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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

G052550

(Super. Ct. Nos. DP024295 &  
DP024995)

O P I N I O N

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

Grace Clark, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

S.C. (Mother) appeals from the juvenile court's order made at the Welfare and Institutions Code section 366.26 hearing (all further statutory references are to the Welf. & Inst. Code, unless otherwise indicated), terminating her parental rights to five year-old V.C. and one-year-old A.C. Mother argues the court erred by denying her petition requesting further reunification services without a full evidentiary hearing.<sup>1</sup> We disagree and affirm the order.

## FACTS

### *V.C.'s Detention & Jurisdiction/Disposition*

In its detention report filed October 11, 2013, Orange County Social Services Agency (SSA), stated Mother was recently arrested for violating probation. In 2011, Mother pleaded guilty to second degree burglary (Pen. Code, §§ 459, 460, subd. (b)), was sentenced to two years in prison, and was released on postrelease community supervision. The report alleged Mother failed to protect three-year, eight-month-old V.C. and did not provide her support. Mother admitted to a social worker she had a substance abuse problem with methamphetamine since 2006 and marijuana, but she denied that either she or her boyfriend, J.G., physically abused V.C. Mother also said V.C.'s father, G.L., was in Mexico, had a criminal history, and had never been involved in V.C.'s life. SSA took V.C. into protective custody and placed her in a foster home.

SSA filed a petition alleging V.C. was a child as described in section 300, subdivisions (b) and (g). The petition alleged the following: Mother was arrested for probation violations, testing positive for methamphetamine and failing to enter a court mandated residential treatment program; Mother had an unresolved substance abuse problem with methamphetamine "on and off" since 2006 and marijuana; Mother knew her boyfriend J.G. physically abused V.C.; Mother left V.C. with others without adequate provisions for care; Mother and J.G. had a history of domestic violence, some of which

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<sup>1</sup> Neither V.C.'s father nor A.C.'s father appeal from the juvenile court's order terminating their parental rights. We limit our discussion accordingly.

occurred in V.C.'s presence; and Mother had a history of robbery, burglary, and drug offenses. At the detention hearing, the juvenile court concluded a prima facie case had been made and ordered V.C. detained (§§ 319, 300).

SSA filed the jurisdiction/disposition report on November 1, 2013, and an addendum report the following week. The jurisdiction/disposition report stated Mother agreed she violated probation when she failed to check in with her probation officer and instead went to work. Mother also agreed she had a substance abuse problem with marijuana but stated she would find other medication to treat her back pain. She did not use it in V.C.'s presence. She had not used methamphetamine in about five months. Mother never saw J.G. hit V.C., and V.C. never said he did. Mother denied she and J.G. engaged in domestic violence. The report stated Mother had an unresolved substance abuse problem, was unable to care for V.C. because of her arrest, and engaged in domestic violence with J.G. in V.C.'s presence. The report thus concluded there were substantiated allegations of general neglect and caretaker absence. The report also concluded allegations J.G. physically abused V.C. were inconclusive because of a lack of visible injury, but V.C.'s statements support the finding J.G. physically abused her. The report recommended the court sustain the petition, declare V.C. a dependent child, and provide Mother with reunification services.

The addendum report indicated Mother was enrolled in the perinatal program until she was accepted from the Heritage House's waiting list. The report said V.C. and Mother "appeared to have a strong bond."

The court held a combined jurisdiction/disposition hearing on November 14, 2013. Mother pleaded no contest to the amended petition; the section 300, subdivision (g), allegation was dismissed pursuant to the parties' stipulation. The court found true the section 300, subdivision (b), allegation based on the stipulation and the reports. The court sustained the petition and declared V.C. a dependent of the juvenile court. The court found there was a substantial danger to V.C. if returned home and the

court removed custody from Mother. The court approved the case plan, which included reunification services for Mother. The court ordered monitored visits once per week while Mother was incarcerated, and monitored two-hour visits twice per week when Mother was released from custody.

