

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

In re BELLA S. et al., Persons  
Coming Under the Juvenile  
Court Law.

B294736, B296364

(Los Angeles County  
Super. Ct. No. DK15481A-B)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

ALISHA M.,

Defendant and Appellant.

APPEALS from orders of the Los Angeles County Superior Court, Rashida A. Adams, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant Alisha M.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Navid Nakhjavani, Principal Deputy County Counsel, for Plaintiff and Respondent.

Alisha M., the mother of six-year-old Bella S. and three-year-old Angolina B., appeals the juvenile court's December 14, 2018 and February 11, 2019 orders summarily denying her requests for additional reunification services and unmonitored visitation with her children (Welf. & Inst. Code, § 388)<sup>1</sup> and the court's February 11, 2019 order terminating her parental rights (§ 366.26). We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Dependency Determination*

On July 29, 2016 the juvenile court sustained an amended section 300, subdivision (b), petition as to Bella and a separate petition as to Angolina, finding both children were at substantial risk of serious physical harm because Alisha had a history of substance abuse and was a current user of illicit drugs, which rendered her incapable of providing the children with regular care and supervision.<sup>2</sup> At the contested disposition hearing on September 21, 2016 both children were declared dependents of the court and removed from Alisha's physical custody.<sup>3</sup> Bella was

---

<sup>1</sup> Statutory references are to this code.

<sup>2</sup> The court also sustained an allegation under section 300, subdivision (b), that Alex S., Bella's presumed father, had a history of substance abuse that rendered him incapable of providing regular care and supervision of the child. Armando J. was identified as Angolina's alleged father, but neither the Department nor the court was provided with further information concerning him or his whereabouts. Alex and Armando are not parties to these appeals.

<sup>3</sup> The Department had detained Bella and Angolina earlier in 2016. Prior to the Department's intervention, Alisha and Bella

suitably placed with her maternal aunt, Valerie E.; Angolina with a nonrelative extended family member, Emily G., a close family friend who lived across the street from Jesus R., Alisha's maternal grandfather. Family reunification services were ordered for Alisha, who was incarcerated on drug-related charges, including a full drug program with aftercare and individual counseling to address case issues. Visitation after her release was to be monitored and in a neutral setting. The Department was granted discretion to permit visitation while Alisha remained in custody.<sup>4</sup>

## *2. Alisha's Enrollment at Prototypes and February 2017 Arrest*

On October 13, 2016 Alisha was admitted to a residential substance abuse treatment facility, Prototypes, as part of a reentry program offered by the criminal court that was comprised of a six-month inpatient program at the facility, a six-month sober living onsite outpatient program and a six-month outpatient program outside the facility.

After her admission to the facility, Alisha reported she had a sponsor with whom she was working her 12-step program. Alisha consistently achieved negative results on random drug tests, attended addiction recovery meetings with her sponsor five times each week and was reported as doing very well in the program. Nevertheless, in December 2016 she stated she still did

---

had been living with Alisha's maternal grandfather; Angolina had not yet been born.

<sup>4</sup> The juvenile court had also ordered monitored visitation in the first half of 2016, but the Department reported in September 2016 that Alisha declined to have visits at the jail with the children.

not trust herself to refrain from using drugs if she were out in the community. On February 17, 2017 Alisha failed to attend an addiction recovery meeting, which was held outside Prototypes, and went somewhere unauthorized instead. She was arrested, jailed for 30 days and released back to the facility.

### 3. *The Six-month Status Review*

In its status review report for the six-month review hearing (§ 366.21, subd. (e)) filed March 22, 2017, the Department reported Bella and Angolina were doing well in the care of Valerie and Emily. The Department also reported Alisha had consistent weekend visits with her children.<sup>5</sup> A very good bond between Alisha and Bella was observed, and Emily brought Angolina to Prototypes to participate in Mommy and Me classes with Alisha to improve their bond. Nevertheless, the Department recommended termination of family reunification services because, acknowledging Alisha's long history with drug abuse, it did not believe Alisha would make the substantial progress over the next review period required to allow the children to be placed safely with Alisha.

According to the Department's last minute information for the court filed for the continued six-month review hearing on May 16, 2017, Alisha had declined on three separate days to visit with Angolina. Alisha had stated that, although she wished for more visits with Bella than the three hours she spent with her elder daughter on Sundays, she was "fine" with the extent of her visits with Angolina. The court ordered the Department to continue to provide family reunification services and granted the

---

<sup>5</sup> On Sundays Jesus brought Bella to the facility, and on Saturdays Emily brought Angolina.

