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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re I.C. et al., Persons Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

G052340

(Super. Ct. Nos. DP024632,  
DP024633)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Andre Manssourian, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

Defendant L.C. (father) appeals from an order denying his Welfare and Institutions Code section 388 (all further statutory references are to this code) petition to obtain family reunification services. He claims the court erred in denying his petition without a hearing because he had shown both changed circumstances and benefit to the children, now almost three-and-a-half-year-old I.C. and now two-year-old S.C. We disagree and affirm.

### **FACTS AND PROCEDURAL HISTORY**

In February 2014, shortly after S.C.'s birth the children were taken into protective custody based on allegations of neglect. The petition alleged the children were at risk of serious physical harm under section 300, subdivision (b) due to father's extensive criminal history and both parents' drug abuse. The children's mother (mother)<sup>1</sup> and S.C. had both tested positive for methamphetamine upon S.C.'s birth.

Father's criminal history included arrests or convictions for various substance abuse charges, battery, receiving stolen property, assault with a deadly weapon, and gang membership. At the detention hearing father was granted six hours' monitored visitation per week.

In the jurisdiction/disposition report Orange County Social Services Agency (SSA) noted the children had been placed with their maternal grandmother (grandmother). Father had been ordered to serve an 11-month sentence for a parole violation.

Between December 2005 and March 2009 father had been ordered to participate in drug treatment four different times but had not completed any of the programs. He began using marijuana at age 18 and started using methamphetamine once a month when he was 22 or 23 years old. That progressed into daily methamphetamine use. He told the social worker he had not used methamphetamine for about the last six

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<sup>1</sup> Because mother is not a party to this appeal we state only minimal facts about her.

months but then admitted he had smoked marijuana a couple of months ago. He did not undergo a drug test to confirm his sobriety.

By the disposition hearing in April 2014, father had missed seven drug tests since the end of February and had tested negative for one. Father did not appear at the hearing. He had not turned himself in to begin his prison sentence and a bench warrant had been issued. Father had not been visiting the children. The court found the children to be dependents and denied reunification services to father pursuant to section 361.5, subdivision (b)(13) (reunification services not required when parent has history of extensive drug use and “resisted prior court-ordered treatment” during preceding three years).

Thereafter, father began serving his prison sentence. The report for the six-month review hearing, stated father had not visited the children since late April. Father had not kept in touch with the social worker. Although the court ordered father to be transported from prison to the hearing, father waived his right to appear. At the hearing in December 2014, the court terminated mother’s services and set the permanency hearing.

The permanency hearing report stated the children were developmentally on track, healthy, and happy. The children were adoptable. They had a close relationship with and were bonded to grandmother, who was interested in adopting them.

In April 2015, father filed a section 388 petition, seeking an order for reunification services. The primary basis for the petition was father’s progress in his drug treatment. He had “dedicated himself to addressing his addiction,” being sober for more than a year, attending Alcoholic Anonymous (AA)/Narcotics Anonymous (NA) meetings and receiving “extensive drug treatment.” Upon leaving prison he checked into a residential recovery program and was in an AA 12-step program.

Father maintained there was a “natural bond” “between a parent and child,” and the children would benefit from having him in their lives and from “a [f]ather

committed to his sobriety and putting their interests before all others.” He had one visit with the children, which was positive. He missed them and he knew they missed him.

After reading the petition and declaration the court commended father on his positive steps and denied a hearing. The court found father had not shown changed circumstances, only “changing circumstances,” and the request was not in the children’s best interests.

At the permanency hearing, the social worker testified the children were adoptable and grandmother, with whom they had been living since being taken into custody, wanted to adopt them. The children were bonded to her and thriving in her care. The social worker explained the children saw grandmother as their parent.

According to the social worker, although father had not visited the children while he was in prison, since his release two months’ prior, he had had monitored weekly visits. After some initial hesitation on the children’s part, they had warmed up to father and the visits went well.

The social worker testified she did not believe there was a relationship between father and the girls before father was released from prison. She also stated she did not believe terminating parental rights would harm the children.