*V.C.'s Six-Month Review*

SSA filed the six-month status review report on April 30, 2014. The report stated that when Mother was released from custody in November 2013, she was enrolled in the Heritage House Inpatient Substance Abuse Program. While at Heritage House, Mother was doing the following: attending individual counseling once a week and making progress in addressing substance abuse and domestic violence issues; attending parenting group class where she learned appropriate discipline techniques, management of resources, and the effect of drugs on children when parents are drug users; randomly drug testing and testing negative; and attending monitored two-hour visits with V.C. twice a week. On January 20, 2014, Mother was discharged from Heritage House because she allowed J.G. to enter her bedroom window at night. An SSA social worker received a telephone message from Mother on January 29, 2014, indicating Mother had enrolled in Grandma's House Transitional Living Program, but the social worker never made contact with Mother there. On February 19, 2014, an arrest warrant issued for Mother because she had absconded from probation; she had stopped drug testing and reporting to her probation officer. Mother resurfaced two months later, on April 15, 2014, at SSA's office. Mother was eight months pregnant, unemployed, and living with a friend and J.G. Mother had not contacted her probation officer because there was a warrant for her arrest and she did not want her child to be born in jail. Mother wanted to comply with her case plan and resume visits with V.C. She denied any drug use during her pregnancy and stated she was receiving prenatal care. The social worker advised Mother to contact her probation officer to schedule a meeting. Mother failed to comply with the agreed upon schedule to call V.C. and the social worker.

The report stated V.C. was placed with non-relative extended family members who wished to adopt her if not returned to Mother. V.C. continued to bond with her caregivers and called them “mommy and daddy.”

The six-month status review hearing, where Mother was not present, was held the following month. The court concluded there was a substantial danger to V.C. if returned home and Mother had made minimal progress in meeting her case plan goals. The court continued reunification services for Mother, approved the visitation plan, and continued the case for a 12-month review hearing.

#### *A.C.'s Detention Hearing*

Days after V.C.'s six-month review hearing, Mother gave birth to A.C. in May 2014; J.G. was A.C.'s alleged father. A hospital hold was placed on A.C. SSA filed a petition alleging A.C. was a child as described in section 300, subdivisions (b) and (j). The petition alleged the following: A.C.'s urine tested positive for THC; Mother had unresolved substance abuse problems, methamphetamine and marijuana, and used both until she learned she was pregnant at three months gestation; Mother had a criminal history; J.G. had unresolved substance abuse problems, methamphetamine and marijuana, and unresolved mental health issues; J.G. had a criminal history; Mother and J.G. were verbally aggressive towards a social worker; Mother and J.G. were transient; and Mother and J.G. had a history of domestic violence. The petition also alleged A.C. had a sibling who was a dependent of the juvenile court.

At the detention hearing where J.G. was present but Mother was not, the court concluded a prima facie case had been made (§§ 319, 300), and ordered A.C. detained at a facility within SSA's discretion or released to a suitable relative as determined by SSA. The court ordered monitored two-hour visits twice per week for Mother and J.G., A.C.'s presumed father.

### *A.C.'s Jurisdiction/Disposition*

SSA filed the jurisdiction/disposition report for A.C. on June 13, 2014, and an addendum report the following month. In the jurisdiction/disposition report, SSA deferred making any recommendations because it had not interviewed Mother and J.G. Mother was arrested on May 25, 2014, and was in custody. A.C. was placed with his paternal grandmother.

The addendum report explained Mother admitted the allegations in the petition except she denied the allegations of domestic violence and physical abuse. While incarcerated, Mother participated in job development and signed up for parenting and substance abuse classes. She was willing to participate in services upon her release and would like to reunify with A.C. The addendum report recommended the court sustain the petition, declare A.C. a dependent of the court, and provide reunification services to Mother and J.G.

The court held the combined jurisdiction/disposition hearing on July 23, 2014. Mother and J.G. submitted on the reports. The court found true the section 300, subdivisions (b) and (j), allegations. The court sustained the petition and declared A.C. a dependent of the juvenile court. The court found there was a substantial danger to A.C. if returned home and the court removed custody from Mother and J.G. The court approved the case plan, which included reunification services for Mother and J.G. The court ordered monitored visits once per week while Mother was incarcerated, and monitored two-hour visits twice per week when Mother was released from custody.

