Filed 2/28/18 In re James M. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAMES M., a Person Coming Under the Juvenile Court Law.	B282762 (Los Angeles County Super. Ct. No. DK12185)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent. v. OSCAR A., et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County. Daniel Zeidler, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant Oscar A.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant, E.M.

Mary C. Wickham, County Counsel and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Oscar A. (father) and E.M. (mother) separately appeal from the juvenile court's order terminating their parental rights to James M. (minor). After mother's appointed counsel filed a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, raising no issues, we notified mother and gave her the opportunity to file a letter or supplemental brief. Mother submitted a letter asking that minor be returned to her custody or that she be permitted to visit him. In her letter she failed to provide any reasoned legal argument or authority showing that any of the juvenile court's rulings constitute reversible error. We thus deem her appeal abandoned. Father contends that through oversight the juvenile court omitted a finding that he was a presumed father, and that the omission resulted in a violation of due process. Father also contends that the juvenile court erred in summarily denying his petition filed pursuant to Welfare and Institutions Code section 388,[1] and that the court was not authorized to terminate his parental rights without finding by clear and convincing evidence that he was an unfit parent. Finding no merit to father's contentions, we affirm the juvenile court's orders.

BACKGROUND

On July 13, 2015, the Los Angeles County Department of Children and Family Services (the Department or DCFS) filed a juvenile dependency petition and a first amended petition to bring the then seven-month-old minor within the jurisdiction of the juvenile court. According to the Department's detention report, minor came to their attention on July 8, 2015, after mother was arrested for assault with a deadly weapon during an altercation with her significant other, Lorena C. (Lorena), while mother was holding minor. A neighbor, Shannon S. (Shannon)

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

cared for the child until a DCFS social worker (CSW) and the police took minor for a medical examination. Lorena, who appeared intoxicated, and Shannon told the CSW that mother threw a cinderblock on Lorena's foot, fracturing some toes, and inflicting scratches on her chest, arms, and legs during an argument. Lorena told the neighbor that mother dropped the minor twice, once on his head and also on his buttocks. Notably, neither Lorena nor Shannon mentioned seeing injuries on the minor, despite his having had a bath that day while in their care. At the clinic, blood was found in minor's diaper, and his penis was bloody. The area above his penis was swollen, and his scrotum had swollen to about four times the size it normally should have been. Minor was transferred to the pediatric emergency department at USC where he remained, pending the detention hearing.

Mother was interviewed by the CSW the next day. Mother claimed that Lorena was the aggressor and had slapped and bit mother during the argument, causing scratches, lacerations, and a black eye. Mother admitted throwing a rock at Lorena, but denied hitting her with it. Mother admitted that she was holding minor, who she dropped during the altercation. Mother claimed not to know how minor sustained the injuries to his groin area, but did not think it was the fall. Mother identified father, who lived in Sylmar, but who she knew to currently be in Guatemala.

The juvenile court ordered minor detained in shelter care, with monitored visits for mother twice weekly, and named father and "Roberto Unknown" as the alleged natural fathers. On September 28, 2015, the Department filed a second amended petition, alleging in count a-2 pursuant to section 300, subdivision (a), the facts concerning mother's violent altercation with Lorena, which endangered the child's physical health and safety and placed him at risk of serious physical harm and

damage. In count b-1, pursuant to section 300, subdivision (b), the petition alleged neglect, in that minor's injuries were consistent with nonaccidental trauma and would not have occurred except as the result of deliberate, unreasonable, and neglectful acts by mother, and that mother should have been aware of the injuries but did not seek medical treatment. Count b-4 of the petition alleged under subdivision (b) that mother and father had an unresolved history of engaging in violent altercations in which father physically assaulted mother, which placed the child at risk of physical harm.

On the same date, father filed a statement regarding parentage (form JV-505), requesting a judgment of parentage, alleging that he had told friends and family that he was minor's father, had visited minor twice, and had given diapers, food, and money to mother, but mother had not allowed him contact with minor.

