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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.R., a Person Coming Under the Juvenile Court Law.	B251709
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK78877)

APPEAL from a judgment of the Superior Court of Los Angeles County. Akemi Arakaki, Judge. Affirmed in part, reversed in part and remanded.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Respondent, Los Angeles County Department of Children and Family Services.

Carlson & Greenberg and John E. Carlson for Respondents M.E. and P.S.

This is the third appeal arising from dependency proceedings involving A.R. and her younger brother, J.R. In the first appeal, we reversed the order terminating parental rights as to A.R. (*In re A.R.* (July 26, 2012, B236550) [nonpub. opn.]). In the second appeal, we reversed the order terminating mother's reunification services as to J.R. (*G.U. v. Superior Court* (October 9, 2012, B242270) [nonpub. opn.].). In this case, A.R. appeals from the order denying mother's Welfare and Institutions Code section 388 petition seeking termination of A.R.'s legal guardianship and return to mother's custody or, in the alternative, additional reunification services.[1] We affirm that part of the order denying mother's request to terminate the legal guardianship, but reverse that part of the order denying mother's request for additional reunification services.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Prior Appeals

The following is a summary of the facts which are set forth in greater detail in the above referenced prior opinions. Mother and father were each 15 years old when A.R. was born in September 2008. Until she was one year old, A.R. lived with mother in the home of maternal grandmother and stepgrandfather. In September 2009, domestic violence in the maternal grandmother's home brought the family to the attention of the Department of Children and Family Services (DCFS). A.R. was detained after DCFS learned that mother and father engaged in violent altercations in A.R.'s presence. As sustained in October 2009, a dependency petition alleged A.R. was a person described by section 300, subdivision (b) based on the history of domestic violence between mother and father (paragraph b-1) and an incident of child endangerment by mother (paragraph

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[1] All future undesignated statutory references are to the Welfare and Institutions Code.

b-2).[2] Because of ongoing domestic violence issues in *maternal* grandmother's home, A.R. was placed with *paternal* grandparents upon the condition that father not live there.

In November 2009, an altercation between mother and her younger brother resulted in maternal grandmother voluntarily placing mother in foster care. DCFS social worker Alicia Ramirez, who had been working with maternal grandmother and her children (including mother), was assigned to A.R.'s case, as well. In January 2010, father moved back into paternal grandparents' home and A.R. was placed with him on the condition that he live with paternal grandparents.

In April 2010, DCFS reported that mother had been reunified with maternal grandmother and was in compliance with all court orders in A.R.'s case; mother was doing well in school and having successful overnight visits with A.R. In October 2010, DCFS reported that mother was pregnant. Although mother was in compliance with the case plan, ongoing issues in the *maternal* grandmother's home caused DCFS to recommend against placing A.R. there. Consistent with DCFS's recommendation, the juvenile court ordered a "home of parent" placement, on the condition that A.R. continue to reside in the *paternal* grandparents' home.

Mother gave birth to J.R. in January 2011. In March 2011, after father reacted violently when mother confronted him over the fact that he had children with two other women, A.R. was detained from father and placed with mother. Mother obtained a restraining order against father and was cautioned that the children would be detained if she did not enforce that order. A.R. and J.R. were detained from mother on April 19, 2011, after mother failed to report and then minimized an incident of domestic violence in which father was observed sitting next to mother outside the dependency courtroom, grabbing her cell phone and pinching her. The children were placed in the home of the

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[2] The child endangerment allegation arose out of an incident in which mother, who did not have a driver's license and did not know how to drive, took maternal grandmother's car without permission and drove with A.R. as a passenger.

couple who later became their de facto parents and are currently A.R.'s legal guardians (the legal guardians).[3]

At the detention hearing on April 22, 2011, the juvenile court ordered thrice weekly visits for mother of at least two hours per visit. Although mother was still a full-time high school student in Los Angeles, DCFS arranged for the visits to occur in North Hills on Tuesdays and Thursdays from 10:00 a.m. to 12:30 p.m., as well as Sundays from 10:00 a.m. to noon. And although mother was 17 years old at the time, there is no indication in the record whether she had a driver's license or access to a car.