### *V.C.'s 12-Month Review*

SSA filed the 12-month status review report for V.C. on October 24, 2014, and an addendum report a couple weeks later. The 12-month status review report stated Mother was released from prison on July 26, 2014. Two days after her release, Mother pleaded guilty to falsely representing herself to a peace officer (Pen. Code, § 148.9, subd. (a)), and driving without a safety belt (Veh. Code, § 27315, subd. (d)). Mother had ended

her relationship with J.G., was renting a room from a friend, and was working part-time at a fast-food restaurant. Mother attended her case plan services, including 20 therapy sessions, parenting classes, a perinatal program, a domestic violence program, and a 12-step program. Mother missed all her scheduled appointments with her probation officer in September 2014 and her first scheduled visit in October 2014. When she did attend appointments, her drug tests had been negative since August 2014, except for two diluted tests. Mother explained this resulted from drinking too much water because she was cycling everywhere. Mother had twice weekly supervised visits with V.C. and A.C. Although Mother and the caregiver got into a verbal altercation during one of the first visits, Mother's subsequent visits went well—Mother was attentive and engaged with both children, and Mother and the caregiver's communication improved. Mother's demeanor and attitude had improved, and she complied with visitation rules, schedules, and dates. Beginning on October 31, 2014, SSA approved unsupervised visits for six hours per week.

The 12-month status review report stated V.C. remained with non-relative extended family members. When V.C. had to visit Mother, V.C. told her caregiver, who she referred to "mommy," she was only visiting Mother and would be back home soon. V.C. told the social worker she wanted to live with her caregivers and not with Mother. The caregivers wanted to adopt V.C. if not returned to Mother. The report recommended continuing reunification services to the 18-month permanency review hearing.

The addendum report stated Mother missed three drug tests in October 2014, and several case plan sessions in November 2014. Mother also missed two appointments with her probation officer. With respect to a visit taking place on Halloween, Mother returned the children with only part of their costumes and without their clothes; V.C. had vomit on her.

The court held the 12-month status review hearing on November 13, 2014. The court concluded there was a substantial danger to V.C. if returned home, Mother had

made substantial progress in meeting her case plan goals, and there was a substantial probability V.C. would be returned to Mother within six months. The court continued reunification services for Mother, approved the visitation plan, and continued the case for an 18-month review hearing.

Three weeks later, SSA filed a petition to modify visitation from unsupervised visits of eight hours per week to supervised visits because Mother tested positive for methamphetamine one week after the 12-month status review hearing. SSA filed an interim review report for V.C. on December 30, 2014. The report stated Mother's living and work arrangements had not changed. Mother's first unsupervised visit went well, but she was late to pick up and drop off the children for the second visit. The caregiver learned from V.C. that during another visit Mother took the children to J.G.'s house and they went to the park. Mother did not have car seats for either child and she held A.C. on her lap. V.C. later told the social worker she did not like to be around J.G. because he used to hit her, and she asked the social worker whether she had to visit Mother anymore. Mother last visited the children in December 2014.

The interim report said Mother missed group sessions, individual counseling, and drug testing and was terminated from the perinatal program. Mother contacted SSA in early December and said she was not "doing well" and was using drugs again. Mother knew she should not have allowed the children to visit J.G. She missed appointments with her probation officer and feared she would be arrested. In November and December 2014, Mother had five missed drug tests, three positive drug tests for methamphetamine and amphetamine, one positive drug test for amphetamine, and one positive drug test for methamphetamine. In January 2015, the court granted SSA's petition to restrict Mother's visits.

#### *A.C.'s Six-Month Review*

SSA filed the six-month status review report for A.C. on January 21, 2015. The status review report detailed Mother's relapse using drugs and positive and missed

drug tests. The caregiver informed the social worker that Mother suspected she was pregnant and would be going to Mexico to have the child. Mother completed her parenting program but failed to complete the domestic violence program. Mother missed two individual counseling sessions and those services were terminated. Mother failed to attend an appointment with her probation officer and there was a warrant for her arrest, but her whereabouts were unknown. She was no longer working. As to visitation, the report detailed the incident where Mother took the children to J.G.'s house. When the social worker asked Mother about this visit, Mother believed J.G. was doing well and J.G. should be able to see his son. There was a subsequent visit where Mother was again late to pick up and drop off the children. After Mother had several supervised visits, she missed three visits and her referral to the visitation center was terminated. The report stated A.C. was placed with V.C.'s caregivers. A.C. appeared to be bonding with his caregivers. The caregivers wanted to adopt A.C. if not returned to Mother. The report recommended continuing reunification services for Mother.

The court held the six-month status review hearing on January 22, 2015. The court concluded there was a substantial danger to A.C. if returned home and Mother had made substantial progress in meeting her case plan goals. The court continued reunification services for Mother and continued the case for a 12-month review hearing.