Prior to the October 5, 2015 contested adjudication hearing, the Department filed a jurisdiction and disposition report. The report included a summary of minor's medical care since he was detained. His doctors could not rule out other causes, but found the injuries to be consistent with a direct blow to minor's genital area. Minor was also suffering from dehydration and starvation ketoacidosis, consistent with a history of neglect.

The jurisdiction/disposition report also included a summary of father's prior child welfare history dating from 1997, involving two older children. Referrals in 1997 and 2001 were investigated and deemed unfounded. In 2012, a referral relating to his seven-year-old son Aaron A. (Aaron) resulted in a juvenile dependency petition. A DCFS investigator interviewed Aaron's mother, Elsa A. (Elsa), who claimed that father tormented her throughout their eight-year marriage by raping and beating her regularly, starving her during her pregnancy with Aaron, and after the

child was born, threatening her with a rifle. Once, when Elsa was nursing Aaron, father put a knife to her stomach and to Aaron's face, threatening to kill them both. The juvenile court removed Aaron from father's custody and in April 2015, terminated jurisdiction after a family law order granted sole physical custody to Elsa, just three months before the Department detained minor.

Mother's criminal history showed no convictions, but that mother had been arrested twice for battery. Between 1986 and 2014, father had been arrested for burglary, murder, domestic disturbance, assault with a deadly weapon, and battery with serious bodily injury. He was convicted upon pleas to violations of Penal Code section 273.6, subdivision (a), in 1997, and Penal Code section 415 in 1998. Both cases were dismissed after completion of probation.

As father was uncertain whether he was the biological father, the juvenile court ordered genetic testing, and continued the adjudication hearing. A DNA test showed a 99.9 percent probability of paternity. On November 23, 2015, the court accordingly found father to be minor's biological father and ruled that "Roberto" was not. In a last minute information report filed at the scheduled December 16 adjudication hearing, the Department reported that mother had enrolled in parenting classes, and she and Lorena had both registered for therapy services and a domestic violence program. Adjudication and disposition were continued to February 29, 2016.

Prior to the February hearing, the Department reported that mother was attending parenting classes and continued in individual therapy, and that she and Lorena were participating in domestic violence programs. Father was participating in a parenting program. In mid-December, when the CSW saw a bruise on mother's cheek, mother claimed that she had fallen off

her bicycle; since the CSW had never seen a bicycle at mother's home during home visits, suspicions were raised. According to father, mother said that Lorena had assaulted her but she was afraid that Lorena would kill her if she reported it. The CSW received three telephone calls from someone who asked to remain anonymous, stating that mother and Lorena continued to have physical altercations, and that mother had said she believed that Lorena had inflicted minor's injuries. The person informed the CSW that mother had been involved in two car accidents, one in which she sustained serious injuries, and that Lorena had been in the car but fled. On February 22, 2016, father was arrested for assaulting Lorena by choking her while he was intoxicated. Lorena retaliated by breaking a mug on father's head.

Adjudication and disposition were continued to May 11, 2016, and father was ordered to undergo weekly alcohol and drug testing in the meantime. Prior to the hearing mother pled no contest to the petition. Father also submitted to the petition on the Department's report and other documents. The report summarized the history of the case and was admitted into evidence. The Department reported that minor had been diagnosed with some developmental delays and had difficulty eating solid food. Mother had been unable to describe minor's eating patterns or provide information regarding diaper changes in several interviews, leading to the conclusion that Lorena had been his primary caretaker. Minor was been placed in a potential adoptive home, and by late April 2016, when minor was approximately 16 months old, he had made significant progress.

On May 11, 2016, the juvenile court sustained counts a-2, b-1, and b-4 of the amended petition and dismissed other counts, declared minor to be a dependent of the court, and ordered that he be removed from the custody of his parents and suitably placed. The court ordered reunification services for both parents,

including domestic violence and parenting programs, individual counseling, and monitored visits. Neither parent appealed the disposition order.