Department discretion to liberalize Alisha's visits to unmonitored, including overnight visits.

#### *4. The 12-month Review Hearing*

As set forth in an interim review report for the 12-month review hearing (§ 366.21, subd. (f)) on June 27, 2017, Alisha's substance abuse counselor stated Alisha was complying with the program requirements, working hard in all her classes and continuing to test negative for all random drug tests. She was given passes for monitored visits with the children outside the facility, which proceeded without incident. Bella said she enjoyed her visits with her parents; Angolina was too young to make a statement. Jesus believed Alisha had a good bond with Bella and that more frequent visits would allow Angolina to bond more with Alisha. Emily reported Alisha did not hold or interact with Angolina as often as Alisha should, and expressed her desire for Alisha "to communicate with her more to discuss Angolina's needs and developmental milestones." At the hearing the court ordered unmonitored visits, with the Department to have discretion to liberalize the visits to overnight once Alisha was in a sober living facility, and continued the matter to August 23, 2017.

In an August 23, 2017 last minute information for the court the Department reported Alisha was scheduled to finish the inpatient program before the end of the month and to move into a sober living program. Her substance abuse counselor expected this transition to a new program with less restrictive rules to be challenging. The counselor also provided the following information: Alisha was employed full-time; the unmonitored visits were going well; the children had developed a close bond with Alisha; and Alisha's longterm housing goal was to move back in with Jesus. On August 23, 2017 the juvenile court

granted the Department “discretion to release to mother and allow overnights at placement.”

*5. October 2017 Reports and the 18-month Review Hearing*

An October 12, 2017 status review report indicated Alisha had successfully completed her inpatient program at Prototypes on August 19, 2017 and was transferred to a six-month sober living home. She complied with all house rules, continued to work full-time and maintained her sobriety. Her caseworker agreed to allow overnight visits on Saturdays commencing September 8, 2017. Bella stated she liked having overnight visits with Alisha and Angolina; and Valerie reported Alisha had made an effort to discuss Bella’s daily routine, such as her eating and sleeping time, to ensure Bella remained on a consistent schedule. Alisha reported that, effective September 30, 2017, she would have her overnight visits at Jesus’s home.

According to an October 25, 2017 last minute information for the court, Jesus reported the children appeared very happy to be with Alisha. Emily stated Angolina seemed “more attached to her sister Bella but not [Alisha]” and appeared “very happy” upon her return home to Emily. In addition, earlier in the month Emily had informed Alisha’s caseworker she had been concerned because, one weekend in October 2017, Alisha had taken the children to stay overnight at the home of a friend. Jesus confirmed this to the caseworker and also reported an incident in which Bella’s father had come over intoxicated and passed out on Alisha’s bed. Jesus further had concerns “that [Alisha and Bella’s father] would take off with Bella to go places”: He was concerned for Bella because Bella’s father did not have a driver’s license, and Jesus worried that the father had been drinking alcohol.

At the 18-month review hearing on October 25, 2017 the court found Alisha's progress in "alleviating or mitigating the causes necessitating placement" had been "minimal." However, it ordered continuation of reunification services.

*6. February 2018 Report, Alisha's Relapse and March 2018 Arrest*

According to the status review report filed February 16, 2018, Alisha continued to have unmonitored, overnight visits on the weekends with the children. Valerie reported Bella and Alisha were very bonded to each other, and Bella would be really excited to visit her mother. Bella wanted to live with Alisha. However, Emily reported she continued to have concerns about Alisha's ability to provide for Angolina. She believed Alisha was not paying attention to Angolina and was not properly caring for the child. For example, although Emily provided the number of diapers Angolina would need for each visit, Alisha would return the child with wet or soiled diapers and too many unused diapers. Emily was further troubled that Alisha frequently left the visits early and stated Alisha missed one visit. Moreover, Emily reported that, during a weekend visit in January 2018, Alisha had been picked up by a man named Ralph, with whom Alisha "got into trouble with when she had been using drugs," and she, with her children in tow, had spent the night at a motel or a hotel with him.

