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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MARIA N., a Person Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

G045530

(Super. Ct. No. DP014902)

O P I N I O N

Appeal from an order and judgment of the Superior Court of Orange County, Gary Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)  
Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

M.C. (mother) appeals from an order and judgment terminating her parental rights to her daughter Maria N. (Welf. & Inst. Code, § 366.26; all statutory references are to this code), who was 10 months old in 2007 when she and her three older half sisters were detained by Orange County Social Services (SSA) and a petition to declare the girls dependent children was filed under section 300, subdivisions (b) and (d). More than four years later, the court terminated mother's parental rights in connection with Maria, to permit Maria's adoption by the family she had lived with more than half of her life. Maria's caretakers, the husband and wife seeking to adopt her and who cared for all four sisters for a time, have agreed to facilitate visits with Maria's sisters. Mother appeals contending the court erred in terminating her parental rights because termination (1) will result in substantial interference with Maria's relationship with her sisters (§ 366.26, subd. (c)(1)(B)(v)) and (2) will deny Maria the benefit of continuing her relationship with mother (§ 366.26, subd. (c)(1)(B)(i)).<sup>1</sup> Mother also contends the trial court erred in denying her petition for modification without an evidentiary hearing. We affirm.

## I

### FACTS

#### *The First Petition*

Ten-month-old Maria and her three half sisters I.C. (nine years old), J.G. and C.G. (eight-year-old twins) were detained in 2007 on allegations of sexual abuse and general neglect. The petition alleged I.C. had been sexually abused by Maria's father, C.G. had been sexually abused by mother's stepfather, and Maria's father inappropriately disciplined I.C., J.G, and C.G., causing them to fear for their safety. (§ 300, subd. (d).) The petition also alleged mother failed to protect the girls. (§ 300, subd. (b).) The court ordered the children detained and placed in the protective custody of SSA.

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<sup>1</sup> Maria is the only child subject to this appeal.

SSA authorized mother to have two monitored visits a week with the girls. The visits went well and mother's interaction with the girls was positive.

Mother said she did not believe the two girls had been molested. She said Maria's father was never alone with her daughters, but she also said he babysat them. Mother entered a no contest plea to the amended petition. Sustained allegations included: I.C. was sexually abused by Maria's father; C.G. was sexually abused by mother's stepfather; mother should have known C.G. was sexually abused; Maria's father used inappropriate and excessive punishment on I.C., C.G., and J.G., causing them to fear for their safety; and that the girls were at risk due to the sexual abuse. The court declared the girls dependants and found clear and convincing evidence requiring the girls be removed from the parents.<sup>2</sup> The court offered mother reunification services, including parenting classes and counseling to address domestic violence and sexual abuse. Weekend visitation, which SSA had the authority to liberalize, was approved for mother. The visits were to take place at the caretakers' residence.

According to a June 2007 interim report, mother said she believes I.C. was abused by Maria's father. She said she does not know what to believe about allegations her stepfather molested C.G., but stated she would not allow unsupervised contact between her stepfather and the children. The children had been placed with an aunt in Arleta, California. Mother said she has been paying a friend \$80 to drive her to and from the visits and, as a result, she has been working as much as possible to pay for rent and transportation to her visits. The report also stated mother was making progress, appears protective of the children during visits, and would benefit from individual therapy.

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<sup>2</sup> Prior to their detention, the girls lived with mother, Maria's father, and another relative. Maria's father never appeared in proceedings below and is not a party to this appeal. A social worker spoke with Maria's father, but he would not give her contact information for fear of being arrested.

The court referred mother for individual therapy and continued the matter to September 2007, for a six-month review. In August, prior to the scheduled review, the children were placed with mother for a 60-day trial visit. The report prepared for the six-month review stated mother has maintained stable employment, housing, completed domestic violence classes, parent education counseling, and has stated the children will not have contact with Maria's father or mother's stepfather.

The court set a 12-month review in February 2008, and found a substantial probability the children would be returned to mother within six months. In October 2007, the court placed the children with mother based on an interim report stating Maria appears to have adjusted to being with mother and the other girls reported no problems at home. The court set the matter for a December 2007 progress review.