A combined six-month and 12-month status review hearing was scheduled for October 24, 2016. The Department reported that minor was adjusting to his foster/adopt home, although he continued to have sleep and social issues for which he was receiving treatment. In an updated planning assessment the Department reported that the foster parents were likely to adopt minor if he did not unify with his parents, and recommended adoption as the alternative permanent plan. Minor improved in his physical, social, and gross motor development, was thriving in foster parents' home, had formed a strong attachment to the foster parents, and looked to them for comfort and affection.

Mother and Lorena continued to live together. Mother did not believe Lorena had hurt minor, and did not understand why they would have to live apart for her to reunify with her son, though she said she would do so. Mother was in partial compliance with her case plan and the court's orders. She had completed domestic violence and parenting programs, was attending individual counseling (although she had missed several sessions due to illness) and she was participating in didactic parenting sessions with minor. She had yet to enroll in an anger management program despite referrals.

Father's employment and housing were stable. He had completed a parenting program, was participating in domestic violence classes, individual counseling, and a didactic parenting program with minor. However, father had missed several drug tests and in August 2016, he was arrested for driving under the influence after getting into a car accident in front of mother's residence. The police reported that mother was his passenger, although father denied this, claiming that he was in mother's

neighborhood looking for a store, and called her for assistance after the accident. Mother also denied that she had been a passenger in the car, and she denied that father called her to the scene. Mother gave the police a false name. Both parents denied being in a relationship or having contact with each other. Father planned to enroll in a substance abuse program in September, which he did.

Both parents had weekly monitored visits with minor. Father's monitor reported that father did well overall during the visits, and that minor responded favorably to father and appeared happy in his company. Mother's monitors varied and included a friend of mother's, the CSW, and a foster parent at different visits. Mother's visits went well for the most part, although minor appeared to be more bonded to father.

The juvenile court found that the Department had provided reasonable services and that both parents were in compliance with the case plan. The court ordered all prior orders to remain in effect, except that father was ordered to participate in alcohol counseling and to submit to random weekly alcohol tests.

The Department reported for the January 9, 2017, 18-month review hearing that mother had enrolled in an anger management program, had attended two sessions, with 14 remaining in the program. Mother and Lorena were no longer living together. Mother claimed they were no longer in a relationship, but remained friends. The CSW warned mother that the Department would not recommend unmonitored visits if she continued her relationship with Lorena. Mother did not attend individual counseling for three weeks, and was terminated from the program. Mother explained that she had changed employment and her therapist was unable to accommodate her new schedule. The therapist told CSW that mother did not attempt to change her schedule or tell the therapist that she

would not be able to continue due to new employment. Mother attended six sessions between June and November 2016, and had not found a new therapist. Mother completed domestic violence and parenting programs. She continued to participate in didactic parenting sessions, having completed five family sessions and one collateral session since September 1, 2016; however she missed some sessions and was late to others, which she said was due to illness. The therapist reported that mother and minor had difficulty in transitioning into their sessions. Also, mother continued to demonstrate a need for support in understanding minor's needs and providing him a soothing and safe environment to express emotions. Mother's monitor reported that mother was appropriate and loving in her visits, but seemed to have difficulty setting limits. In November 2016, mother left two visits early, by 45 minutes in one and two hours in another.

Father had completed programs in parenting and individual counseling, had just a few sessions remaining in a domestic violence program, and had participated in nine family didactic therapy sessions with minor. Father was participating in AA, an alcohol program with group therapy, and random testing. His tests were normally negative, but he tested positive for morphine and codeine in December 2016. Father told the CSW that he had not taken any strong pain medication. He continued to have positive and regular monitored visits with minor.

Upon finding that parents were in partial compliance with the plan and that the child could not yet safely return to either parent's care, the juvenile court terminated reunification services for parents at the January 9, 2017 review hearing, and continued the matter to May 8, 2017, for the selection and implementation of a permanent plan pursuant to section 366.26. Mother and father each filed a notice of intent to file a writ petition in the

appellate court, but when no petition was filed, the writ proceedings were declared non-operative in February 2017.

