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

R.M.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F074065

(Super. Ct. No. 04CEJ300068-3)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Brian M. Arax, Judge.

Cheryl K. Turner, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Detjen, J. and Peña, J.

R.M. (mother) was denied reunification services in the case of her now three-year-old son, Juan, because of her extensive and chronic use of methamphetamine. (§ 361.5, subd. (b)(10) & (11).)¹ She filed a modification petition under section 388 (section 388 petition) requesting reunification services. The juvenile court denied her section 388 petition at a contested 12-month review hearing during which it also terminated reunification services for Juan’s father and set a section 366.26 hearing. Mother filed an extraordinary writ petition (Cal. Rules of Court, rules 8.450-8.452) in which she contends the court abused its discretion in denying her section 388 petition.² We deny the writ petition.

PROCEDURAL AND FACTUAL SUMMARY

This dependency case originated in Merced County in June 2015, when the Merced County Human Services Agency (agency) took then one-year-old Juan into protective custody after he was bitten in the face by a dog. At the time, the agency was monitoring mother under a voluntary maintenance services (VMS) plan to address her longstanding use of methamphetamine and lack of stable housing. Over the prior decade, mother had lost custody of ten other children because of her chronic drug use. She participated in reunification services for five of the children in 2009 but the court terminated services in 2011.

Mother admitted violating her VMS plan by refusing substance abuse treatment and persisting in her use of methamphetamine. She said she did not like being in a “treatment home.”

The juvenile court exercised its dependency jurisdiction over Juan and ordered reunification services for his father. The court denied mother services because of her

¹ Statutory references are to the Welfare and Institutions Code.

² Juan’s father did not file a writ petition.

ongoing and untreated drug abuse and failure to reunify with her children but ordered monthly supervised visits for her. The agency placed Juan in foster care.

In September 2015, mother entered Spirit of Women, a residential substance abuse treatment program.

In October 2015, Juan's case was transferred to Fresno County where his father resided. The Fresno County juvenile court set a six-month review hearing for January 2016. Also in October, mother filed a section 388 petition asking the court to increase visitation from once monthly to once weekly. She informed the court that she was participating in substance abuse treatment and a parenting class. The court increased mother's supervised visitation to twice rather than four times a month.

The juvenile court continued the six-month review hearing and ultimately combined it with the 12-month review hearing (combined review hearing). Meanwhile, mother filed a section 388 petition asking the juvenile court to order reunification services for her. She alleged in her petition that she would complete the Spirit of Women program in February 2016, and then move to transitional housing. She maintained her sobriety since entering the program, completed a parenting class and consistently visited Juan. She alleged she and Juan were developing a bond.

The juvenile court set a hearing on the 388 petition on the date set for the combined review hearing (combined hearing). In its reports for the hearing, the agency recommended the court terminate father's reunification services because of his slow progress and poor prognosis for reunification and deny mother's section 388 petition.

In June 2016, the juvenile court convened the contested combined hearing and concluded it in July 2016. Social worker aide Teresa Luis testified she supervised two of mother's visits and the visits went well. Mother and Juan were close and comfortable with each other and appeared to be bonded. During the course of the hearing, mother testified she completed the program at Spirit of Women and relocated to the sober living home at Westcare, another substance abuse treatment program. She testified she was

participating in Westcare's aftercare services and could have Juan in her care there. She was also attending Alcoholics/Narcotics Anonymous meetings, going to church, searching for a job and planning to attend college. She remained sober and had a sponsor. She said she and Juan shared a mother/son relationship.

The juvenile court terminated reunification services for Juan's father and denied mother's section 388 petition. In ruling on mother's petition, the court acknowledged her progress, stating she had done "everything right" and it "could not be more impressed." However, the court did not believe it would be in Juan's best interest to provide her reunification services because she had a lengthy history of drug abuse and had not demonstrated she could remain abstinent outside of a highly structured environment. The court set a section 366.26 hearing to select a permanent plan.

DISCUSSION

Mother contends the juvenile court abused its discretion in denying her section 388 petition. We disagree.

A parent may bring a petition for modification of any order of the juvenile court pursuant to section 388 based on new evidence or a showing of changed circumstances.³ "The parent requesting the change of order has the burden of establishing that the change is justified. [Citation.] The standard of proof is a preponderance of the evidence." (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) Determination of a petition to modify is committed to the sound discretion of the juvenile court and, absent a showing of a clear abuse of discretion, the decision of the juvenile court must be upheld. The best interests of the child are of paramount consideration when the petition is brought after termination of reunification services. In assessing the best interests of the child, the juvenile court

³ Section 388 provides, in part: "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" (§ 388, subd. (a)(1).)

looks to the child's need for permanence and stability, not to the parent's interest in reunification. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317-319.)

Here, mother persuaded the juvenile court that her circumstances had changed. She did not persuade the court, however, that providing her reunification services would serve Juan's best interest at that time, given her untested sobriety outside of the structured environment of the residential treatment setting. Nevertheless, the court did not rule out the possibility that mother could prevail on a section 388 petition and indicated she could file another petition.

In her petition, mother contends the juvenile court abused its discretion because: (1) she was able to have Juan in her care while at the sober living house; (2) the agency failed to show that a permanent plan served Juan's best interest; and (3) the juvenile court denied her petition based on her prior history but did not take judicial notice of the entire file in the siblings' case. Her contentions are meritless.

Once reunification efforts have failed, the juvenile court's focus shifts to the need of the child for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child at that point. Such presumption applies with even greater strength when the anticipated permanent plan is adoption. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

Mother bore the full burden of proving that reopening reunification efforts for her would better serve Juan's need for permanency and stability than a permanent plan. It was *not* the agency's burden, as mother argues, to prove the reverse; i.e., that a permanent plan better served his interest. Further, the fact that Juan could have stayed with her at the sober living house does not support her argument she could offer him a permanent home at that time. She had yet to demonstrate that she could maintain her sobriety and safely parent Juan while living independently. Finally, the nature and extent of mother's drug use and child welfare history are not disputed. The details were introduced through

the agency's reports which were admitted into evidence without objection. Therefore, the fact that the court did not take judicial notice of the sibling case files is irrelevant.

We find no error.

DISPOSITION

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