On May 24, 2011, a supplemental petition alleging father engaged in an altercation with mother the previous month outside the courtroom was sustained as to A.R.; and a section 300 petition was sustained as to J.R. Consistent with DCFS's recommendation, mother's reunification services were terminated, adoption was identified as the permanent placement plan and a .26 hearing was set for A.R. for September 20, 2011. Mother did not seek review of the order terminating reunification services and setting A.R.'s case for a .26 hearing. (See § 366.26, subd. (a)(1)(A).)

On August 3, 2011, a month before the .26 hearing, mother filed a section 388 petition seeking return of A.R. or, alternatively, placement with maternal grandmother. The petition was set for hearing on September 20, 2011, the same day as the .26 hearing. On that date, the juvenile court denied mother's petition and continued the .26 hearing to October 4, 2011. Mother did not appeal from the order denying her section 388 petition. Following the .26 hearing on October 4, 2011, the juvenile court terminated all parental rights as to A.R. and selected adoption as the permanent placement plan. Mother appealed from that order. (*In re A.R., supra,* B236550.)

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3 At the time A.R. and J.R. were placed with them, the legal guardians already had an approved adoption home study. The legal guardians "were matched with [the children] through the Placement and Recruitment Unit (PRU) at the time of detention." Thus, although DCFS knew this couple wanted to foster a child they would later adopt, they placed A.R. and J.R. with them at a time when reunification was still the goal.

While mother's appeal in A.R.'s case was pending, dependency proceedings continued for J.R. Although mother completed all of her court-ordered programs, she refused social worker Ramirez's recommendation to enter a residential domestic violence program which was *not* court-ordered. The juvenile court terminated mother's reunification services as to J.R. in June 2012. Mother filed a writ petition challenging that order. (*G.U. v. Superior Court*, *supra*, B242270.) While the appeal and writ petition were both still pending, mother voluntarily entered a residential domestic violence program.

In late July 2012, we reversed the order terminating mother's parental rights as to A.R., observing: "Mother exhibited extraordinary efforts to reunify with [A.R.] and was thwarted only by father's conduct. Mother, herself a dependent child, was in full compliance with her case plan. . . . [¶] Mother's parental rights cannot be terminated based on father's conduct toward her . . . ." In light of the undisputed evidence that A.R. had a substantial positive emotional attachment to mother, we concluded that it was an abuse of discretion for the juvenile court to find the beneficial parental relationship exception to the preference for adoption (§ 366.26, subd. (c)(1)(B)(i)) did not exist. We suggested that on remand, the juvenile court "may find it appropriate to hold future hearings for [A.R. and J.R.] at the same time." (*In re A.R.*, *supra*, B236550.)

Three months later, we granted mother's writ petition challenging the order terminating her reunification services as to J.R.: "Even assuming mother minimized father's abusive conduct, there was no evidence that such minimization ever placed [J.R.] at risk of harm, any more than it placed [A.R.] at risk. Under these circumstances, the trial court erred in terminating mother's reunification services and setting a section 366.26 hearing as to [J.R.]. On remand, the juvenile court in [J.R.'s] matter will be able to take into account our observation made in [A.R.'s] matter, including our suggestion that the court may find it appropriate to hold future hearings for the two children at the same time." (*G.U. v. Superior Court*, *supra*, B242270.)

B. Juvenile Court Proceedings After Remand

Upon remand, the juvenile court reinstated mother's and father's parental rights as to A.R. As to both children, a status hearing was set for November and a contested .26 hearing was set for December 7, 2012.

For the status hearing, DCFS reported that *mother was in compliance with her case plan* but she lacked good parenting "instinct" and instead "robotically follows the advice or suggestions of others, when it is pointed out to her that she is not doing enough to bond." DCFS criticized mother's reluctance to *voluntarily* enter the residential domestic violence program: "[I]t seemed, as it was assessed before, that [mother] was robotically complying with what the Court Ordered, and was not willing to find the assessment made by the Department that she is in need of such a program valid." DCFS recommended against returning A.R. to mother because A.R. had then been out of mother's care for 18 months and mother "demonstrated very basic skill and lacked the instinct in her time with her children to redirect behavior, provide a reasonable meal, or bring fun filled activity, or make request on her own to try something new with her visits." Adoption was the recommended permanent placement plan for both children. At the November status hearing, the juvenile court appointed the prospective adoptive parents de facto parents for both children and continued the matter to December 7, 2012 for the .26 hearing as to both children.