Just before the section 366.26 hearing, both parents filed petitions pursuant to section 388. Mother requested that minor be returned to her home, and both parents requested renewed reunification services. On May 8, 2017, the court denied the petitions without a hearing, and the section 366.26 hearing immediately commenced. In a document prepared for the hearing, the Department reported that minor had resided with his foster parents for over a year, and was closely bonded to them and their adopted daughter, with whom minor shared a close sibling relationship. The foster parents were committed to adopting minor and their home had been found to be safe, loving, and stable. Minor was healthy, happy, growing appropriately, and had made significant progress in his development of speech and motor skills.

The Department noted that mother and father had made attempts to establish an attachment and emotional connection with minor through their weekly visits and conjoint counseling. However, despite parents' efforts, minor needed ongoing Regional Center services and a high level of parenting to address his special needs and the trauma he suffered while in mother's custody. Although father's interactions with minor were positive, and minor was happy and comfortable during visits, he did not ask for or seek father after the visits ended. Minor had become more comfortable with mother, but mother still struggled with her parenting and attachment, and continued to require direction in identifying the child's emotional needs. The CSW remained concerned about father's substance abuse and mother's possible presence in father's car when he was driving under the influence of alcohol. There was also concern that mother had demonstrated a pattern of involvement in violent domestic relationships. The

Department recommended terminating parental rights and providing permanent placement services to foster parents, pending the filing of an adoption petition.

Father testified that he visited minor weekly for three hours. Visits were monitored by a social worker and therapist and took place at a mall, where they would play games, do exercises, and eat together. Father would also change minor's diapers. Father believed minor was attached to father, because he would break free of his foster parents upon seeing father and run toward him. In addition, minor was affectionate with father, giving him hugs and kisses, and he cried at the end of the visits. Minor was two and a half years old at the time of the hearing, and had never resided with father.

The juvenile court terminated parental rights, having found by clear and convincing evidence that it would be detrimental to minor to return him to parental custody.

DISCUSSION

I. Presumed father status

Father asks this court to correct an alleged error in the record which resulted in the absence of a finding by the juvenile court that he was the presumed father of the minor. He contends that the absence of a formal finding of presumed father status was an oversight and this court should consider the issue preserved for appeal and declare father a presumed father.

"In dependency proceedings, fathers are divided into four categories: de facto fathers, alleged fathers, natural fathers and presumed fathers." (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) "A biological or natural father is one whose biological paternity has been established, but who has not achieved presumed father status." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15 (*Zacharia D.*).) California law accords presumed fathers greater rights than natural or biological fathers. (*Id.* at

pp. 448-449.) "Only a 'presumed' father, not one who is merely a 'natural' father, is entitled to reunification services. [Citation.] In order to become a presumed father, a father must fall within one of several categories enumerated in Family Code section 7611 (formerly Civ. Code, § 7004). [Citation.]" (*In re Julia U.* (1998) 64 Cal.App.4th 532, 540, fn. omitted.) Under Family Code section 7611, subdivision (d), an unwed biological father is considered a presumed father if he "receives the child into his . . . home and openly holds out the child as his . . . natural child." An unwed, biological father who does not live with the child may be found to be a presumed father if he "promptly comes forward and demonstrates a full commitment to his parental responsibilities -- emotional, financial, and otherwise." (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849 (*Kelsey S.*); *Zacharia D.*, *supra*, at p. 450.) Such "*Kelsey S.* rights" protect such a father's "federal constitutional right to due process [which] prohibits the termination of his parental relationship absent a showing of his unfitness as a parent. [Citation.]" (*Zacharia*, at p. 450, fn. omitted.)

Father argues that the juvenile court must have intended to rule that he was a presumed father, as shown by the fact that father was referred to as "father" in court records, rather than "alleged natural father" as it had previously; the juvenile court accorded him reunification services; and in the Department's final report, it stated, "On 11/23/15 the court found [Oscar A.] to be a presumed father." Father concludes that the juvenile court could not therefore lawfully terminate his parental rights without finding that he was an unfit father. (See *In re Gladys L.* (2006) 141 Cal.App.4th 845, 848.)