The report prepared for the progress review stated the children remained "relatively stable" in mother's home. Mother, however, told the social worker that her stepfather gave the family a ride to Arleta. The social worker reminded mother the children are to have "no contact" with the abusers. C.G. told her counselor Maria's father had been by the house, but that mother yelled at him to leave. C.G also said mother told her to lie about the earlier molestation and Maria's father having hit her. The court scheduled another six-month review in April 2008 to determine whether to return the children to mother.

By April 2008, mother had completed the case plan, maintained stable employment and housing, and had suitably cared for the children. The three older girls all said they like living with mother. The girls reported seeing mother's stepfather, but denied any interaction with him. They said he leaves if they arrive at his location. The social worker recommended the girls remain with mother. The court set the matter for review in October 2008, and set an earlier appearance in July 2008, to consider terminating proceedings.

### *The Second Petition*

On April 18, 2008, the girls were once again removed from mother's house. A second petition was filed, alleging mother violated the family maintenance case plan by allowing Maria's father and mother's stepfather to each have unauthorized contact with the girls on more than one occasion while the girls were in her care. According to the petition, each of the abusers had several contacts with the girls. The twins each said Maria's father had gone to their house. I.C. said she knew he had been there while she was at school because she saw his bicycle at the house and heard his voice in mother's room. An after school program teacher at the school-age girls' school saw mother, Maria's father, and the girls at a Target store together.

The court placed the children with SSA and again ordered reunification services. Monitored visitation was ordered. Mother pled no contest to the supplemental petition at the end of May 2008. The court found the petition true and approved reunification services for mother.

The report prepared for an August 2008 review stated mother was attending counseling with John Adsit and would start group counseling in early August. Mother had refused to attend therapy with another therapist, who mother said was located too far from her home. The social worker explained the need for mother to demonstrate progress by the next hearing date, and concluded mother's progress was unsatisfactory. Mother attended her weekly four hour visits and the monitor reported the visits went well. I.C., J.G., and C.G. said they enjoy their visits with mother. All three said they would not feel safe if returned to mother. The social worker noted the sisters were all placed in the same foster home and Maria was bonded to her sisters. The foster parents were not interested in adopting the children. The social worker recommended termination of reunification services.

The court ordered continued funding for mother's counseling on the condition she not have any unexcused absences. The court found that adoption was appropriate as a permanent plan and set the matter for a hearing in December 2008 to determine whether to terminate mother's parental rights and implement adoption as the permanent plan. (§ 366.26, subd. (c)(1).)

The report prepared for the section 366.26 hearing concluded termination of parental rights would not be detrimental to the children. The social worker who prepared the report observed the sisters were bonded to each other and their caretakers. At this point mother visited the children, monitored, once a week for four hours. I.C.'s therapist said I.C. appears reluctant to have unmonitored visits with mother. Mother acknowledged her stepfather lived in the same neighborhood. The social worker concluded the close proximity of the stepfather placed the children at risk.

The hearing was continued to January 2009. By this time, the family's therapist recommended the children be returned to mother. He stated mother had made significant progress in therapy and he believed she would protect the children from abuse. He also observed the children seem very attached to mother. Mother and the therapist created a safety plan to protect the children, and mother moved to an apartment in a different city so she and the children would be not be in the same neighborhood as her stepfather.

The therapist said he did not believe I.C.'s statement that she heard the voice of Maria's father in the background once, when she was on the telephone with mother. He believed I.C.'s statement was her way of slowing down the process of her return to mother. He suggested visitations continue with I.C., but that I.C. be permitted to decide whether to participate.

Mother's parenting instructor stated the family had completed the program or made adequate progress. The foster mother said the foster family was interested in adopting I.C. and Maria if the children were not returned to mother.

The social worker asked mother about contact with the abusers. Mother said she has not seen Maria's father in two years, and she visits her mother while her stepfather is at work and, if he returns early, she leaves. The social worker said he could not legally recommend returning the children to mother because reunification services had been exhausted as had "legal timeliness," but would agree with a discussion of a 60-day visit by the children.