The report for the .26 hearing reiterated much of the information contained in the November status review report. Mother had almost finished high school and was attending some college classes. She was also volunteering at the domestic violence shelter and in a junior recreation program. Mother had consistently visited A.R., always accompanied by her godfather and sometimes by maternal grandmother and one or more maternal aunts. The social worker explained her methodology for evaluating the quality of mother's visits with A.R.: "In taking from how real estate agencies use recent comparables of home sales when assessing the value of a home, CSW Rodriguez has decided to utilize a similar method when assessing the overall quality of visitation

between [mother and the children]." The social worker concluded mother's visits inadequate because she did not bring games and home-cooked meals, arrange for the children to have haircuts and professional photographs taken, include the legal guardians in biological-family events or telephone the caretakers between visits to inquire about the children. The social worker also accused mother of a "consistent pattern" of lying and falsely accusing others of doing so. Regarding this court's reversal of the termination of parental rights order, the report states: "The overall reversal is currently a concern, as the Department continues to assess that [A.R.] continues to thrive strongly in her current placement. The Department also continues to assess that the bond between mother and child is not a strong bond. The Department has assessed that child [A.R.] showed a stronger bond with [father, paternal grandmother, maternal aunt Jessica and mother's godfather]. [¶] [The social worker] read the Court of Appeal's response and found that the information provided to assess the bond between the child and the mother was not complete (specifically the situations surrounded with the letter provided by FFA [Foster Family Agency] worker . . . , and the call to mother's Attorney by the same FFA worker). [¶] . . . [A]n inappropriate bond/relationship developed between [the parents and the FFA worker] that resulted in [the FFA worker's] dismissal from the case and eventually" from her job at the agency.

Attorney Nancy Sarinana, of the Children's Law Center, represented both children at the .26 hearing, which was continued as to J.R. but went forward as to A.R.[4] Mother stipulated to legal guardianship as the permanent placement plan because she was still living in the domestic violence shelter and did not want A.R. to have to live there. Mother was given weekly two-hour visits, which the guardians had discretion to liberalize. Dependency jurisdiction over A.R. was terminated.

J.R. was reunified with mother almost six months later, on June 3, 2013. We grant A.R.'s motion to take judicial notice of the January 23, 2014 minute order terminating

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4 This appears to be Sarinana's first appearance on behalf of the children.

juvenile court jurisdiction as to J.R., and the judgment of the same date giving mother sole legal and physical custody of J.R.

C. The Section 388 Petition

The day after J.R. was returned to mother's custody, Sarinana (A.R.'s former attorney and J.R.'s then current attorney) filed a section 388 petition seeking reinstatement of dependency jurisdiction as to A.R., reappointment of Sarinana as A.R.'s attorney, termination of the legal guardianship and return of A.R. to mother's custody.[5] The juvenile court reinstated jurisdiction, appointed Sarinana as A.R.'s attorney and set the petition for hearing on July 18, 2013. A week before that hearing, mother filed her own section 388 petition seeking return of A.R. "to the care and custody of her biological mother. However, if she cannot be returned at this time, [mother] is requesting re-instatement in alternative additional reunification services be provided." Mother's petition identified the following as changed circumstances: "At the time of the Guardianship stipulation, Mother was in domestic violence transitional housing in accordance with the recommendation of the social worker. She has completed that program, all parenting programs, domestic violence education, completed High School, attending college and working part time. She has been reunited with [A.R.]'s brother [J.R.] and is able to secure care giver for both children[.]" The petition alleged the change would be in A.R.'s best interest because "[t]he biological mother has made significant efforts and changes in her life in order to be reunited with her daughter. This

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[5] As a change in circumstances, Sarinana's petition alleged mother was in full compliance with the case plan, she had been consistently visiting A.R. and had custody of J.R. The change would be in A.R.'s best interest because A.R. and J.R. had always lived together, were bonded and it would be detrimental to A.R. to be separated from J.R. In support, Sarinana attached declarations filed by the legal guardians and a letter from the director of A.R.'s preschool – all previously filed by the legal guardians in opposition to returning J.R. to mother – which discussed how important it was to keep the children together. According to the preschool director: "breaking their bond by separating the two would not be advisable, and could actually be traumatic for [A.R.]."

is evident by the Court's decision to reunite her with her son [J.R.]. During the children's stay in foster care, the biological mother maintained contact with her children. Through her efforts with school and work she is now able to [provide] safe living for her children."