We assume that the trial court did not specifically find that father had presumed father status. (See *In re Julian R.* (2009) 47 Cal.4th 487, 498-499; *Denham v. Superior Court* (1970) 2 Cal.3d

557, 564-565.) Instead, we infer from the use of the designation "father," rather than "alleged natural father," that the court found that father was the biological father and no longer merely an alleged father. Being a biological father does not automatically confer presumed father status. (See *Zacharia D., supra*, 6 Cal.4th at p. 449, fn. 15.) Nor do we infer a presumed father finding from the provision of reunification services, as the juvenile court had discretionary authority to order reunification services to a biological father who had not yet demonstrated that he was a presumed father. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.) Finally, as a finding of presumed father status appears nowhere in the available juvenile court records, we conclude no such finding was made.

Moreover, the juvenile court ruling that father was minor's biological father was entered on November 23, 2015, nearly six months prior to the disposition order entered May 11, 2016. If the court erroneously failed to make a presumed father finding, father had ample time to point out the omission to the court. Furthermore, father should have raised the issue in an appeal from the disposition order. As he did not do so, father may not now complain of errors in predisposition findings and orders. (See *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1152-1156.)

Regardless, father did not demonstrate that he was a presumed father. "'The burden is on a biological father who asserts *Kelsey S*. rights to establish the factual predicate for those rights.' [Citation.]" (*Adoption of Baby Boy W*. (2014) 232 Cal.App.4th 438, 452.) To meet his burden, father was required to show by a preponderance of the evidence that he promptly demonstrated a "full commitment to the responsibilities of parenthood." (*Adoption of T.K.* (2015) 240 Cal.App.4th 1392, 1398, 1401; see also *Zacharia*, *supra*, 6 Cal.4th at p. 450.) "In

determining whether a biological father has demonstrated such a commitment, '[t]he father's conduct both *before and after* the child's birth must be considered. Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his circumstances permit. In particular, the father must demonstrate "a willingness himself to assume full custody of the child -- not merely to block adoption by others."' [Citation.]" (*Zacharia*, at p. 450, fn. 19, quoting *Kelsey S.*, *supra*, 1 Cal.4th at p. 849.) "'A court should also consider the father's public acknowledgement of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child.' [Citation.]" (*Zacharia*, at p. 450, fn. 19.)

Father's written request for presumed father status falls short, as it was supported solely by brief statements made to friends and family that the child was his, that he had visited with the child twice, had given mother diapers, food, and money, and that mother had not allowed contact. Father did not say when he learned that minor was his son, when he told friends and family that the child was his, how much money he had given to mother, or when he gave money; nor did he provide any details regarding mother's not allowing contact, whether it was recent or remote, a single occasion or ongoing, or whether father had ever attempted to have contact with minor prior to his removal from mother's home. Father told the CSW prior to filing his statement of parentage, that he had met mother two years earlier, that they had lived together for a time, that mother told him that minor was his child, and that he asked her to leave his home after he discovered mother's relationship with Lorena. Father thereafter continued to have contact with mother, who confided in him several times that she had been physically assaulted by Lorena.

One week prior to filing the statement of parentage, father told the CSW that he hoped that mother would do what she needed to do to get her son back, but was willing to be responsible for him if she did not.