In January 2009 mother filed a section 388 request to change the court's previous order and to have the children released to her care for a 60-day visit. The court found adoption and termination of parental rights were not in the best interest of the children and amended the permanency plan to long-term foster care. The court ordered eight hours a week of unmonitored visits — visitation with I.C. at her discretion — and authorized SSA to liberalize visitation.

July 2009 reports stated Maria was bonded with her sisters and the caretakers. The three older girls said they do not want overnight visits. J.G. said she does not feel safe in mother's home. I.C. and C.G. said they would not feel safe if returned to mother. The family therapist said counseling was terminated in July. Mother had been making slow progress and showed a lack of empathy for the children. He did not expect future progress on mother's part. The court ordered a section 366.26 hearing to be held and informed mother that if the children were not placed with her by the next hearing, a permanent plan would be developed at the hearing.

The next month, I.C. told the social worker she went to a party at the grandmother's house and saw mother's stepfather there. J.G. and C.G. were unsure whether they felt safe at mothers. Mother denied taking the girls to the grandmother's house. The foster parents said C.G. and J.G. are defiant and rude after returning from visits with mother. SSA requested the court change visitation to monitored visits because mother took the girls to a party where an abuser was present. The court ordered two weekly monitored visits.

An October 2009 report indicated I.C. did not want telephone contact with mother and J.G. did not want to visit mother, but C.G. did. The foster mother said mother had been inappropriate at the last visitation. She said mother stated the girls were skinny, ugly, and interrogated them. The report for the section 366.26 hearing stated Maria is attached to the foster parents and her sisters. The social worker stated Maria has lived with the foster parents for half of her life and it would be detrimental to remove her from their home. He further stated mother lacks the ability to protect the children, the children are clear they cannot live with mother, but want to maintain contact with her. He recommended making the foster parents legal guardians of the girls.

The court appointed Dr. Roberto Flores de Apodaca to evaluate the bonds between mother and the children, the children themselves, and the children and the foster parents. SSA sought the study because it anticipated adoption and the social worker was unsure if separation of the sisters would be detrimental to them.

A January 2010 SSA report stated the children's psychologist found I.C. exhibited symptoms consistent with posttraumatic stress disorder. C.G. had been stealing. The report recommended placement of the three older girls in a long-term foster care/adoption situation, and recommended Maria be placed for adoption, ideally with her sisters.

The next month J.G. told the social worker that if she did not continue to live with her present foster parents, she would live wherever she was sent so long as she was with her sisters. C.G. said she would want to live in another foster home and would only want to be adopted if she was adopted with her sisters. I.C. said she did not know where she wanted to live if she did not live with her current foster parents, but she did not want to be adopted.

Dr. Flores de Apodaca found the girls were positively bonded with one another, with mother, and with the foster parents. He concluded it would not be in the girls' best interest to be separated. Flores de Apodaca concluded the status quo with the

girls living together with the foster parents to be the most favorable of the possible alternatives. The social worker, however, believed Maria's young age made it in her best interest to be adopted — not kept in long-term care for 15 years — and to allow Maria to maintain contact with her sisters.

In March 2010, the court found a permanent plan of adoption appropriate and found termination of parental rights would not be detrimental to Maria. By the first 15-day review, the caretakers stated their willingness to adopt Maria. Although it would have been preferable to have Maria adopted with her sisters, that option was ruled out because I.C. did not want to be adopted. The second option was having her foster parents adopt Maria. She had lived with them for approximately two years and was bonded with them. The third option was adoption by a paternal uncle. The uncle lived in Colorado and did not present himself as a possible adoptive parent until 2010, and at the time of the review had not mailed in the detailed information on the people living at his residence.

The report prepared in anticipation of the third 15-day review noted Maria's caretakers are nurturing and loving toward Maria and she responds to them as if they were her biological parents. A subsequent report stated it would not be in Maria's best interest to be adopted by the paternal uncle, in part because he has no relationship with Maria and lives in Colorado, which would adversely affect efforts to maintain contact between the sisters.

Efforts to find a family to adopt all four sisters were unsuccessful. J.G. and I.C. stated they were agreeable to being adopted by a separate family from the one adopting Maria. The therapists for the caretakers and Maria's sisters both recommended Maria's adoption by her caretakers.