On February 13, 2018 the owner of Alisha's sober living home reported Alisha had been asked to leave the program due to a positive test result for methamphetamine several days earlier. He also reported Alisha had tested positive for drugs once before at the sober living home. The Department's February 16, 2018 report concluded Alisha lacked the coping skills needed to

prevent relapse and the capacity to protect her children from harm. It recommended reunification services be terminated. The court continued the 24-month review hearing to April 2018 for further investigation.

In the interim review report filed March 28, 2018 the Department indicated Alisha had failed to appear for three drug tests for the period February 6, 2018 to March 7, 2018. Valerie and Emily both reported Alisha had not called to ask about her children's health, safety or well-being since February 21, 2018 and had missed two consecutive visits in the past two weeks. Alisha finally contacted her caseworker by e-mail on March 20, 2018 and stated her telephone had been disconnected. Her caseworker scheduled a meeting for March 21, but Alisha failed to appear at, or reschedule, the meeting. The March 28 report recommended the court terminate reunification services and order Alisha's visits be monitored.

In a last minute information dated April 3, 2018, the Department reported Alisha had been arrested on March 23, 2018 for vehicle theft and was again incarcerated. Alisha had not visited with Angolina in several weeks; and Alisha's caseworker had been unable to speak with Valerie regarding any visits by Alisha with Bella.

#### *7. The 24-month Review Hearing and August 2018 Reports*

At the 24-month (§ 366.25) review hearing on April 20, 2018, the court found that return of the children to Alisha's physical custody would create a substantial risk of detriment to the children and that Alisha's progress had been minimal; terminated reunification services; and set a section 366.26 selection and implementation hearing.



The Department's section 366.26 report filed August 8, 2018 indicated the children were doing well in the care of their respective caregivers, Valerie and Emily, who wished to adopt them. The report attached a June 2018 letter from Alisha to her caseworker in which Alisha explained, since her incarceration, she had only talked to Bella once because Valerie refused to accept her collect calls, and she did not have Emily's telephone number. Expressing her love for her children and her hope to reunify with them, Alisha requested Valerie's and Emily's addresses so she could write to her children; explained she was participating in a self-improvement program available to the inmates; and stated her goal upon release was to return to Prototypes for six months and then progress to the sober living home or bridge housing. Alisha further wrote she was five months pregnant.

The Department's addendum report filed August 21, 2018 stated the adoption home study for Emily had been completed and approved. That same day the court ordered monitored visitation for Alisha upon her transfer to a residential program where visits could be facilitated. The court continued the selection and implementation hearing to December 18, 2018.

*8. October and November 2018 Reports, Alisha's Release from Custody and Emily's Agreement To Care for Bella*

According to a status review report filed October 4, 2018 and attached case plan, Emily and Valerie had provided a calm and secure environment for Angolina and Bella, respectively. Emily, who had cared for Angolina since infancy, reported she loved Angolina like her own daughter. The Department's caseworker observed Angolina to be happy and very attached to Emily and her fiancé, whom she regarded as her parents.

Angolina stated she loved her “mommy and daddy,” referring to Emily and her fiancé, as well as her sister Bella. Bella reported she loved her caregiver Valerie, whom she referred to as “auntie,” and, although she would rather be with Alisha, she was happy to live with her aunt and cousins. Bella and Angolina had no visits with Alisha during the most recent reporting period, but continued their sibling visits, with Bella having spent the day with Angolina and Emily.

In October 2018 filings of last minute information for the court, the Department reported Alisha had been released from custody on October 2, 2018; she was enrolled in the Flossie Lewis Residential Program, an inpatient program; she had a monitored visit with Bella on October 13; and Emily was to take Angolina for a visit on October 21. On November 30, 2018 the Department reported Valerie and Emily had agreed Bella should be placed in Emily’s care: Valerie, having recently given birth, could no longer provide properly for Bella; and Emily, who wished for Angolina and Bella to be together, willingly agreed to care for Bella. Bella was to be placed with Emily in December 2018.