SSA filed an interim review report for A.C. on February 2, 2015. The report stated Mother's whereabouts were still unknown. The report recommended continuing reunification services for Mother. At a hearing, the court adopted SSA's recommendations and continued the matter for a 12-month review hearing.

#### *V.C.'s 18-Month & A.C.'s 12-Month Review*

SSA filed a status review report for both V.C., 18-month status review report, and A.C., 12-month status review report, on March 26, 2015, and an addendum report a few weeks later.

The status review report stated Mother's whereabouts were unknown and she was rumored to be in Tijuana, Mexico. Mother had not visited with the children since December 2014. Both children were placed with the same caregivers and were doing well there. The caregivers wanted to adopt the children if not returned to Mother.

The status review report recommended terminating reunification services for both children, finding suitable placement, and scheduling a section 366.26 hearing. The social worker had not spoken with Mother in about three months as her whereabouts were unknown. Although Mother made initial progress on her case plan, she had not made any recent improvement. Mother had not seen the children in over three months and had not established a consistent relationship. Mother continued to have an unresolved substance abuse problem. Mother had not demonstrated care for either child. The report concluded the risk to the children if reunited was high. The addendum report made the same recommendations. At the hearing, the court terminated Mother's reunification services and set the matters for section 366.26 hearings.

#### *Section 366.26 Hearing*

SSA filed a section 366.26 report for V.C. and A.C. on July 30, 2015, and an addendum report the following week. The section 366.26 report explained Mother failed to address the problems that caused the children to be dependents of the juvenile court, including substance abuse, domestic violence, and failing to care for and protect them. Additionally, Mother had not seen her children for about seven months. Both children were placed with the same caregivers. V.C. was "content" with the caregivers, and A.C. was happy and affectionate toward the caregivers. V.C. called the caregivers "'mommy' and 'daddy'" and was excited when told she might live with them forever. The caregivers had known V.C. since she was 10-months old and A.C. since he was two-months old. The caregivers did not have any children of their own and wanted to provide V.C. and A.C. with a stable and loving home. The section 366.26 report concluded the

children were adoptable and recommended terminating parental rights and referring for adoption placement.

The addendum report made the same recommendations. Mother contacted SSA in late July 2015 to request visitation. Mother had been admitted to an inpatient substance abuse program.

On the date of the scheduled section 366.26 hearing, August 17, 2015, Mother filed a section 388 petition. The petition stated Mother entered a detoxification center on July 16, 2015, and was discharged on July 23, 2015. Mother enrolled in a residential treatment facility on July 26, 2015. Mother had been sober since July 16, 2015. Mother sought additional reunification services. Mother stated she had a bond with V.C., and V.C. and A.C. had a sibling bond, and thus they should both be placed with Mother. Mother attached documents supporting her recent treatment history. SSA filed a section 388 petition requesting Mother's visitation and parental rights be terminated and the children be freed for adoption.

At a hearing, the court denied Mother's section 388 petition without an evidentiary hearing. The court concluded there was insufficient evidence of changed circumstances, acknowledging there may be "possibly changing circumstances." The court added Mother's request did not promote the best interest of the children. That afternoon at the section 366.26 hearing, the court found none of section 366.26's statutory exceptions applied and terminated parental rights as to both V.C. and A.C.

#### DISCUSSION

Mother argues the juvenile court erred by denying her section 388 petition without an evidentiary hearing. We disagree.

A juvenile court dependency order may be changed, modified, or set aside at any time. (§ 385.) "Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change

of circumstance exists and that the proposed change is in the child's best interests. [Citation.] A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]

“[C]hildhood does not wait for the parent to become adequate.” [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*)) We review a court's order denying a section 388 petition without a hearing for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-319.)

Here, the juvenile court did not abuse its discretion by denying Mother's section 388 petition without an evidentiary hearing. Mother neither established a prima facie case of changed circumstances nor that additional reunification services were in V.C.'s and A.C.'s best interests.

Changed circumstances are insufficient when the parent has not eliminated the specific factors that required the children's placement outside the home. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 463-464; *In re Edward H.* (1996) 43 Cal.App.4th 584, 592-593.) Chronic substance abuse is generally considered a serious problem and, therefore, is less likely to be satisfactorily ameliorated in the brief time between termination of services and the section 366.26 hearing. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 [appellant's history of drug relapses, in early stages of recovery, and addressing unresolved substance abuse program not changed circumstances]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686 [no abuse of discretion in denying § 388 petition where mother established only 372 days of abstinence]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 (*Clifton B.*) [seven months of sobriety not changed circumstances]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [person must be sober much longer than 120 days to demonstrate real reform].)

