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

In re JANAE B., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

TINA L.,

Defendant and Appellant.

B276392

(Los Angeles County  
Super. Ct. No. DK06355)

APPEAL from an order of the Superior Court of Los Angeles County. Emma Castro, Commissioner. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel for Plaintiff and Respondent.

Tina L. (mother), mother of Janae B. (born April 2013) and Jace L. (born July 2014) appeals from a juvenile court order terminating her parental rights to her children.<sup>1</sup> Mother argues that the juvenile court erred in denying her petition for modification filed pursuant to Welfare and Institutions Code section 388.<sup>2</sup> We find no error and affirm the order.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### **Initial referral**

The Department of Children and Family Services (DCFS) received a referral on July 10, 2014. Newborn Jace had been surrendered at a fire station by his maternal aunt, who stated that she surrendered the child at mother's direction.<sup>3</sup> Jace was not designated a "safe surrender baby" pursuant to Health and Safety Code section 1255.7 because the authorities did not have a statement from mother indicating that she was safely surrendering the child.

### **Investigation**

Mother's whereabouts were unknown. The maternal aunt reported that mother was homeless and had been for several years, but occasionally showed up at maternal aunt's home. Maternal aunt further reported that mother had a history with DCFS and a history of drug abuse.

The baby was estimated to have been born on July 9, 2014, and weighed 5 pounds 12 ounces. The baby appeared to be

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<sup>1</sup> Mother's two older children, Ariana N. (born Dec. 2006) and Michael G. (born Mar. 2009) are not subjects of this appeal.

<sup>2</sup> All further statutory references are to the Welfare & Institutions Code unless otherwise noted.

<sup>3</sup> Jace, who was named by his foster parents, is referred to as Baby Boy throughout the clerk's transcript.

experiencing withdrawal symptoms. He was having tremors, was jittery and had a very high pitched cry indicative of drug exposure. The toxicology screen was negative, however the child was not born at a hospital and therefore no one was able to collect the first urine at birth. It appeared the child was born at 36 weeks as opposed to 40 weeks.

On July 16, 2014, mother contacted DCFS to inquire about the child's whereabouts, claiming she had reconsidered her decision and wanted the child back in her care. Mother admitted to using heroin the day before Jace's birth, and opined that the drug use led her to deliver the child early. Mother claimed it was her first time using heroin, although she admitted to using methamphetamine during the first months of her pregnancy. Mother reported giving birth to Jace in an empty home and panicked, believing she would face criminal charges for the way she gave birth. She confirmed that her older children, Ariana, Michael, and Janae, were in her custody, and she agreed to bring them to court.

### **Section 300 petition and detention**

On July 17, 2014, DCFS filed a section 300 petition on behalf of Ariana, Michael, Janae, and Jace alleging that the children were at risk of serious physical harm due to mother leaving the baby without ongoing care and supervision. It was further alleged that mother's whereabouts were unknown. The petition was subsequently amended to include an allegation of domestic violence between mother and Michael's father.

Mother appeared with Ariana, Michael and Janae at the detention hearing on July 17, 2014. The juvenile court found that DCFS had set forth a prima facie case for detaining the children. Michael and Ariana were released to their father, and Janae and Jace were ordered detained in shelter care. Mother

was granted monitored visits with the children three times per week.

### **Jurisdiction/disposition report**

A jurisdiction/disposition report was filed on August 26, 2014. Ariana and Michael remained with their father. Janae and Jace were placed with different foster families.

Mother had four prior DCFS referrals regarding Ariana, Michael and Janae. All prior referrals were found to be either inconclusive or unfounded. Mother's criminal history included an arrest in April 2009 for possession of methamphetamine, and two subsequent convictions for possession of controlled substances in 2012 and 2013. Mother also had an active warrant for "multiple charges" by the Whittier Police Department. Mother indicated that she would attend the upcoming criminal hearing on September 30, 2014.