#### *9. December 2018 Section 388 Petitions*

On December 12, 2018 Alisha filed section 388 petitions requesting the juvenile court change its April 20, 2018 order terminating her reunification services for Bella and Angolina. She requested a new order reinstating “reunification services, and/or grant[ing] her unmonitored visits with Bella and Angolina” and identified the following new circumstances or new information: “Mother has been enrolled at Flossie Lewis Center for Women since October 10, 2018. Her date of completion is January 6, 2019. Mother has established her sobriety, provided all negative drug/alcohol tests for her program, and most

importantly, has a new baby in her care, which has not been filed on by [the Department]. She attends 12 step meetings daily.” In the petition directed to Bella, Alisha provided the following explanation why the requested order would be better for both Bella and Angolina: “Bella has only recently been placed with Angolina’s caregiver. Both children have a close parent-child bond with their mother. It is in their best interest to be reunified with their safe, stable, sober mother and their younger sibling. In the Status Review Report dated 2/21/18, Bella’s previous caregiver noted that Bella and Mother ‘are very bonded to each other’. . . . Mother is seen ‘as a loving mom to her daughters Bella and Angelina.’”

Alisha attached to each petition a December 10, 2018 letter in which her Flossie Lewis Center counselor confirmed Alisha had entered the residential treatment center on October 10, Alisha’s anticipated January 6 date of completion, her attendance at 12-step meetings, and her negative drug test results throughout her treatment. According to the counselor, Alisha had a new baby and was regarded as a loving and nurturing mother to her children. Her counselor also wrote Alisha intended to attend the outpatient part of the program after completing her primary treatment.

On December 14, 2018 the juvenile court denied Alisha’s petitions without a hearing, finding: (1) Alisha’s request did not state new evidence or a change of circumstances; and (2) the proposed change of order did not promote the best interest of the child.

10. *February 2019 Section 388 Petitions and  
Section 366.26 Selection and Implementation Hearing*  
a. *The section 388 petitions*

At Alisha's request, on December 18, 2018 the court again continued the section 366.26 hearing to February 11, 2019. On February 8, 2019 Alisha filed another section 388 petition for each child seeking to change the April 20, 2018 order by "reinstat[ing] her reunification," granting unmonitored visits with Bella and Angolina, and assessing Alisha's new home for "visits and future overnights and ultimately placement." She based her new petitions on the following new information: "Mother has successfully completed Flossie Lewis Treatment Program 1/6/2019, a 12 week Anger Management Program, Parenting Class, has obtained housing and employment." She explained the requested order would be better for each child for the following reason: "The mother and minors [are] very bonded. Mother has learned the tools necessary to provide a safe and stable environment for the child in hopes of reunifying. All statements indicate the bond that exists between Mother and her girls. Bella and Angolina continue to visit with Mother consistently every week. It is in [the best interests of] Bella and Angolina to reunify with their Mother and sibling in a safe, stable environment with a sober loving Mother." Attached to each petition were copies of Alisha's certificates of completion for "Primary Treatment," "Anger Management 12 weeks" and "Parenting 12 weeks" at "BHS/Flossie Lewis Center" dated January 6, 2019.

A last minute information for the court filed January 28, 2019 reported Bella had been placed in Emily's care with

Angolina on January 19, 2019. Emily reported Bella was adjusting well and stated her desire to adopt Bella as well.

According to a February 7, 2019 addendum report, the Department's caseworker observed Bella and Angolina were comfortable in Emily's home and had healthy attachments to her. Emily similarly had a strong bond with the children, an appropriate parenting style and a general excitement for caring for them. The Department recommended Alisha's parental rights for both children be terminated.

On February 11, 2019, the morning of the section 366.26 hearing, the court summarily denied Alisha's section 388 petitions. It found the petitions failed to show changed circumstances. The court orally stated Alisha had been in a residential treatment program and, after completing the inpatient portion of the program, had relapsed and been incarcerated the previous year. According to the court, the basis for Alisha's most recent petitions was her completion of another treatment program "around one month ago"; "[g]iven the mother's long history of substance abuse and even more recent relapse after completing a different inpatient program, what is offered today should show only changing rather than changed circumstances." The court also concluded the petition did not "state facts showing the children's best interests might be promoted by the proposed change of order." Alisha requested additional reunification services, but the children were both of a very young age; and Alisha had already been provided with two years of such services.

*b. The selection and implementation hearing*

Alisha testified she was currently employed and visited the children once a week, usually for, at most, two hours. For a one-

month period starting January 6, 2019, she had visited them every other day for no more than an hour each visit. During the visits, which were monitored by Emily, Alisha and the children went to the park and ate lunch. According to Alisha, Bella and Angolina were very excited to see her, called her “mom” and were very sad when she left at the end of the visits. Bella cried; she wanted to go home with Alisha or have Alisha stay. Alisha had also gone shopping with the children for Bella’s new shoes for school; and she had spent the holidays with the children, which she memorialized with photos. The previous weekend Alisha and the children went to a family-fun pizza restaurant for a four-hour visit.