DCFS and the legal guardians opposed both petitions. In addition, the legal guardians moved to quash or dismiss Sarinana's petition on the grounds that (1) as A.R.'s *former* attorney, Sarinana did not have standing to bring the motion and (2) Sarinana should be disqualified from representing A.R. for "inherent conflict" arising out of her representation of J.R. Regarding the conflict of interest, they argued that Sarinana should not be allowed to subordinate A.R.'s interests in remaining with the legal guardians to J.R.'s interest in being reunited with his sister. They also argued that Sarinana's bias was evident from the fact that she filed the petition without first ascertaining A.R.'s wishes as required by section 317, subdivision (e)(2).[6] Sarinana countered that she had standing to file the petition and that there was no conflict. Alternatively, she argued: "Even if this Court were to conclude that minor's counsel lacked standing to file the section 388 petition, the issue is now moot, since mother has, in the meantime, filed a section 388 petition raising the identical issues which were raised in [A.R.]'s petition."

On the merits, the legal guardians argued A.R. had "languished" in the dependency system as a result of mother's delay in ending her relationship with father and refusal to enter a domestic violence shelter. They argued further that A.R.'s bond with the legal guardians was stronger than her bond with mother. The legal guardians attributed the perceived lack of bond to mother "missing out on at least 540 hours of visits." This appears to be a reference to the fact that mother visited the children just once a week while she was a full-time high school student, and less often while she was in the domestic violence shelter and the appeal was pending.

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6 Section 317, subdivision (e)(2) reads: "If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child."

In its report, DCFS reiterated its criticism that mother resisted entering a residential domestic violence treatment program which was not court-ordered, suggesting that mother selfishly prioritized attending a traditional high school over reunifying with A.R. Meanwhile, A.R., who would be five years old in September 2013, had bonded with the legal guardians with whom she had been living since April 2011. Although A.R. told social worker Ramirez that she wanted to live with mother, Ramirez questioned whether A.R. fully understood the ramifications of such a decision. A.R. had expressed anger at mother for "taking" J.R. away. DCFS concluded that returning A.R. to mother, while mother is still "working on her bond and time with [J.R.]," would be detrimental to A.R.'s emotional health. It recommended that mother's weekly visits with A.R. continue, with the legal guardians having discretion to liberalize.

At the June 18, 2013 hearing on Sarinana's petition, the juvenile court reappointed Sarinana as A.R.'s attorney, set mother's petition for hearing on July 31, 2013, and continued Sarinana's petition to the same date. The court indicated it would hear argument on the standing and conflict issues at that time.

At the hearing on the section 388 petitions, the juvenile court engaged Sarinana in the following colloquy: "THE COURT: . . . Ms. Sarinana, I also received your response to the legal guardians' motion to quash your 388. In your response, you do indicate that, technically, the issue would be moot based on the fact that the mother has, in fact filed her own 388. [¶] My question to you at this time, would you like to be withdrawing your 388 on behalf [of] [A.R.] based on the circumstances, that we will be hearing all of the same issues in this matter at this time? [¶] MS. SARINANA: That's fine. I will withdraw my 388. [¶] THE COURT: Thank you. Based on the withdrawal of Ms. Sarinana's 388, we would be going forward with mother's 388." The juvenile court found no conflict arising out of Sarinana's representation of both A.R. and J.R.

Mother and social worker Ramirez were the only witnesses at the hearing. Mother explained that she stipulated to the legal guardianship because, at the time, she was living in the domestic violence shelter and was not in a position to have A.R. live with her. While at the shelter, mother finished high school. From the shelter, mother moved in

with her godparents, with whom she and J.R. were still living. Mother had completed a semester at community college, was working six days a week, and intended to return to school in the fall. Mother did not know anything about A.R.'s daily life and routines. At mother's last visit, A.R. was angry at mother for taking J.R. away.