Mother was interviewed in August 2014 at the DCFS office, where she reported being scared when she had the baby because she knew she had drugs in her system and did not know if it was legal to have a baby outside of a hospital. Mother acknowledged that she asked her sister to surrender the baby. Mother stated that she had changed her mind and did not want to relinquish her parental rights to Jace.

Mother admitted to an incident of domestic violence involving Michael's father. Mother also admitted that she had not attended a domestic violence program for victims.

Mother, who was 25 years old at the time of the interview, stated that she had first used drugs when she was 16 years old. She used marijuana on a weekly basis for approximately two years. She started using (snorting and injecting) methamphetamines when she was 20 years old. Mother stated that her last drug use was approximately one week prior to the interview. She denied using drugs in the presence of the

children. Mother admitted that the fathers of her children were gang members. She acknowledged that she has a drug problem and needs an inpatient program. Mother was interested in finding a program that could provide her with counseling. Mother acknowledged that she was repeating the actions of the maternal grandparents by using drugs and losing her children to foster care, however she stated that she intended to get her children back.

### **Jurisdictional hearing**

The jurisdictional hearing took place on August 26, 2014. Mother waived her trial rights and pled no contest to an amended version of the section 300 petition, which alleged:

Count b-2: “mother . . . has a history of substance abuse and is a recent user of methamphetamines and heroin. The children’s mother’s use of drugs endangers the children’s safety and creates a detrimental home environment and places the children at risk of physical harm.”

Ariana and Michael were placed in their father’s custody. Disposition as to Janae and Jace was continued.

### **Multidisciplinary assessment**

The family underwent a multidisciplinary assessment during August and September 2014. Mother reported her struggle to financially provide for her children. Her mother and grandmother were the source of her support. Mother had enrolled at Tarzana Rehabilitative Center for treatment. She had challenges in getting visits with her children due to the restrictive environment at the facility. She also faced challenges in communicating with Janae’s father and Jace’s alleged father because both of them were incarcerated.

The assessor observed mother and Jace together on August 8, 2014 at the foster family agency. Mother did not pick up the child for the first 30 minutes of the visit, and did not talk, cuddle or make eye contact with the child during her visit. Mother appeared to have difficulty managing her time as Janae was constantly asking for mother's attention. Mother held Jace briefly but placed him back in his car seat within 10 minutes and did not get him out of the car seat when he became fussy. Mother had to be encouraged to soothe the child.

During a second observation, mother appeared sad and emotional as she looked at Jace. Mother was responsive in attending to the baby when he was fussy and was able to soothe him with the assessor's guidance. Mother held him constantly but did not engage him in talk or cooing. The assessor addressed the need for mother to talk and engage Jace in smiling and following her voice and movements. However, mother did not respond to the assessor's attempts to model how to talk to the baby.

Mother was also observed during a visit with Janae at the foster family agency. Mother did not sit and play with the child and often gave her books or a cell phone to distract her. Janae appeared to enjoy playing with the phone. Mother was distracted as she spoke to the assessor and asked the child to sit down several times. Janae often did not listen to her mother when she was asked not to touch or play with objects in the office. Janae often cried out of frustration and appeared to seek her mother's attention.

### **Disposition hearing**

At the December 1, 2014 disposition hearing, DCFS reported that Janae was happy in her foster home. Jace's hand and leg continued to shake and sometimes became stiff, and the child grunted and made high-pitched squeals. Jace's foster

mother reported that he was gaining weight at a good rate and liked to be held most of the time.

Mother submitted to four drug tests between September 19 and November 18, 2014, all negative for the presence of drugs. However, mother missed drug tests on August 29, September 30, and October 22, 2014. Mother's counselor from Tarzana treatment program reported that mother was doing well and would be graduating, although no graduation date was provided.

Janae and Jace were declared dependents of the court and ordered to remain suitably placed. Mother was granted monitored visitation three times per week, three hours per visit, and was ordered to receive family reunification services. Mother was ordered to attend a drug treatment program with aftercare, submit to weekly drug testing, and attend parenting classes and individual counseling to address case issues, including domestic violence.