Father's position suggests that he knew mother was pregnant with his child, that she lived with him during her pregnancy, and that minor possibly lived with them for a short period. Father presented no evidence that he *publicly* acknowledged paternity, assisted mother during her pregnancy, actively helped her obtain prenatal care, or helped her pay pregnancy or birth expenses. Providing an unknown quantity of diapers and money, simply telling two or more people that he was the father, and having the child in his home for a short period do not demonstrate a full commitment to parental responsibilities. For example, in *In re Elijah V.* (2005) 127 Cal.App.4th 576, the biological father's demonstration was insufficient when "the evidence showed he sent diapers for one year and, on one occasion, $300. He offered no evidence that he was unable to make further financial contributions. The only person he told he was Elijah's father was his mother, and she did not believe he acted parentally. There was no evidence he publicly acknowledged Elijah was his child and . . . , at most, he lived with Elijah for two weeks in [maternal grandmother's] home after Elijah's birth and in his own home for 11 days . . . ." (*Id.* at p. 583; also cf. *In re Sarah C.* (1992) 8 Cal.App.4th 964, 972-973 [father gave food or rent money only once although employed, and lived with the child only briefly].)

We conclude from the circumstances presented that the juvenile court did not find father to be a presumed father, that the court's finding was based upon substantial evidence, and that the court did not err.

II. Constitutional rights

Father contends that the allegedly erroneous failure to find him a presumed father resulted in a violation of due process under the California and federal constitutions, as well a violation of his constitutionally protected parental interest in the companionship, care, custody and management of his child. It is father's burden to demonstrate his presumed father status, and having failed to do so, he has also failed to show a violation of his constitutional due process and parental rights. (See *Adoption of T.K., supra*, 240 Cal.App.4th at pp. 1398-1399, citing *Kelsey S.*, *supra*, 1 Cal.4th at pp. 849-850.)

III. Summary denial of section 388 petitions

Father contends that the juvenile court erred in summarily denying his section 388 petition. Respondent contends that the juvenile court's summary denial of parents' section 388 petitions should not be reviewed on the merits because both notices of appeal are defective due to the failure to specify any order, other than the order terminating parental rights. Notices of appeal must be liberally construed. (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) Thus, when a section 388 petition is heard and denied the same day as the order terminating parental rights, reviewing courts will generally consider the appeal on the merits, although only the order terminating parental rights was specifically mentioned in the notice of appeal. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1449-1451; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413, fn. 9.)

Section 388 provides for a procedure to petition the juvenile court to set aside or change a prior court order on the grounds of a change in circumstances or new evidence. (See § 388, subd. (a).) The best interests of the child are of paramount consideration when a section 388 petition is brought after reunification services have been terminated. (See, e.g., *In re*

Stephanie M. (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this juncture, the juvenile court's focus is on the needs of the child for permanence and stability rather than the parent's interests in reunification. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "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.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

"'[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The 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.' [Citation.]" (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.) "To make a prima facie showing under section 388, the allegations of the petition must be specific regarding the evidence to be presented and must not be conclusory. [Citation.]" (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

We review the juvenile court's denial of a section 388 petition without a hearing for an abuse of discretion. (*In re Alayah J., supra*, 9 Cal.App.5th at p. 478) It is the appellant's burden to show a clear abuse of discretion, and the court's discretion will not be disturbed on appeal unless it is shown to have been "'"an arbitrary, capricious, or patently absurd determination [citations]"' [Citations.]" (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) "The denial of a section 388 motion

rarely merits reversal as an abuse of discretion. [Citation.]" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

With regard to changed circumstances, father alleged in his section 388 petition that he had completed his domestic violence class, which helped him realize that he should not be in contact with mother, which he had not, since October 2016. The petition also alleged that father continued to attend classes addressing alcoholism, was on the third step with a sponsor, and continued to test negative for the presence of alcohol. With regard to the best interests of the child, father alleged: "The most recent report shows that my visits have been going well with [minor]. The report states that he has a strong bond with me. It would be better for him to continue that bond."

In support of her petition, mother alleged that she had completed an anger management course, had re-enrolled in individual counseling, having participated in six sessions since March 2017. Mother also expressed concerns about minor's behavior in his current placement, but she did not describe the concern causing behavior.