Although Alisha believed Bella wanted to live with her because Bella told her so, she was not certain whether Angolina felt the same; however, her bond with Angolina was growing stronger. Angolina was starting to call Alisha “mommy” and wanted Alisha to help her wash her hands, get dressed and put her shoes on.

Emily gave Alisha permission to pick the children up from school, but Alisha was unable to do so because of her move. Alisha helped Bella with school projects but did not participate in open houses at school or parent-teacher conferences. Alisha asked Emily during each visit if she could go with Emily to the children’s medical and dental appointments, and Emily told her they would discuss it “when the time gets there.”

At the conclusion of Alisha’s testimony, the Department’s attorney requested the court terminate parental rights for both children. Alisha’s attorney argued the parent-child relationship exception to adoption applied (§ 366.26, subd. (c)(1)(B)(i)), contending it would be detrimental to the children to disrupt the

bond between Alisha and her two daughters. The children's attorney joined the Department's request to terminate parental rights.

The court ordered the termination of parental rights for the children, finding by clear and convincing evidence the children were adoptable. It also found Alisha had not established the beneficial parent-child relationship exception to adoption. The court acknowledged there had been periods when Alisha had visited regularly and Alisha's testimony showed visits had commenced again on a regular basis; however, there had also been periods when Alisha had not engaged, or had been unable to engage, in regular visitation with her children, including a seven-month period the previous year.

The court stated, "But even if the court finds that despite the significant disruptions in regular visitation that [the] mother has visited regularly, the court finds the mother has not established that . . . any parent-child relationship is sufficient to meet the [subdivision] (c)(1)(B)(i) exception." The court found, with respect to Angolina, "the child was detained from the mother at birth. Even [Alisha's] testimony indicates that the exception does not apply in that [Alisha] testified that she is starting to call her "Mommy" and that the bond is beginning to grow strong. There is a bond in process, but the evidence before the court does not support a finding that there is a bond existing between Angolina and the mother that is such that it is so significant . . . that terminating it would cause the child detriment."

As for Bella, the court observed, "Bella was two when detained from the mother. At this point, she has now been out of the mother's custody for three years. She's been out of the

mother's custody far longer than she was in it." Although the court acknowledged that Bella did recognize Alisha as her mother and found there was "some information in the record regarding [Bella] being excited about visits with [Alisha]," it stated, "There's no evidence before the court that Bella has any particular needs that can be met only by the mother"; "[t]he evidence, at most, establishes a positive relationship but does not establish that it is so significant that the detriment to Bella of terminating it outweighs the stability and permanence that she would gain through adoption."

As reflected in the February 11, 2019 minute orders for each child, the court found Alisha had not maintained regular visitation with the child and had not established a bond with the child; any benefit accruing to the child from her relationship with Alisha was outweighed by the physical and emotional benefit the child would receive through the permanency and stability of adoption; adoption was in the best interests of the child; and no exception to adoption applied in the case. The court terminated the parental rights of Alisha and the children's fathers; ordered adoption to continue as the children's permanent plan; and transferred custody and control of the children to the Department for adoptive planning and placement.

## **DISCUSSION**

### *1. Governing Law and Standard of Review Applicable to the Juvenile Court's Denials of the Section 388 Petitions*

Section 388 provides for modification of juvenile court orders when the moving party presents new evidence or a change



of circumstances<sup>6</sup> and demonstrates modification of the previous order is in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) To obtain a hearing on a section 388 petition, the parent must make a prima facie showing as to both elements. (*In re K.L.* (2016) 248 Cal.App.4th 52, 61; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157; see Cal. Rules of Court, rule 5.570(d)(1).)

The petition should be liberally construed in favor of granting a hearing, but “[t]he prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; accord, *In re K.L.*, *supra*, 248 Cal.App.4th at p. 61.) The petition may not consist of “general, conclusory allegations.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) “Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make” at the hearing. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) When determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. (*In re K.L.*, at p. 62; *In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.)

---

<sup>6</sup> Specifically, section 388, subdivision (a)(1), requires the petition to set forth “any change of circumstance or new evidence that is alleged to require the change of order.” Similarly, California Rules of Court, rule 5.570(a)(7), requires that the section 388 petition contain “[a] concise statement of any change of circumstance or new evidence that requires changing the order . . . .”