Ramirez testified that the juvenile court never ordered mother to enter a residential domestic violence program. Ramirez had recommended returning the children to mother until April 2011, when mother failed to report that father pinched her while they were waiting outside the courtroom. From that time forward, the recommendation was that A.R. and J.R. be adopted together by the legal guardians. Although J.R. had been returned to mother, Ramirez still believed "it would be best for [A.R.] to continue on the course that she's on right now, to remain in a consistent family setting that she has been with the parents she has continued to identify as parents for over two years now." Ramirez believed "it would be very detrimental to [A.R.'s] emotional growth and her thriving spirit if she were removed from her current caregivers."

In closing, Sarinana responded to DCFS's and the legal guardians' argument that A.R. had already been in dependency too long as follows: "If this case has dragged on as long as it has with [A.R.] languishing in foster care, it is not because of the mother's fault. It is because the department has not been objective. The social worker has not been objective. She's continued to focus on the dynamics of the family and the grandmother. A.R. should have gone home two years ago."

The juvenile court denied the petition. Finding mother had "changing circumstances" but not "changed circumstances," it concluded that taking A.R. from the stability she had found with the legal guardians would not be in her best interests. The court also denied mother's request for continued reunification services, observing, "[that] is also something that we're long past."

A.R. timely appealed from the denial of mother's section 388 petition. Mother did not appeal.

DISCUSSION

A. Standard of Review

The procedural mechanism for a parent seeking termination of a legal guardianship established under section 366.26 and/or additional reunification services is a section 388 petition, which allows any interested party to petition for a hearing to change or set aside a prior placement order on the grounds of "change of circumstances or new evidence." (§ 388, subd. (a)(1); see Cal. Rules of Court, rule 5.740(c).) It is the moving party's burden to show by a preponderance of the evidence both that there are changed circumstances or new evidence, *and* that the change would be in the best interest of the child. (§ 388, subd. (b); *In re Jacob P.* (2007) 157 Cal.App.4th 819, 831; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1077.)

Whether to grant a section 388 petition seeking to terminate or modify a legal guardianship is left to the juvenile court's sound discretion and its ruling should not be disturbed absent a clear showing of abuse of discretion. (*In re Jacob P., supra*, 157 Cal.App.4th at p. 832.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citation.]" (*In re J.C.* (2014) 226 Cal.App.4th 503, 525-526.) It is rare that denial of a section 388 petition merits reversal as an abuse of discretion. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 521 [reversing denial of mother's section 388 petition seeking custody].)

B. Denial of Mother's Section 388 Petition Seeking Additional Reunification Services was an Abuse of Discretion, But Denial of Mother's Request for Custody of A.R. *Was Not An Abuse of Discretion*

Mother contends denial of her section 388 petition was an abuse of discretion because the evidence established both changed circumstances and that the change would promote A.R.'s best interest. In the following section, we explain why the trial court abused its discretion in finding no changed circumstances. In the next section, we

explain why the denial of additional reunification services was also an abuse of discretion. In the final section, we explain why it was not an abuse of discretion to deny mother's request that A.R. be immediately returned to mother's custody.

1. *A Finding of Changed Circumstances is the Only Reasonable Inference From the Undisputed Evidence*

In *In re Daijah T.* (2000) 83 Cal.App.4th 666, 673, the court held that section 388's "changed circumstance" requirement was satisfied by the parent's declaration that she had completed the reunification plan in dependency proceedings involving the child's siblings, and that those siblings had been returned to her custody. By contrast, in *In re Angel B.* (2002) 97 Cal.App.4th 454, 463-464, the court found evidence that the parent had *partially* completed the case plan but was not yet in a position to accept custody of the child established only changing circumstances, not changed circumstances.

Here, under *In re Daijah T.*, the only reasonable inference from the undisputed evidence that mother had been in compliance with the case plan in A.R.'s dependency since May 2011, had successfully reunified with J.R. and was willing and able to accept custody of A.R., was that there were the requisite changed circumstances. That the procedural context of *Daijah T.* was denial of a hearing on the mother's section 388 petition is of no legal consequence. Because it was contrary to the evidence, the juvenile court's finding that mother showed only *changing* circumstances and not *changed* circumstances was an abuse of discretion.