On July 7, 2011, mother filed a section 388 petition requesting custody of the girls, or in the alternative, liberal unmonitored or monitored visits. Mother alleged circumstances had changed because she completed a six-week parenting course and eight sessions of individual counseling, and has not had any contact with the abusers. The

court heard argument from counsel. Attorneys for the girls were opposed to granting a hearing on the petition, as was the attorney for SSA. The court found there were no changed circumstances and denied the petition without taking evidences.

The section 366.26 hearing was held on July 12, 2011. The social worker's report prepared for the hearing recommended termination of parental rights. The court admitted a number of reports into evidence and heard testimony from the social worker and mother. The court found Maria would likely be adopted, termination of mother's parental rights would not be detrimental to Maria, there would be no substantial interference with Maria's sibling relationships, and ordered mother's parental rights terminated.

## II

### DISCUSSION

The purpose of a hearing to terminate parental rights under section 366.26 is to provide dependent children stable, permanent homes. (§ 366.26, subd. (b).) Of the possible alternatives, adoption is preferred. The least preferred is placement in long-term foster care subject to periodic review. (§ 366.26, subd. (b)(6).) When there is clear and convincing evidence the child will likely be adopted, the statute directs the court to terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c)(1).) “If the court finds a minor cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the minor under one of five specified exceptions. [Citations.]” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The fact that a court has continued to remove the child from the custody of the parent and terminated reunification services — as happened here — constitutes a sufficient basis to terminate parental rights. In such a circumstance, the court terminates parental rights *unless* one of the specifically exception applies. (§ 366.26, subd. (c)(1).)

One such specific exception is when termination of parental rights would be detrimental to the child as the result of “substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

Mother claims termination of her parental rights would be detrimental to Maria because it would result in substantial interference of Maria’s sibling relationship with her sisters, in violation of section 366.26, subdivision (c)(1)(B)(v). The argument lacks merit. While it is true Maria was found to be bonded to her sisters, the termination of mother’s parental rights will not cause a substantial interference. Maria’s caretakers stated their intent to foster the relationship between Maria and her sisters. In a perfect world, Maria would continue to live with her sisters in a stable and loving household. Maria’s adoption will not remove her from such a situation. The four girls were not living together at the time of the section 366.26 hearing. Efforts to have all the girls adopted by the same family failed and there is no reason to believe a different result would likely occur in the future.

Mother argues it cannot be guaranteed the caretakers who have cared for Maria for years, cared for all four sisters for a time, and who want to adopt Maria and have stated a desire to facilitate visitation between Maria and her sisters can maintain contact between the girls. She contends this is so because there could be no post-adoption agreement for visitation as Maria’s sisters were not placed with caretakers capable of entering into such an agreement and the sisters’ future placements are uncertain. She contends she was the “sure bridge” between the girls. The problem with that contention is evident. Unification efforts failed. All four girls were not living

together. Even if mother's parental rights were not terminated and she continued in her monitored visits, she could not "guarantee" *she* would be able to arrange visitation with all the girls together. The court was entitled to accept the representation of the parents seeking to adopt Maria. They are aware of Maria's bond with her sisters and have stated a desire to see that bond maintained.

"After reunification efforts have failed, it is not only important to seek an appropriate permanent solution — usually adoption when possible — it is also important to *implement* that solution reasonably promptly to minimize the time during which the child is in legal limbo. A child has a compelling right to a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child. [Citation.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 59.) This weighty right comes into play when the issue is whether adoption would be detrimental to the child because it would result in substantial interference with a sibling relationship.

The sibling relationship exception contained in section 366.26, subdivision (c)(1)(B)(v), "contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citations.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]" (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

While Maria is bonded to her sisters, she is also bonded to her caretakers. Dr. Flores de Apodaca concluded in his bonding study that based upon the connection between the sisters, it would not be in their best interests to be separated. He concluded the status quo — at the time, the sisters were living together — should be maintained. They were, however, subsequently separated and Maria stayed with her caretakers, the

people she interacts with as her parents. Efforts to have the girls adopted together failed. The social worker believed adoption and maintaining contact with her sisters was in Maria's best interest due to her young age. Her sisters are in agreement with Maria being adopted. The alternative was placement in long-term care with her sisters, which, depending upon circumstances of each of the sisters over the years, could require multiple placements. Of course, long-term foster care is the least favored placement. (§ 366.26, subd. (b)(6).)