### **Reunification services**

Jace's foster parents filed a Caregiver Information Form with the court on May 26, 2015. Jace was delayed in his motor skills but was attending physical therapy and showing improvement. He took medication five times per day and was receiving daily massages for stiffness. Mother canceled 50 percent of her visits with the child, and the monitor reported that mother paid little attention to Jace during visits. She had to be reminded to feed him, change his diapers, and have physical contact with him. Mother took photos of Janae, but not Jace. The caregivers questioned mother's desire to reunify with Jace. They were willing to adopt him.

In an email attached to Jace's Caregiver Information form, a social worker from Jace's foster family agency indicated to DCFS that mother had opened up to the social worker and said

she did not have any interest in Jace and did not want to reunify with him.

In a status review report filed on June 1, 2015, DCFS reported that mother was not in compliance with the court's orders. On December 30, 2014, she left her in-patient treatment at Tarzana Treatment Center after a falling out with her counselor.

Mother then reported that she was enrolled at LACADA treatment program. However, mother was unable to provide a letter of enrollment. On February 24, 2015, a DCFS social worker spoke with Jill Seither who indicated she was the counselor for mother at LACADA. Seither stated that mother had enrolled in the program on January 21, 2015. When asked for a progress report, Seither indicated that mother had not yet been drug tested. When the social worker asked Seither why mother had not drug tested when she had been in the program for over a month, Seither ended the phone call. On March 13, 2015, the social worker was informed by the regional administrator of LACADA that the progress letters were falsified as the authors were no longer employed at LACADA. Seither had been terminated from her position there in December 2014.

On May 5, 2015, the DCFS social worker received a call from Recovery Center, Long Beach, indicating that mother had enrolled in the program on May 3, 2015. Mother had tested positive for amphetamines and methamphetamines when she was admitted, and it was the third positive test mother had received in the past two months. Mother failed to test five times between January and May 2015.

On March 17, 2015, DCFS received a referral alleging that mother had unsupervised contact with her two older children. Mother claimed she had never been informed that she was permitted only monitored visitation, and had the children in her



care all week long. During this time mother had tested positive for drugs.

Mother consistently canceled visits with Jace, usually right before the visit was scheduled. When the visits did occur, mother would give most, if not all, of her attention to Janae. Mother did not initiate contact with Jace or call him by any name.<sup>4</sup> On one occasion when Janae was not feeling well, mother canceled the visit rather than visit with Jace alone.

DCFS recommended that mother's reunification services be terminated, and that a section 366.26 permanency planning hearing be scheduled.

On June 1, 2015, at mother's request, the juvenile court set a contested hearing regarding DCFS's recommendation that reunification services be terminated.

#### **Contested six-month review hearing**

DCFS filed a status review report for the contested hearing. Mother was having regular visits with the children, although she missed some. In May 2015 mother did not have any visits with the children as she admitted herself into an in-patient program at Redgate Memorial Recovery Center. Both Janae's and Jace's foster families were interested in adopting the children.

The social worker met with mother on August 3, 2015. Mother indicated that she was continuing to participate in her inpatient program and would request a progress letter. Mother

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<sup>4</sup> Mother stated that she had named the child "Charles," although she had not done so legally. At the time of placement, the social worker had encouraged Jace's foster parents to choose a name for him. They started calling him Jace and continued to refer to him as Jace. When the foster family first took Jace into their home, the situation was presented as a safe surrender, and the family had quickly accepted in the hopes that they would be able to adopt Jace.

tested negative for drugs on June 2, June 17, July 22, and August 10, 2015. Mother failed to drug test on May 19 and July 9, 2015. DCFS recommended that the children remain dependents; that mother's reunification services be terminated; and that a section 366.26 hearing be set for both children.

At the August 12, 2015 contested hearing, the juvenile court admitted a letter from mother's treatment facility indicating that her expected completion date was August 15, 2015. Mother testified at the hearing. Following testimony and argument, the juvenile court terminated mother's reunification services and set the matter for a section 366.26 permanency planning hearing.