We review the summary denial of a section 388 petition for abuse of discretion. (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 61; *In re A.S.* (2009) 180 Cal.App.4th 351, 358.) We may disturb the juvenile court's exercise of discretion only in the rare case when the court has made an arbitrary, capricious or patently absurd determination. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

2. *The Juvenile Court Did Not Abuse Its Discretion in Summarily Denying Alisha's February 2019 Section 388 Petitions*

In support of her February 2019 section 388 petitions, Alisha asserted that, since the court's April 20, 2018 order terminating reunification services, she had immediately reentered treatment for her substance abuse upon her release from incarceration; completed the treatment program; and no longer presented a risk to her children, as evidenced by her having consistently maintained her sobriety for nearly a year, her ability to provide full-time care for her newborn son, who has not been made a subject of dependency proceedings, and her ability to secure employment and housing. However, Alisha did not allege, let alone present evidence, she had completed anything but the inpatient phase of her drug treatment. The juvenile court was fully justified in finding Alisha's completion of the inpatient phase of her drug treatment was not a change of circumstance or new evidence that may require changing the court's prior order, particularly since Alisha had in the recent past successfully completed the inpatient program at Prototypes before relapsing during the outpatient phase of her drug treatment.<sup>7</sup> (See *In re*

---

<sup>7</sup> Indeed, as discussed, Alisha had previously admitted she did not trust herself to refrain from drug use if she were outside the confines of a residential treatment facility.

*Ernesto R.* (2014) 230 Cal.App.4th 219, 223 [parent's recent sobriety and completion of a drug program, "though commendable, is not a substantial change of circumstances"].)

As for Alisha's contention her ability to secure employment and housing and to provide full-time care for her newborn son showed she no longer presented a risk to her children, she provided no explanation how those factors would avert a drug relapse. To the contrary, Alisha had in the past been employed and had housing, but relapsed nonetheless. Similarly, she previously had responsibility for the care of a young child (Bella), but this had not prevented her from succumbing to her drug addiction.<sup>8</sup> The juvenile court properly concluded Alisha's petitions failed to make the required *prima facie* showing necessary to justify an evidentiary hearing.

In addition, the juvenile court acted well within its discretion in concluding Alisha had failed to make a *prima facie* showing the requested modification would promote the children's best interests, notwithstanding the petitions' allegations of a very

---

<sup>8</sup> In any event, Alisha failed to support her petitions with any evidence she had secured housing (other than her temporary stay at the Flossie Lewis Center) or employment since the court's April 20, 2018 order. As for her son's care, although the December 2018 letter from her Flossie Lewis Center counselor stated Alisha had a new baby and was seen as a loving and nurturing mother, it was dated December 2018, while Alisha was still in the structured environment of the inpatient drug treatment program. No evidence was provided to support any allegations regarding her son's care since completion of her stay at the residential treatment center, despite her argument on appeal she has been able to fulfill her parenting responsibilities amid the stressors of life outside of a rehabilitation facility.

close bond between Alisha, on the one hand, and the children, on the other hand (fostered by her weekly visits with them), even if supported by evidence and assumed to be true. Whatever credit Alisha deserves for her recent steps toward sobriety, the nature and extent of that recovery and whether it is adequate to address each child's overriding interest in permanency and stability are precisely the appropriate focus of the second prong of the section 388 analysis, the child's best interest. (See generally *In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310 [following termination of reunification services and the setting of a section 366.26 hearing, the parent's interest in reunification must yield to the child's best interests in permanency and stability; "[c]hildhood does not wait for the parent to become adequate"]; see also *In re J.C.* (2014) 226 Cal.App.4th 503, 527 [a parent's petition to reopen reunification efforts "must establish how such a change [of circumstances] will advance the child's need for permanency and stability"].)