2. Finding That Additional Reunification Services Would Not be in A.R.*'s Best Interest was an Abuse of Discretion*

Under the 14th Amendment, a parent has a liberty interest in the care, custody and management of his or her children. (*In re Sade C.* (1996) 13 Cal.4th 952, 987.) Likewise, a child has a liberty interest to live in a home with his or her parents, if possible. But if not possible, then at least in a stable home. Prolonged uncertainty over

whether a child is to remain in his current home is detrimental to a child's sound development. (*Id*. at pp. 988-989.) For this reason, after reunification services have been terminated, the child's interest in a stable and permanent placement is paramount and reunification is no longer the guiding principle. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

When a legal guardianship is established under section 366.26, a parent whose rights have not been terminated may seek termination of the legal guardianship and/or additional reunification services. (See e.g. *In re Jacob P., supra*, 157 Cal.App.4th 819.) Hearings to terminate or modify guardianship are governed by Rule 5.740(c).[7] Rule 5.740(c)(4) provides that the juvenile court "may consider further efforts at reunification only if the parent proves, by a preponderance of the evidence, that the efforts would be the best alternative for the child." (Rule 5.740(c)(4).) Thus, Rule 5.740(c) does not preclude the juvenile court, in appropriate circumstances, from denying the petition to terminate the guardianship but also ordering additional reunification services for a parent whose rights have not been terminated. (See e.g. *In re Jacob P., supra*, 157 Cal.App.4th 819.) The juvenile court retains its authority to fashion orders in the best interest of the child. (*In re Z.C.* (2009) 178 Cal.App.4th 1271, 1286 [juvenile court may order agency to provide reunification services to guardian].)

The following factors must be considered in determining whether the change requested in a section 388 petition – termination of legal guardianship or additional reunification services – is in the child's best interest: (1) the seriousness of the problem

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[7] In relevant part, Rule 5.740(c) provides: "(3) At the hearing on the petition to terminate the guardianship, the court may do one of the following: [¶] (A) Deny the petition to terminate guardianship; [¶] (B) Deny the petition and request the county welfare department to provide services to the guardian and the ward for the purpose of maintaining the guardianship, consistent with section 301; or [¶] (C) Grant the petition to terminate the guardianship. [¶] (4) If the petition is granted and the court continues or resumes dependency, the court must order that a new plan be developed to provide stability and permanency to the child. . . . Parents whose parental rights have not been terminated must be notified of the hearing on the new plan. The court may consider further efforts at reunification only if the parent proves, by a preponderance of the evidence, that the efforts would be the best alternative for the child."

leading to dependency jurisdiction; (2) the degree to which that problem has been resolved, and why it was not resolved sooner; and (3) the relative strength of the bonds between the child and the parent and the child and the caretakers. (*In re Jacob P., supra*, 157 Cal.App.4th at p. 832 [listing factors for evaluating section 388], citing *In re Kimberly F., supra,* 56 Cal.App.4th at p. 532; *In re D.R.* (2011) 193 Cal.App.4th 1494, 1512 [listing factors].) These are often referred to as the "*Kimberly F.* factors." (See *In re J.C., supra,* 226 Cal.App.4th at p. 527.)

The *Kimberly F.* factors are not meant to be exhaustive. (*In re Jacob P., supra*, 157 Cal.App.4th at p. 832.) The child's wishes are also evidence of what is in his or her best interest, but are not determinative. (*Id.*) Also to be considered is whether the child's best interest would be served by reuniting the child with siblings. (*In re Daijah T., supra*, 82 Cal.App.4th at pp. 674-675.) "[W]hether a child is reared in a more mainstreamed or socioeconomically advantaged household is not dispositive under section 388." (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 529.)

Jacob P. is instructive. In that case, the mother's reunification services were terminated and the maternal grandmother was appointed legal guardian of teenage twins Jacob and Jeremy. The mother moved to Colorado. The mother subsequently filed a section 388 petition seeking termination of the guardianship, return of the twins to her custody in Colorado and additional reunification services. By the time of the hearing, the twins had been living with the maternal grandmother for four years. The juvenile court granted the mother additional services without terminating the guardianship. Several months later, consistent with Jeremy's wishes to live with his mother in Colorado, it terminated the legal guardianship as to Jeremy and placed him with the mother. But it continued the matter as to Jacob, who wanted to remain in California under the maternal grandmother's guardianship. Two months later, the juvenile court denied the petition as to Jacob, finding that, although circumstances had changed, the requested change in placement was not in Jacob's best interests. (*In re Jacob P., supra*, 157 Cal.App.4th at pp. 827, 831.) The appellate court found no abuse of discretion. (*Id*. at p. 833.)

Analyzing the *Kimberly F.* factors in this case, the only reasonable inference from the evidence is that additional reunification services would be in A.R.'s best interest. First, some conditions which lead to dependency jurisdiction are more serious than others. For example, in *In re Kimberly F., supra*, 56 Cal.App.4th at page 521, the court held that dependency jurisdiction based on an unsanitary home was not as serious as sexual abuse, physical abuse or illegal drug use. In this case, while domestic violence is certainly a serious problem, mother was the victim, not the perpetrator of the violence which led to dependency jurisdiction over A.R. As best we can tell, the last incident of domestic violence between mother and father was when father grabbed mother's cell phone and pinched mother while they were outside the courtroom. As we stated in our prior opinion reversing the order terminating parental rights: "Mother's parental rights cannot be terminated based on father's conduct toward her and his violation of a restraining order. . . . [E]ven assuming mother minimized father's abusive conduct, there was no evidence that such minimization ever placed A.R. at risk of harm." (*In re A.R.. supra*, B236550 [at p. 10].) Under the unique circumstances of this case, the domestic violence which led to dependency jurisdiction over A.R. was less serious than if mother had been the perpetrator, or if A.R. had been actually harmed.

Second, by the time of the section 388 petition hearing on July 31, 2013, there is no dispute that mother's issues with recognizing and protecting herself and her children from domestic violence had been resolved. Mother was no longer involved with father and she no longer lived in maternal grandmother's home. Mother had completed all of the court-ordered domestic violence and individual counseling programs and had also completed a residential domestic violence program even though it was not court-ordered. The juvenile court was so confident that domestic violence was no longer an issue that it had returned J.R. to mother's custody (and has since terminated dependency jurisdiction as to him). DCFS's reports for the July 2013 section 388 hearing made no mention of domestic violence, except to rebuke mother for being previously reluctant to enter a residential domestic violence program that was *not* court-ordered. Instead, the reports focused on mother's perceived lack of parenting "instincts," which is so vague we doubt

whether it is an appropriate factor to consider. (Cf. *In re Kimberly F., supra*, 56 Cal.App.4th at p. 521 [psychologist's opinion that the mother had a narcissistic personality cannot serve as the basis for removing children from their parents, or a decision not to return them].)

Regarding the time it took mother to resolve her domestic violence issues, DCFS and the legal guardians blame the failure to do so sooner on mother's refusal to voluntarily enter a residential domestic violence program. That blame is misplaced. The evidence is undisputed that A.R. was placed with the legal guardians on April 22, 2011. By May 2011, mother had completed all of her court-ordered programs, was consistently visiting A.R. three times a week and was "loving and attentive" to the children during these visits.[8] Thus, except for the residential domestic violence program which was not court-ordered, mother was in full compliance with the case plan and was willing and able to have A.R. returned to her custody by May 2011. DCFS's recommendation to terminate parental rights was based not on any ongoing domestic violence, but on mother's "minimization" of past domestic violence and refusal to voluntarily enter a domestic violence shelter. By the time the juvenile court erroneously terminated mother's parental rights on October 4, 2011, A.R. had been living with the legal guardians for less than six months. For the next 10 months, the matter was on appeal. The order terminating parental rights was reversed on July 26, 2012. But the juvenile court did not set the matter for a new hearing until November 2012, another four months. On this record, it is unfair to say that mother did not immediately address the problem of domestic violence that led to dependency jurisdiction over A.R. Much of the time A.R. has been in the dependency system can be attributed to the mistaken belief, held by

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[8] Throughout these dependency proceedings, mother has consistently visited A.R. once a week. In April 2011, mother was given three visits a week. She initially adhered to this schedule. But according to a September 2011 report, mother's school schedule, soccer practice and court-ordered services made it impossible for her to visit more than once a week. The October 4, 2011 order terminating parental rights did not include a visitation order, but it included a provision that all non-conflicting prior orders remained in full force and effect. Thus, mother presumably was still entitled to three weekly visits.

DCFS and the juvenile court, that mother's reunification depended on her participation in a residential domestic violence program which was not court-ordered, or that it could be frustrated by father's conduct alone.

