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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LYRIC C., a Person Coming
Under the Juvenile Court Law.

B287709
(Los Angeles County
Super. Ct. No. DK03727)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Thomas E. Grodin, Referee. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendant and Appellant.

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

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ T.L. (Mother) appeals from orders (1) denying her section 388 petition seeking reinstatement of reunification services and unmonitored visitation and (2) terminating parental rights to her then three-year-old son, Lyric C. We affirm.

BACKGROUND

This is the second time this case has been before us. In July 2016, Mother appealed from the disposition order, challenging the sufficiency of the evidence supporting the removal of Lyric (then 21 months old) from her custody. We affirmed the order. (*In re Lyric C.* (Oct. 20, 2017, B277586) [nonpub. opn.])

In her opening appellate brief, Mother quoted in full the facts set forth in the background section of our prior opinion. We also quote those facts here, omitting some that are not relevant to the issues before us.

Statement of Facts in Case No. B277586

“In January 2016, when Lyric was 17 months old, the Los Angeles Department of Children and Family Services (DCFS) detained him from Mother and Daniel P. (Father)² after they both tested positive for methamphetamine and marijuana when they

¹ Further statutory references are to the Welfare and Institutions Code.

² “Father is not a party to this appeal.” His involvement in the dependency case is not relevant to the issues on appeal.

sought shelter at a rescue mission. Mother and Father also admitted to alcohol use. They had been homeless for over a year, staying at hotels and shelters. They arrived at the rescue mission without diapers or a change of clothes for Lyric, and the clothing the child was wearing appeared dirty and smelled like urine, according to a DCFS social worker who visited the mission after receiving a referral about the positive drug tests.³ DCFS placed Lyric in foster care.

“Mother, who was 42 years old when Lyric was detained, had a 29-year history of drug and alcohol use. She told a dependency investigator during a February 2, 2016 interview that she began using when she was 13 years old, experimenting with marijuana and alcohol. In high school, she experimented with “acid” and cocaine. By her own account, her drug use ‘became a problem’ when she was about 17. At 22, she began using methamphetamine and continued using this drug for the next 19 years, until after DCFS detained her daughter Chloe L. (Lyric’s older half sibling), and she stopped using methamphetamine for a little over a year before relapsing.

“In May 2014, about two months before Lyric’s birth, the juvenile court removed Chloe (whose age was not specified in the record before us) from Mother’s custody, based on sustained allegations about Mother’s drug and alcohol use, Mother’s violent altercations with Father in Chloe’s presence, and Mother’s failure

³ “DCFS concluded Mother had the financial means to provide for Lyric’s care because she received \$550 per month from CalWorks to meet Lyric’s needs and \$881 per month in Supplemental Security Income as Father’s caretaker. Father, who was 37 years old, was legally blind.”

to attend to Chloe's medical needs.⁴ Chloe was diagnosed with pulmonary hypertension, a congenital heart defect and protein C deficiency. The juvenile court ordered reunification services for Mother.

"When Lyric was born in July 2014, during the pendency of Chloe's dependency case, he and Mother tested negative for drugs.⁵ DCFS did not detain Lyric from Mother, but offered her a voluntary family maintenance plan conditioned upon her entering an inpatient substance abuse treatment program with Lyric. On September 5, 2015, Mother checked herself into a program where she bonded with Lyric, complied with her treatment plan, and continued to test negative for drugs and alcohol. . . .

"In December 2014, Chloe died while under DCFS supervision due to her medical conditions. Mother was in compliance with her case plan, but had not reunified with Chloe. The juvenile court terminated jurisdiction in Chloe's dependency case in January 2015. In March 2015, DCFS closed the voluntary family maintenance case regarding Lyric. Mother maintains she relapsed in December 2015, on the one-year anniversary of Chloe's death.⁶

⁴ "Mother also has a son, who [who was then] over 18 years old and reside[d] with a maternal aunt. Father is not the biological father of this child or Chloe."

⁵ "According to Mother's February 2, 2016 interview with the dependency investigator in this case, however, she continued to use methamphetamine until September 2014."

⁶ "Based on referrals DCFS received about Mother's conduct and comments while at shelters in May and June 2015,

“On January 13, 2016, after DCFS detained Lyric from Mother in this case, Mother checked herself into a six-month residential alcohol and drug treatment program. The program accepted children, and informed DCFS it could accommodate Lyric.

“On January 14, 2016, DCFS filed the dependency petition in this case, alleging Lyric was at risk of harm due to Mother’s (count b-1) and Father’s (count b-2) history of substance abuse. At the detention hearing the same day, Mother denied the allegations in the petition. The juvenile court detained Lyric from Mother and Father, ordered reunification services for both parents and monitored visitation for Mother. [Fn. omitted.]

“On February 2, 2016, a DCFS dependency investigator interviewed Mother at the treatment facility in preparation of the March 1, 2016 jurisdiction/disposition report. Mother initially told the investigator that ‘she and [F]ather were in a relationship and [were] working individually to address their addiction to drugs so they [could] be better parents to Lyric.’ Later, in the presence of her drug counselor, however, Mother told the investigator ‘she and [F]ather [were] not together and she [did] not have plans to reconcile with him.’ Mother explained that she did not want to be in a relationship with Father because ‘in the past [F]ather did not support or respect her choice to remain sober.’