Here, there was extensive evidence that Angolina was thriving in Emily's care, and Bella's recent placement with Emily and Angolina was also proving to be highly successful. Recovery is a long and difficult process, as Alisha herself essentially acknowledges in her appellate briefs. Alisha's drug problem was serious; and her petitions did not allege otherwise, nor could they. As observed by the juvenile court, she had a lengthy history of substance abuse, which is supported by the record and which she has not disputed. Alisha has not contested, nor could she contest, the court's finding the children were of very young age and its observation Alisha sought further reunification services after having already been provided more than 24 months of such services. In light of Alisha's long history of addiction and

the entire factual and procedural history of the case, as well as the nature and extent of her recovery, it was neither arbitrary nor irrational for the court to summarily deny the petitions on the basis it was not in these two young children's best interest to delay their opportunity for a permanent home to give Alisha yet another, uncertain chance to maintain her sobriety outside a structured rehabilitation facility.<sup>9</sup>

That the February 2019 petitions also included the conclusory allegation it was in Angolina's and Bella's best interest to reunify with their younger brother fails to compel a contrary result. The petitions presented no evidence of any bond between either Angolina or Bella, on the one hand, and their newborn brother, on the other. In fact, the record indicates Alisha's son was born at least two years after April 2016, and thus years after Angolina and Bella had already been removed from her custody. (Cf. *In re Erik P.* (2002) 104 Cal.App.4th 395, 404-405 [sibling-relationship exception to termination of parental rights was designed to "preserv[e] long-standing relationships between siblings"; it did not apply where the siblings had not been raised in the same home and no evidence had been presented of "a close and strong bond" between the siblings].)

---

<sup>9</sup> Our determination that the juvenile court did not abuse its discretion in denying the section 388 petitions applies not only to Alisha's request for modification to provide additional reunification services but also to her request for modification to grant unmonitored visitation. The petitions did not allege facts showing the benefit to the children of unmonitored visits was different from that of further reunification services.

3. *The Juvenile Court Did Not Abuse Its Discretion in Summarily Denying Alisha's December 2018 Section 388 Petitions*

For the most part, Alisha's December 2018 petitions relied on the same factual allegations as her February 2019 petitions, except that, as of December 2018, she had not yet completed the drug treatment program at the Flossie Lewis Center for Women. Absent allegations, supported by evidence, more favorable to Alisha than those set forth in the February 2019 petitions, for the reasons discussed as to the February 2019 petitions, it was not an abuse of discretion to summarily deny the earlier ones.

Alisha's December 2018 petitions, unlike the February 2019 petitions, however, did include the additional allegation Bella had been newly placed with Emily. Alisha contends on appeal this circumstance shows the children's stability would not be compromised by the proposed modification. Nevertheless, providing further reunification services would delay securing a permanent, stable home for Bella, as well as her sister. (See *In re Ernesto R.*, *supra*, 230 Cal.App.4th at p. 225 ["we observe that a section 388 order for reunification services at this late date would deprive [the child] of a permanent, stable home in exchange for an uncertain future"]; see also *In re Josiah Z.* (2005) 36 Cal.4th 664, 674 ["[t]here is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged"].) Under all the circumstances, Bella's recent placement in the home where her sister had been thriving for her entire life, and with a caregiver who knew her and was eager to adopt her, is not a fact that shifts the balance of the child's best interest.

4. *Governing Law and Standard of Review Applicable to the Juvenile Court’s Termination of Alisha’s Parental Rights*

The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) Once the court has decided to end parent-child reunification services, the legislative preference is for adoption. (§ 366.26, subd. (b)(1); *In re S.B.* (2009) 46 Cal.4th 529, 532 “[i]f adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child”]; *In re Celine R.* (2003) 31 Cal.4th 45, 53 “[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child.”]; see *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307 [once reunification efforts have been found unsuccessful, the state has a “compelling” interest in “providing stable, permanent homes for children who have been removed from parental custody,” and the court then must “concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order”]; see also *In re Breanna S.* (2017) 8 Cal.App.5th 636, 645-646; *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299-1300.)

Section 366.26 requires the juvenile court to conduct a two-part inquiry at the selection and implementation hearing. First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250; *In re D.M.* (2012) 205 Cal.App.4th 283, 290.) Then, if the

court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B); see *Cynthia D.*, at pp. 250, 259 [when the child is adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is relatively automatic].)

One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The exception requires the parent to prove both that he or she has maintained regular visitation and that his or her relationship with the child ““promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“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”].)