The juvenile court found that neither parent had sufficiently alleged changed circumstances, but had merely shown changing circumstances. The court explained that mother had only recently re-enrolled in individual counseling, father had not yet participated in individual substance abuse counseling, and father had inconsistently attended his 12-step meetings, as the record he submitted showed only one in January, one in February, two in March, and three in May. The court found no legal basis to reinstate family reunification services with a section 366.26 hearing pending, and noted that it was premature to return the child to either parent as visits remained monitored.

Father's challenge to the court's finding that his circumstances were merely changing is contradicted by his own

argument. He argues that his petition and attached exhibits adequately demonstrated a prima facie showing of changed circumstances because his completion of a 52-week domestic violence program demonstrated the "*amelioration*" of domestic violence concerns and important "*progress*" on other services. (Italics added.) Father was required to show a *substantial* change in circumstances. (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577.) A *lessened* potential for domestic violence and *some progress* in other services does not suggest substantial change.

Father concedes that the petition and exhibits did not adequately show his progress and prognosis regarding alcohol abuse. He asserts that he should have been afforded a hearing because such facts cannot be shown without a hearing. However, father does not state what additional facts could be shown. Father was arrested for driving while intoxicated about nine months prior to his petition and tested positive for morphine and codeine in December 2016. His attendance in a 12-step program was irregular until just before the May 2017 hearing. Chronic substance abuse is a serious problem that usually requires a long period of sobriety to show substantial change. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform"]; *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423 [seven months of sobriety insufficient].) Even a year of sobriety and reaching the third step of a 12-step program may be insufficient to justify relief. (See *In re Amber M.* (2002) 103 Cal.App.4th 681, 686.)

Father also argues that his showing on the issue of the best interests of the minor was sufficient simply because his allegations of positive visits and a strong bond were views shared by the Department. We cannot agree that good visits and a

strong bond, without more, make the necessary prima facie showing that resumption of reunification services are in the best interests of the child. A court does not abuse its discretion in denying a hearing where, as here, the child has been in a lengthy placement with an adoptive family, the petitioning parent never actually parented the child prior to removal, and the parent's visits amount to only a fraction of the time the child has spent with foster parents. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 465.)

We conclude that father's petition failed to allege adequate facts to establish a prima facie showing that the circumstances had substantially changed, or that further reunification services would promote the best interests of the child. He has thus not met his burden to show an abuse of discretion by the juvenile court.

IV. Termination of parental rights

Father contends that his right to federal due process prohibited the court from terminating his parental rights without finding by clear and convincing evidence that he was an unfit parent. At the outset of his argument, father states the applicable legal principles as follows: "If an unwed father promptly comes forward and demonstrates a full commitment to his parental responsibilities -- emotional, financial, and otherwise -- his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent. (*Kelsey S.*, *supra*, 1 Cal.4th at p. 849; *In re Zacharia D.*, *supra*, 6 Cal.4th at p. 450.) Moreover, that finding of parental unfitness must be by clear and convincing evidence. (*In re T.G.* (2013) 215 Cal.App.4th 1, 20.)

When applied to presumed fathers, we agree with the general principles on which father relies. "With respect to *Kelsey S.* fathers and presumed fathers, . . . the juvenile court cannot

terminate parental rights without finding, by clear and convincing evidence, that placement with the father would be detrimental. [Citations.]" (*In re T.G.*, *supra*, 215 Cal.App.4th at p. 5.) On the other hand, where, as here, a "father had never elevated his status to presumed father, . . . his rights could be terminated solely by considering [the child's] best interests. [Citations.]" (*Id*. at p. 18; see also *In re Jason J.* (2009) 175 Cal.App.4th 922, 933-934.)

Father's argument thus erroneously assumes that the juvenile court found him to be a presumed father. Further, father's argument assumes that his section 388 petition made a prima facie showing of changed circumstances and that the best interests of the child would be served. We determined that the juvenile court did not rule that father had achieved presumed father status. We also concluded that father had not carried his burden to prove that he was a "*Kelsey S*. father," entitled to the rights of a presumed father, as the juvenile court did not elevate father's status. Father has not shown error. The juvenile court was not required to make a finding of parental unfitness as to father.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT