaccidentally by a parent and that there was sufficient evidence to indicate that father was the perpetrator. The court also ordered reunification services for Alisha and B.L. and denied father reunification services under section 361.5, subdivision (b)(6)). At the hearing, father's attorney asked the court to provide him more than the one visit a month that the agency was recommending. The court expressed its concern that the girls were afraid and standoffish with father. The court ordered a minimum of one visit a month, but stated it was not opposed to two visits a month if visits went well. The court scheduled a progress review hearing in March 2015 and a six-month review of services for June 2015.

In March 2015, at the progress review hearing, father's attorney asked the juvenile court to modify his visitation order to a minimum of twice a month for two hours. She informed the court that father graduated from a 90-day substance abuse treatment program and from a parenting program, attended four to five Alcoholics Anonymous/Narcotics Anonymous meetings a week, and missed the children very much. County counsel opposed amending father's visitation order and advised the court that it would require father's attorney to file a section 388 petition. The court granted the agency discretion to allow father two visits a month.

In April 2015, father filed a section 388 petition asking the juvenile court to order reunification services for him and increase visitation. He asserted that he completed a 16-week anger management course, a 10-week parenting class and three months of inpatient and outpatient substance abuse treatment and was participating in group therapy. He also stated that he and the children had a close relationship prior to their removal and it would be in their best interest to maintain a relationship with him.

On April 30, 2015, the juvenile court denied father's section 388 petition. On form JV-183 ("Court Order on Form JV-180") under the section explaining the grounds for denial, the juvenile court checked the boxes stating that the petition did not state new evidence or a change of circumstances and that the proposed change did not promote the

children's best interest. In a handwritten explanation on the form the juvenile court wrote:

> "Two major factors having to do with denial of services to [father] were injury to a child of very tender years and a serious history of domestic violence. Neither of those issues have been addressed by [father]. Although he has engaged/completed some services, he has not addressed two other very serious issues, to wit, physical abuse to a child under the age of two and domestic violence in the home."

On June 15, 2015, father filed a notice of appeal seeking relief from the summary denial of his section 388 petition. On the same date, father filed a second section 388 petition asking the court to order reunification services. He stated in the petition that he was participating in domestic violence counseling and child abuse and neglect classes. He attached documentation showing that he had participated in 18 sessions of domestic violence counseling and three sessions of a 52-week "CAN/Parenting Program." Father asserted in the petition that the children's best interests would be served by an order for family reunification services because they were bonded to him.

On June 18, 2015, the juvenile court summarily denied father's second section 388 petition, again indicating on the form JV-183 that he failed to show a change of circumstances and that the proposed change in circumstances would serve the girls' best interests. In a handwritten explanation, the court stated:

> "Although the court appreciates [father's] recent engagement, the court finds only changing not changed circumstances. Attendance at 3 out of 52 CAN classes is not significant. Although he has attended 18 [domestic violence] classes, the physical abuse to a child of tender years has not been adequately addressed by attending 3 classes."

In its report for the six-month review hearing, the agency recommended that the juvenile court terminate Alisha and B.L.'s reunification services and set a section 366.26 hearing to consider a permanent plan of adoption. According to the agency, Alisha and B.L. made poor progress. Of particular concern with respect to Alisha was that she

maintained a romantic relationship with father against her counselors' advice and had conceived another child with him.

On June 23, 2015, the juvenile court convened the six-month review hearing and set it as a contested hearing in August 2015.

DISCUSSION

Section 388 provides, in relevant part, "(a)(1) Any parent … 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 …. The petition shall … set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order …. [¶] … [¶] (d) If it appears that the best interests of the child … may be promoted by the proposed change of order, … the court shall order that a hearing be held and shall give prior notice …."

A petition under section 388 must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) "Thus, if the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing. [Citation.] The court may deny the application ex parte only if the petition fails to state a change of circumstance or new evidence that even *might* require a change of order …. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461 (*Angel B.*).) We review the summary denial of a section 388 petition for abuse of discretion.[2] (*Id.* at p. 460.)

Father contends that when viewed together his two section 388 petitions established a prima facie showing of new evidence and changed circumstances.

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[2] Father contends the juvenile court's discretion in determining whether to conduct a hearing on a section 388 petition is limited and implies this court should apply a de novo standard of review. To that end, he cites *In re Jeremy W.* (1992) 3 Cal.App.4th 1407 which neither expressly nor by implication advocated de novo review. Thus, we will apply the abuse of discretion standard of review.

Together, he asserts, they demonstrate that he completed a 16-week anger management course, a 10-week parenting class, three months of substance abuse treatment, 18 sessions of domestic violence counseling, and three child abuse and neglect classes. Not only was this evidence "new," he argues, it also reflected "changed circumstances" rather than "changing circumstances" as the juvenile court described them. We disagree the evidence established changed circumstances.

In deciding whether a petition has made out a prima facing showing, the juvenile court can look to the case file and undisputed facts. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 461.) This case file contains undisputed evidence that father has a strong and entrenched propensity for violence which manifested in ongoing domestic violence and serious injury to a small child. Given those circumstances, the juvenile court could find that merely completing some services was not sufficient and that father provided no evidence that his conduct or attitude had changed in the five months since the court denied him reunification services.

That said, however, father *did* present new evidence; i.e., the courses he either completed or in which he was participating. The question then is whether he presented any evidence that granting him reunification services would promote Arianna and A.L.'s best interests. The juvenile court properly found that he did not.

In his petitions, father merely asserted that he raised Arianna and A.L. and that they were bonded to him. However, he provided no evidence of the nature of that bond. Though petitions under section 388 are to be liberally construed, conclusory claims are insufficient to require a hearing. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

Further, any consideration of a child's "best interests would necessarily involve eliminating the specific factors that required placement outside the parent's home [citation] …." (*Angel B.*, *supra*, 97 Cal.App.4th at pp. 463-464.) In this case, it was father's physical abuse that required the children's removal. On appeal, father acknowledges he "may have hit Arianna, and that Arianna did not like [him] and was

afraid of him." However, he provided no evidence in his petitions other than his participation and completion of courses that he had made any meaningful attempt to change his abusive behavior.

Father nevertheless contends a hearing would have given him the opportunity to quell concerns he physically abused Arianna and to offer evidence the children were bonded to him. The purpose of a hearing under section 388 however is not to develop the evidence father had the burden of establishing on the face of the petition.

We find no abuse of discretion in the juvenile court's summary denial of father's section 388 petitions and affirm.

DISPOSITION

The orders are affirmed.