Here, Mother began using methamphetamine in 2006 when she was about 14 years old. Mother tested positive for methamphetamine as late as December 2014, about the last time she saw her children before she disappeared for seven months. Although Mother made sporadic progress on her case plan, Mother began to falter in Fall 2014. She missed individual and group counseling sessions, appointments with her probation officer, and visits with her children. When she did make visits, she violated the terms of her case plan. Most importantly, in Fall 2014 Mother admitted she relapsed and began using drugs again. She had numerous positive tests for methamphetamine and amphetamine. When Mother reappeared in July 2015, she admitted her first day of sobriety was July 16, 2015. The record before us demonstrates Mother has a chronic unresolved substance abuse problem. We cannot conclude one month of sobriety demonstrates a prima facie case of changed circumstances requiring an evidentiary hearing on her section 388 petition. Nor has Mother established reunification was in her children's best interests.

On the eve of a section 366.26 hearing, “the court’s focus shifts from family reunification toward promoting the child’s needs for permanency and stability. [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) Mother has not established V.C.’s and A.C.’s need for permanence and stability would be advanced by an order returning them to her care. As evidence of their strong bond, Mother cites to V.C.’s 12-month status review report filed in October 2014 detailing visits during August to October 2014. Contrary to Mother’s claim she and V.C. had a strong bond, the evidence demonstrated Mother had not seen her children for about seven months. In fact, the record established V.C. did not want to see her Mother and wanted to remain with her caregivers. For example, in November 2014, Mother took V.C. and A.C. to J.G.’s house. After that visit, V.C. told the social worker she did not like J.G. around because he previously hit her, and asked whether she had to visit Mother again. This is not evidence of a strong bond between parent and child.

On the other hand, both V.C. and A.C. bonded with their caregivers. Both V.C. and A.C. appeared to be happy and content with the caregivers. V.C. called the caregivers “‘mommy’ and ‘daddy.’” When the social worker told V.C. the caregivers were planning on adopting her and her brother and they were going to live with them forever, she replied, “‘oh, I would love that!’” And A.C. showed the caregivers affection. This was evidence of a strong bond between the children and their caregivers. Unfortunately, Mother’s unresolved substance abuse problems resulted in poor choices and prevented her from bonding with her children.

Mother relies on *In re Ramone R.* (2005) 132 Cal.App.4th 1339 (*Ramone*), to support her contention the juvenile court erred by summarily denying her section 388 petition. In that case, mother’s petition was both procedurally and substantively deficient. (*Ramone, supra*, 132 Cal.App.4th at p. 1348.) Mother’s petition was not verified, violated the California Rules of Court, and was not supported by a sworn declaration. Additionally, mother was just recently released from jail, unable to provide her son with a stable home, lacked insight into her son’s personality, and had not seen him in a year. (*Ibid.*)

Here, we recognize Mother submitted documentation she entered a residential treatment program and had been sober for three weeks. But lack of documentation was not the only reason the *Ramone* court denied mother’s section 388 petition. In *Ramone*, like here, there was no prima facie case of *changed* circumstances. Here, Mother established at best *changing* circumstances, not *changed* circumstances. As we explain above, Mother had not made adequate progress addressing her unresolved substance abuse problem. Three weeks of sobriety while commendable does not establish prima facie evidence of *changed* circumstances considering 23-year old Mother had been using methamphetamine regularly since she was about 14 years old. Like in *Cliffon B., supra*, 81 Cal.App.4th at pages 423-424, where father’s 200 days of sobriety after a history of drug use did not reassure the court he would not relapse, here Mother’s

21 days of sobriety after over nine years of drug use did not reassure the court she would not relapse. We cannot conclude the court's decision exceeded the bounds of reason.

We recognize a juvenile court must liberally construe allegations in a section 388 petition. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; Cal. Rules of Court, rule 5.570(a).) Mother was required to demonstrate a prima facie case of *changed* circumstances, not *changing* circumstances, on both elements. (*Casey D., supra*, 70 Cal.App.4th at p. 47.) Mother did not satisfy that burden, and thus she was not entitled to an evidentiary hearing and was not denied due process. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 260.) Therefore, the juvenile court did not abuse its discretion by denying Mother's section 388 petition without an evidentiary hearing.

#### DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.