Maria has a family that cares for her and has cared for her most of her life. The court determined her interests are better served by maintaining that relationship instead of subjecting Maria to the uncertainty of long-term foster care. Mother did not carry her "heavy burden" below. The evidence supports the juvenile court's decision to terminate mother's rights whether the standard of review used is substantial evidence or abuse of discretion. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) Accordingly, we find the court did not err in finding the sibling relationship exception did not outweigh Maria's interests in being adopted by her caretakers.

Mother also contends the juvenile court erred in not finding a compelling reason for determining termination of her parental rights would be detrimental to Maria because mother had "maintained regular visitation and contact with [Maria] and [Maria] would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) In determining whether this exception applies, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

At the time the court terminated mother's parental rights, more than four years after Maria was made a dependent child of the court, mother's visitation with Maria was limited to one 2-hour supervised visit a week. The visits were supervised for six months and monitored for six to nine months before that. Although she refers to mother as "mother" during their visits, she refers to her by mother's first name after the visits. Maria referred to her caretakers as mother and father and considers them her family. There was no evidence to overcome the preference for adoption. Accordingly, the court did not err in finding section 366.26, subdivision (c)(1)(B)(i) did not apply in this case.

#### *Mother's Section 388 Petition*

In July 2011, a week before the scheduled section 366.26 hearing, mother filed a petition to modify the court's order making adoption the permanent plan. The petition sought the return of the children or, in the alternative, liberal unmonitored visits or liberal monitored visits. The court found the petition failed to present new evidence or a change of circumstances, and denied it without an evidentiary hearing.

Section 388 authorizes a party to the dependency proceeding to move the court to set aside a previously made order based upon a change of circumstances or new evidence. (§ 388, subd. (a).) To be granted, the modification must be in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) We review a trial court's order denying a section 388 petition for an abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.)

Here, mother alleged she had completed a six-week parenting class and eight sessions of individual therapy and, as a result, she learned to be assertive in protecting her children and of the importance of discipline and setting boundaries for children. Mother had parenting classes and counseling in the past, and purportedly learned to protect her children. The children had twice been entrusted to her, albeit on temporary bases, and each time she exposed the children to those who had abused them.

The latest parenting classes and counseling did not constitute a change of circumstances. The court knew in April 2011 mother had completed the parenting classes.

As the trial court had terminated reunification services to mother, the court's focus shifted to the need to provide permanency and stability to Maria (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309), who has compelling rights “to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to [her]. [Citation.]” (*Id.* at p. 306.) Maria was 10 months old when she was first detained. At the time mother filed her section 388 petition, Maria was almost five years old and had lived with the people who were seeking to adopt her — people to whom she was bonded — for almost half of her life. Mother's petition did not contain any new evidence or circumstances from which it could be inferred Maria's best interests were better served by returning her to mother or by increasing mother's visits. For a child of tender years, like Maria, time is of the essence. (*In re M.V.* (2006) 146 Cal.App.4th 1048, 1062.) After all, “[c]hildhood does not wait for the parent to become adequate.” (*In re Marilyn H., supra*, 5 Cal.4th at p. 310.)

Once the permanent plan is decided, the best interests of the child are paramount, and “[t]here is little that can be as detrimental to a child's sound development as uncertainty over whether [s]he is to remain in [her] current “home,” under the care of [her] parents or foster parents, especially when such uncertainty is prolonged.” [Citation.]” (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674.) Maria lived the vast majority of her young life as a dependent child of the court. (See § 361.5, subd. (a)(1)(B) [parents of a child three years of age or younger when removed generally have six months to reunify].) Nothing in mother's petition — filed more than four years after Maria's initial detention — gave reason for the court to delay implementing that which ultimately is in Maria's best interest. Accordingly, we find the trial court did not err in denying mother's section 388 petition without an evidentiary hearing. (See *In re Baby*

*Boy L.* (1994) 24 Cal.App.4th 596, 610.)

III

DISPOSITION

The order and judgment of the juvenile court are affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.