#### **Mother's section 388 petition**

On October 9, 2015, mother filed a section 388 petition. Mother requested that the court change the order terminating her reunification services, adding that she completed treatment, transitioned to a sober living facility, and enrolled in an outpatient program. Mother requested the court grant her reunification, arguing that the order would serve the children's best interests because it would allow them to be with their mother.

Mother attached a letter from Options for Recovery confirming her enrollment in day treatment. A letter from Redgate confirmed mother had completed chemical dependency treatment on August 27, 2015.

On November 16, 2015, the juvenile court granted mother a hearing on her section 388 petition.

#### **Status reports**

DCFS filed a report for the section 366.26 permanency planning hearing. Both children were comfortable in their respective placements and doing well. Both foster families were committed to providing permanent homes to the children through

adoption. Mother had been consistently visiting with both children. Mother was appropriate with Janae during visits, however, Jace's caregiver did not believe mother was appropriate during visits with Jace. She believed mother was feeding him fast food, because the food she packed for him was being returned. Jace had digestive problems so the caregiver had spoken to mother about giving him appropriate food.

DCFS recommended that mother's parental rights be terminated and that adoption be deemed the appropriate plan for the children.

On December 10, 2015, Jace's foster parents filed a Caregiver Information Form with the court. Their bond with Jace continued to grow, and he was happy, well adjusted, and social. When Janae was rough with Jace during visits with mother, mother did not correct the child's behavior. The foster parents also provided a typed summary of mother's visits. Mother had canceled 34 percent of her visits, a total of 57 visits, or 171 missed hours. They reported that mother's interaction with Jace at visits was minimal, with little conversation or bonding between them. In a summary of a visit on November 27, 2015, the monitor reported that Jace had been crying when he was picked up for visits. He held his foster mother's hand and did not want to let go. The monitor reported that neither Janae nor Jace cried when the visits with mother ended.

On December 10, 2015, DCFS reported that mother had moved to Flossie Lewis sober living facility in Long Beach on August 27, 2015. On December 4, 2015, the DCFS social worker spoke with the program director at Flossie Lewis who reported that mother had been discharged from the program on November 12, 2015, for stealing from another resident, a behavior that is not tolerated at the facility.

The social worker determined that mother had also been discharged from her day treatment program because mother was not meeting the program standards and seemed to be struggling to keep up with the demands of the program.

A letter from mother's day program gave the reason for her discharge as her repeated violation of the no cell phone usage rule in treatment. The letter noted mother's lack of commitment to treatment, communication, honesty, and the importance of making sure she was involved in healthy relationships.

Mother had tested negative for drugs six times during the period between September 3 and November 30, 2015.

DCFS opined that mother had not made progress in addressing her case issues. Although she had maintained sobriety for seven months, mother's behavior continued to be inappropriate and she continued to be influenced by her male partners. DCFS recommended that mother's section 388 petition be denied.

In a last minute information for the court on December 10, 2015, DCFS reported that mother had enrolled in Woman to Woman outpatient program.

On December 10, 2015, mother's section 388 petition was set for a contested hearing and the section 366.26 hearing was continued to effectuate proper notice.

In a status review report filed February 25, 2016, DCFS reported that mother had left Woman to Woman recovery center and entered American Recovery Center on January 15, 2016. Mother left the program at Woman to Woman because she was not happy with the services provided and her attorney told her she needed to be in an inpatient program. Mother further reported that she had completed her aftercare at Redgate and would be receiving her certificate of completion before the upcoming hearing.

At the continued section 366.26 hearing, notice was found to be proper and DCFS's recommendation to terminate parental rights was set for hearing on June 1, 2016. The contested hearing on mother's section 388 petition was set for the same date.

In a letter dated May 27, 2016, American Recovery Center indicated that mother had been "administratively discharged from residential treatment on 5/23/2016 due to behavior issues." All her drug tests to date had been negative.