The third factor is the relative strength of the bonds between the child and the caretaker and the child and the parent. While not dispositive, it is "an extremely important factor." (*In re D.R., supra*, 193 Cal.App.4th at p. 1512.) There is no question that as of the 388 hearing, the legal guardians had done an excellent job caring for A.R., who had thrived in the more than two years she had lived with them. The juvenile court found A.R. loved and was bonded to both the legal guardians and mother: "[I]it is very clear to me that she loves all of these ladies. It is clear to me that she is bonded to all of them. The issue today is her best interest." The finding that A.R. continued to love and be bonded with mother militates in favor of a finding that additional reunification services would be in A.R.'s best interest, even if termination of the guardianship would not. Two additional factors also militate in favor of additional reunification services: (1) A.R.'s statement to the social worker that she wanted to live with mother (*In re Jacob P., supra*, 157 Cal.App.4th at p. 832) and (2) the undisputedly close bond between A.R. and J.R. (*In re Daijah T., supra*, 82 Cal.App.4th at pp. 674-675).

To summarize, the actual incidents of domestic violence that resulted in dependency jurisdiction over A.R. were less serious than many other problems that commonly result in dependency jurisdiction because mother was the victim; mother relatively quickly resolved those problems; despite frustrations and difficulties, mother has maintained a strong bond with A.R.; A.R. is also strongly bonded with her brother, who lives with mother; and A.R. has stated her desire to live with mother. While each individual factor may not be enough to warrant additional reunification services, the only reasonable inference from all of this evidence considered together is that additional reunification services would be in A.R.'s best interests. The juvenile court's finding that it was "long past" the time for additional reunification services is not a reason to deny services if they will benefit the child.

3. No Abuse of Discretion in Finding Termination of Legal Guardianship Would Not Be in A.R.*'s Best Interest*

Although we find the only reasonable inference from the evidence is that A.R.'s best interest would be served by additional reunification services, the same cannot be said of mother's request that the legal guardianship be terminated and A.R. immediately returned to mother's custody.

At all review hearings prior to termination of reunification services, there is a statutory presumption that a dependent child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child's physical or emotional well-being. But after reunification services are terminated, the juvenile court's focus shifts from the parent's interest in the care, custody and companionship of the child to the child's needs for permanency and stability. (*In re Jacob P., supra,* 157 Cal.App.4th at p. 828.) " 'When custody continues over a significant period, the child's interest for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of the child.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

We take guidance from *In re Jacob P.*, in which the juvenile court ordered additional reunification services to the mother of twin boys who had been living with their maternal grandmother for four years, but would not terminate the grandmother's legal guardianship until the court had an opportunity to evaluate the situation after the mother and children received additional reunification services. (*In re Jacob P., supra,* 157 Cal.App.4th at p. 825.) Ultimately, the court returned one of the boys to the mother and terminated the guardianship, but the other boy remained in the guardianship with the maternal grandmother.

Here, the undisputed evidence at the section 388 hearing was that A.R. had lived with the legal guardians for more than two years, they had provided a safe and loving home for her, she was thriving in their care and was bonded to them. By contrast, mother had, of necessity, only limited contact with A.R. during most of that time. It is a credit to

mother that she has maintained such a strong bond with A.R. under the circumstances. We also find it significant that mother has not appealed from the denial of her section 388 petition; only A.R. has appealed. We can only speculate as to the reasons why. In any case, mother's failure to appeal suggests to us that returning A.R. to mother at this time would not be in A.R.'s best interest. Accordingly, denial of mother's request to terminate the legal guardianship was not an abuse of discretion. Rather, as in *Jacob P.*, A.R.'s best interests would be best served by waiting to see the outcome of the additional reunification services if, on remand, the court finds current conditions and circumstances indicate additional reunification services will serve the best interests of A.R.

DISPOSITION

The order denying mother's section 388 petition is affirmed insofar as it denies mother's request for termination of the legal guardianship. It is reversed insofar as it denies mother's alternate request for additional reunification services. The matter is remanded to the juvenile court with instructions that it conduct a new hearing to decide what additional reunification services are available for mother that will serve the best interests of A.R., unless current conditions and circumstances convince the court that further reunification services would not be in the best interests of A.R.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.