A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [“[a] biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from



continuing a relationship maintained during periods of visitation with the parent”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy “a parental role” in the child’s life.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) Factors to consider include “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 643.) Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The parent has the burden of proving the statutory exception applies. (*In re I.W., supra*, 180 Cal.App.4th at p. 1527; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The court’s decision a parent has not satisfied this burden may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) We review for abuse of discretion the determination whether the benefit to the child derived from preserving parental rights is sufficiently compelling to outweigh the benefit achieved by the permanency

of adoption. (*In re K.P.*, at pp. 621-622; *In re Bailey J.*, at pp. 1314-1315.) When the issue on appeal turns on a failure of proof at trial, we ask whether the evidence compels a finding in favor of the appellant as a matter of law. (See *In re I.W.*, at pp. 1527-1528; see also *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1163.)<sup>10</sup>

5. *Alisha Failed To Establish the Parent-child Relationship Exception to Termination of Parental Rights*

Alisha argues the juvenile court erred in terminating her parental rights because the beneficial parent-child relationship exception to termination under section 366.26, subdivision (c)(1)(B)(i), applies. She contends she maintained regular visitation and contact with Bella and Angolina and she showed her daughters would benefit from continuing their relationship with her, thus satisfying the requirements of the statutory exception. With respect to visitation, she asserts the juvenile court erred in relying on her seven-month period of incarceration, during which time the juvenile court had failed to order visitation, because she is only required to show consistent visitation to the extent allowed by court orders.

Whatever the merits of Alisha's visitation argument, the juvenile court acted within its discretion in concluding the

---

<sup>10</sup> The Supreme Court recently granted review in *In re Caden C.* (review granted July 24, 2019, S255839) and asked the parties to brief and argue the following issues: "(1) what standard governs appellate review of the beneficial parental relationship exception to adoption; and (2) whether a showing that a parent has made progress in addressing the issues that led to dependency is necessary to meet the beneficial parental relationship exception."

benefits of adoption for the children outweighed those from continuing their relationship with Alisha. To be sure, “[i]f 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.*, *supra*, 27 Cal.App.4th at p. 575; see *In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 [parent-child relationship exception requires parent to demonstrate “relationship remained so significant and compelling in [the child’s] life that the benefit of preserving it outweighed the stability and benefits of adoption”]; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315 [juvenile court determines “the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption”].) The juvenile court, however, essentially concluded the evidence failed to support a finding that severing Alisha’s relationship with her daughters would deprive them of a substantial, positive emotional attachment such that they would be greatly harmed.

Alisha on appeal points to evidence the children enjoyed the monitored visits with Alisha, who they referred to as “mom”; they engaged in pleasant activities with her, such as lunches in the park, going to a family-fun pizza restaurant and celebrating the holidays; and they became sad at the end of visits. With respect to Angolina specifically, Alisha emphasizes evidence her bond with her daughter was improving. Alisha helped Angolina wash her hands, get dressed and put her shoes on; and Angolina started to call Alisha “mommy.” As for Bella, Alisha describes

the evidence the two were well-bonded; Bella missed, and wanted to live with, Alisha; and Bella cried at the end of visits.

The record, however, contains evidence contradicting the existence of an attachment so substantial that its termination would greatly harm the children. Angolina had been detained by the Department just two days after her birth. A few months afterwards, she was placed with Emily, with whom she has since lived continuously and who has provided for Angolina's needs. Angolina considered Emily her mother, and it was Emily who fulfilled the role of a parent for most of Angolina's life. Alisha herself was not even certain whether Angolina wanted to live with her. That Angolina called Alisha "mom" or "mommy" is not dispositive. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 [termination of the mother's parental rights affirmed despite evidence the child and mother were emotionally attached and well-bonded, and the child knew appellant was her mother and had called her "Mommy"].)

With regard to Bella, she was only two years old when detained; and at the time of the selection and implementation hearing she had not shared a home with Alisha for three years, a period that exceeded the time the two resided together. Although Bella preferred to live with Alisha, she had in the past expressed her willingness to live with someone other than Alisha. For both children, the record also shows Alisha did not serve a parental role for most of the three years during which these proceedings were pending. Without consideration of the seven-month period of Alisha's most recent incarceration, there were periods of inconsistent visitation as a result of Alisha's declining to visit them. More recently, even when she did visit, her visits generally occurred only once a week, usually for two hours at the most. We

cannot conclude from the record Alisha relied on uncontradicted and unimpeached evidence that compelled a determination her daughters each had a substantial, positive attachment to Alisha that would cause them to suffer great harm if severed. (See *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528 [“where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of appellant as a matter of law”—that is, “whether appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding’”].)

### **DISPOSITION**

The juvenile court’s December 14, 2018 and February 11, 2019 orders summarily denying Alisha’s section 388 petitions for modification, as well as its February 11, 2019 order terminating parental rights, are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.