**Contested hearing on mother's section 388 petition**

The contested hearing on mother's section 388 petition commenced on June 1, 2016. Mother testified regarding the various programs she had entered throughout the course of the proceedings. She denied that she stole from anyone at Flossie Lewis Center. Mother explained that her most recent discharge from American Recovery Center was the result of an argument with another resident and they were both asked to leave. Mother stated that she was participating in outpatient treatment at American Recovery Center and living at a sober living facility in Pomona. She said the program accepted mothers with children. Mother admitted that she had attended four residential inpatient programs and three outpatient programs since the case started.

Mother testified she was involved in a 12-step program and was on step 2, which she identified as coming to believe that a greater power can restore one to sanity. Mother said she had been involved with the 12-step program for about two years. The court questioned why mother was only on step 2 after two years, and mother responded that she did not know. Mother said she still attended individual therapy, attended meetings, worked with her sponsor, participated in domestic violence counseling, and tested. Mother also attended group counseling to address relapse and cognitive behavioral therapy. Mother admitted to a

relapse in May 2015, but stated that she completed the program at Redgate in August 2015, just three months after her relapse.

Mother said her children had been in foster care for almost two years and she visited them twice per week, for two hours each visit. Though mother had never attended a doctor appointment for Jace, she claimed not to have been given an opportunity to do so. Mother was aware that Jace had special needs, but was unsure what they were. Mother had a job in a warehouse, and on weekends she sold phones. Babysitting was available at her program. Mother acknowledged that she had never had unmonitored or overnight visits with her children.

The court asked why mother thought it would be in her children's best interests to be returned to mother. She replied that her son and daughter meant everything to her and they were the reason that she was clean. She did not deny that she still thought about using drugs, but the children were more important to her than using drugs. Mother believed the children should be with her because she is their biological mother.

The juvenile court heard argument on June 15, 2016. Mother's counsel argued that her client's petition should be granted, and that the children should either be returned to mother's custody or mother should receive a new period of reunification. The children's attorney joined DCFS in arguing that mother's petition should be denied.

On June 16, 2016, the juvenile court denied mother's section 388 petition, noting that the focus at the current stage of the proceedings was on the children's need for permanency and stability. The court further noted that mother failed several times at drug rehabilitation. Mother had not provided testimony from anyone associated with Redgate, the one program from which she had a certificate. Because Redgate was a 90-day detoxification program, the court did not believe it was the

equivalent of a full drug treatment program. The children had been in foster homes for the majority of their lives, and had special needs of which mother was not aware. Mother's status as biological mother was an insufficient reason to grant the petition. The court believed mother's circumstances were changing, but not fully changed, and that it was not in the children's best interests to modify its prior orders.

### **Contested section 366.26 hearing**

The juvenile court proceeded to the section 366.26 hearing. Mother was not present in court and her attorney represented that mother did not wish to participate in the proceedings. Mother's attorney objected to the termination of parental rights, raising only the sibling relationship exception to adoption. The children's attorney joined with DCFS in recommending termination of parental rights.

The juvenile court found by clear and convincing evidence that both children were adoptable and that no exception to adoption applied. Parental rights of mother were then terminated.

On June 22, 2016, mother filed her notice of appeal.

## **DISCUSSION**

### **I. Applicable law and standard of review**

Section 388 permits a parent to petition the juvenile court to change, modify, or set aside any order the court previously made when there has been a change of circumstances or new evidence. (§ 388, subd. (a)(1).) If it appears that the best interests of the child may be served by the proposed change of order, the juvenile court shall order a hearing on the petition. (§ 388, subd. (d).)

The juvenile court may modify a previous order if the parent shows, by a preponderance of the evidence, changed circumstances or new evidence and that the proposed

modification would promote the child's best interests. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) The parent bears the burden of showing both a change in circumstances and that the proposed change is in the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*))

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.] A court hearing a motion for a change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*))

On appeal, mother bears the burden of showing a clear abuse of discretion on the part of the juvenile court. Under this standard, the juvenile court's ruling will not be disturbed unless its decision is arbitrary, capricious, or patently absurd. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

## **II. The juvenile court did not abuse its discretion**

Mother was required to show both a change of circumstances and that her proposed change of order was in the best interests of the children. The juvenile court did not abuse its discretion in determining that mother failed to meet this burden.