Father testified that, although he did not visit with the children while in prison, before he went he had visited them three times a week for two hours. While in prison he sent letters and cards. During recent visits the children were excited to see him. I.C. called him “daddy.”

Father stated he had been in prison for simple assault. He had belonged to a gang for almost 20 years but about a year ago he discontinued his association.

The trial court found father’s efforts to turn his life around “impressionable,” considering “where you have been and where you represent that you are today . . . .” It noted the difference between father’s life until 18 months prior compared to “the man that you will hopefully be going forward.”

The court found the children were generally and specifically adoptable. It also found father had not proved the exception to adoption under section 366.26, subdivision (c)(1)(B)(i). Despite father's regular visitation, he had not shown he had a beneficial parental relationship with the children that was strong enough to outweigh the benefits of adoption. Rather, it was in the children's best interest to be adopted. The court terminated parental rights.

Additional facts are set out in the discussion.

### **DISCUSSION**

To prevail on a section 388 petition, a parent must show by a preponderance of the evidence both changed circumstances and that the requested modification would be in the best interest of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) To merit a hearing, a prima facie case of both elements must be presented. (*Ibid.*) "If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

We review denial of a hearing on a petition under section 388 for abuse of discretion. (*In re Anthony W., supra*, 87 Cal.App.4th at p. 250.) We affirm the order unless it "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." (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) The trial court's decision will not be disturbed unless the court "has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." [Citations.] (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

The court did not abuse its discretion in summarily denying the section 388 petition. It commended father for what he had done to date and noted he was "on his

way” to becoming the man that he would “hopefully be going forward.” But it did not find changed circumstances, and the evidence supports that.

Father lists many reasons in support of changed circumstances: sobriety for more than a year; and participation in numerous programs to address the problems leading to detention of the children, including a 12-step program, NA and AA programs, a program for fathers and a parenting class, and a “relapse prevention class.”

These are admirable undertakings and we encourage father to continue with them. But they do not demonstrate changed circumstances. In the past, father had begun at least four different drug programs and had not completed them. Further, even after the children were detained, father missed several drug tests. In addition, he missed several visits before he went to prison.

Further he is still in a residential treatment program. It has been too short a time to predict whether he will be able to maintain his sobriety, especially once he leaves that program, and also in light of his approximately fifteen years of alcohol and drug abuse. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [father’s seven months of sobriety “nothing new” in light of history of drug use].)

Even if father had shown changed circumstances, there is virtually no evidence that providing services would be in the children’s best interests. The children have had very limited contact with father. Grandmother is the only parent S.C. has ever known. And I.C. was only a year old when taken into custody. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 465 [request for services in section 388 petition failed to show child’s best interest when mother “never actually parented” child].)

Father emphasizes the children loved him, and I.C. called him “daddy” and ran to him and gave him a hug at visits. But this does not show the children would benefit from disrupting their current arrangements where their needs are being met in a stable, loving home. They had only a few visits before father went to prison and a few afterward, and all of the visits have been supervised. Further the short time the children

visited with father, even if the children loved him, were “only a tiny fraction of the time” they have been with grandmother. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 465.)

The mere fact there is a biological relationship does not show providing services to father would be in the children’s best interests, despite father’s conclusory statement they need him in their lives.

Father argues offering him services would benefit the children because it would give them “a chance to better bond with [him] so they can recognize who he is,” and “[g]iving him the opportunity to bond with [them] could help [him] in his commitment to provide for and financially support them in the future.” He further asserts if he was given services it would help him “in changing his lifestyle and in his commitment to paternal obligations and responsibilities.”

We sympathize with father’s desire to maintain a relationship with children. But at this stage of the proceedings, “a parent’s interest in the care, custody and companionship of the child is no longer paramount. [Citation.]” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 464.) Rather, the standard is the children’s need for stability, continuity, and permanence. (*Ibid.*) As opposed to what father wants, there is a presumption adoption is in the best interest of the children. (*Ibid.*) “Granting a section 388 petition would delay selection of a permanent home and not serve the child[ren]’s best interests. [Citation.]” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224.) “Childhood does not wait for the parent to become adequate. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

**DISPOSITION**

The order is affirmed.

THOMPSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.