First, mother failed to show changed circumstances. Mother had a long history of drug use, including methamphetamines and heroin. Mother acknowledged using both drugs while she was pregnant with Jace. Despite testing positive for methamphetamines at various times throughout the proceedings, mother admitted she was only on step 2 of her 12-



step program at the time of hearing on her section 388 petition. While mother had a certificate of completion from Redgate, mother had tested positive upon entering the program, and received her certificate only three months later. The juvenile court questioned whether this constituted a full drug counseling program, which she had been ordered to complete.

Further, at the time of the hearing on her section 388 petition, mother had failed to show stability in her life. After she completed Redgate, she was discharged from two recovery programs for violating rules. She enrolled in yet another program, but was discharged for behavioral issues involving a conflict with another resident of the program.

Under the circumstances, the juvenile court was justified in determining that mother had not shown a true change of circumstances. While mother claimed to have been drug free for a year at the time of the hearing, her behavior continued to be unstable and she continued to move between different treatment centers based on her inability to follow rules and get along with other residents. Mother's failure to complete a full drug treatment program shows that, as the juvenile court noted, her behavior was merely changing. "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 . . . might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) "[C]hildhood does not wait for the parent to become adequate." [Citation.]" (*Ibid.*) Under the circumstances, the juvenile court did not abuse its discretion in determining that mother had not met her burden of showing truly changed circumstances.

In addition, mother failed to show that a change of order was in the best interests of the children. Mother faced a heavy

burden, given that the termination of reunification services creates a presumption that continued foster care is in the children's best interest. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

When asked how the change of order would benefit her children, mother stated that her children were everything to her and they were the reason she was drug free. Mother further stated her belief that it was important for her children to be with their biological mother. Mother's reasons were insufficient at that stage of the proceedings. After termination of reunification, a parent's interest in the care, custody and companionship of the child is no longer paramount. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In addition, the presumption in favor of biological parents does not by itself satisfy the best interests prong of section 388. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 192.) A child is better off with his or her biological parent only "when the biological parent has shown a sustained commitment to the child and parenting responsibilities. [Citations.]" (*Ibid.*) Here, mother has shown no such commitment. She had a long history of substance abuse and failed attempts to comply with the orders of the court. She had virtually no bond at all with Jace, as she did not cuddle, talk to the child, or even call him by name. Mother also canceled visits with Jace and told the social worker that she did not want to reunite with the child. Further, she admitted knowing nothing of the child's special needs.

Mother may have had a somewhat closer relationship with Janae. However, the record shows that Janae did not cry when visits with mother ended, and that she was happy and thriving in her foster care placement. Both children had lived with their prospective foster families for approximately two years, and were comfortable in their homes. Under the circumstances, mother did

not meet her burden of showing that a change of order was in the children's best interests.

Mother points out that the best interests of the child can be evaluated by several factors set forth in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-531. Those factors are: (1) the seriousness of the problem which gave rise to the dependency proceedings; (2) the strength of the relative bonds between the dependent children both to the parent and to the caretakers; and (3) the degree to which the problem may be easily ameliorated, and the degree to which it already has been. (*Id.* at p. 532.) Applying these factors to the matter before us, we find that the juvenile court did not abuse its discretion. Mother's drug addiction was a very serious problem. She had engaged in the use of methamphetamines and heroin, and she had a long history of drug abuse. The children had been with their respective foster families for two years and were bonded to those caregivers, while mother had never progressed to unmonitored or overnight visits with the children. And finally, mother had not completed a full drug treatment program to the satisfaction of the juvenile court. Thus, her problem had not been fully ameliorated.

## DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, Acting P. J.  
CHAVEZ

We concur:

\_\_\_\_\_, J.\*  
GOODMAN

\_\_\_\_\_, J.  
HOFFSTADT

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\* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.