“Mother also told the investigator that her counselor at the treatment facility had referred her for counseling and mental health services. Mother stated that she had begun counseling ‘to

and discussions with relatives during the pendency of this case, DCFS believed Mother relapsed prior to December 2015.”

talk about the death of [her] daughter.’ She also stated that she had been diagnosed with bipolar disorder (at some undisclosed time) and had recently visited a medical clinic which prescribed her ‘Trileptal, Trazadone and Respidone [sic].’

“Mother informed the investigator that she wanted Lyric placed with her at the residential treatment facility. . . . The case manager . . . reported that Mother had tested clean since her enrollment and was ‘actively participating in services.’ Mother was having three-hour, weekly, monitored visits with Lyric at the treatment facility.

“In the March 1, 2016 jurisdiction/disposition report, DCFS declined to recommend to the juvenile court that Lyric be placed with Mother, explaining: ‘Mother has an extensive substance abuse history and is in the beginning stages of treatment. Mother has not yet stabilized her mental health needs or been thoroughly assessed for mental health treatment. Additionally, Mother was transient for the past year and during that time she was unable to meet the basic needs of her child. . . .’ Before recommending placement with Mother, DCFS wanted to see Mother ‘address her addiction to drugs, stabilize her mental health and demonstrate an ability to care for herself prior to assuming the responsibility of caring for a child, especially a child of such a young age.’ . . . [¶] . . . [¶]

“On May 13, 2016, the date of the continued jurisdiction/disposition hearing, DCFS submitted a last minute information for the court. According to this report, the dependency investigator spoke with Mother’s counselor at the treatment facility on May 11, 2016. The counselor stated Mother admitted the week before that she had been in a relationship with Father since entering the facility on January 13, 2016,

although she originally told the counselor ‘that she was not in a relationship with [F]ather because he was actively using drugs and would compromise her sobriety.’ On May 10, 2016, Mother informed the counselor that Father ‘got loaded’ the day before and ‘she was very upset about father’s inability to maintain his sobriety.’ As stated in the last minute information, the counselor told the investigator ‘that although [M]other has been testing clean since admission, she [was] concerned about [M]other’s inability to be honest. [The counselor] believe[d] that [M]other’s inability to be truthful hinder[ed] her ability to fully grasp the concepts discussed in individual and group sessions.’ The counselor also revealed that Mother was in ‘the process of completing an intake’ for mental health services.

“In the same May 13, 2016 last minute information for the court, DCFS also informed the juvenile court about Mother’s visitation with Lyric, based on a summary provided by the foster father. In his summary, he noted that Mother was often ‘overwhelmed and fatigued during visits.’ He also noted that, on March 27, 2016, Mother told him ‘that she was not taking her medication as prescribed and disclosed that she struggle[d] with gaining weight and attribute[d] it to her sobriety and not smoking.’

“DCFS again declined to recommend that Lyric be placed with Mother at the residential treatment facility, stating in the last minute information: ‘The Department believes that [M]other needs to complete her substance abuse treatment program and individual counseling prior to Lyric being returned to her care. This will allow [M]other to address the underlying cause of her addiction and her inability to be honest and forthcoming.’

“At the May 13, 2016 jurisdiction/disposition hearing, Mother waived her rights and pleaded no contest to the following amended allegation in the petition (count b-1): ‘The child Lyric [C.]’s mother, T[L.], has a history of substance abuse and is a recent user of methamphetamine and marijuana, which renders the mother incapable of providing the child with regular care and supervision. On 1/11/16, the mother had a positive toxicology screen for amphetamine and marijuana. Remedial services have failed to resolve the family problems in that the mother resumed drug use despite the mother’s participation in a substance abuse rehabilitation program. The child’s sibling, Chloe L[.], was a prior dependent of the Juvenile Court due to the mother’s substance abuse. The mother’s substance abuse endangers the child’s physical health and safety, creates a detrimental home environment and places the child at risk of harm.’ The juvenile court found count b-1 to be true and sustained it. [Fn. omitted.] [¶] . . . [¶]

“Mother testified during the disposition portion of the May 13, 2016 hearing, in support of her request that Lyric be placed with her at the residential treatment facility. In response to a question by her attorney about why she relapsed on the one-year anniversary of Chloe’s death, Mother testified: ‘Well, I had stopped talking to my sponsor. I stopped going to meetings. I stopped taking my medication. And I just stopped working the program and using the tools that they had given me in the program.’ Mother believed she had acquired the tools to avoid another relapse. She maintained daily contact with her sponsor, attended eight recovery meetings per week (six inside the facility and two outside), and was ‘working the 12 steps’ of Narcotics Anonymous and Alcoholics Anonymous (having completed the

fourth step). In her prior recovery effort, she only completed step two. Mother stated that maintaining daily contact with her sponsor aided in her recovery effort because her sponsor ‘call[ed] [her] on [her] character defects and [her] bad behaviors’ and held her ‘accountable.’

“Regarding her mental health, Mother testified that she was meeting with an outside therapist twice a month and taking her prescribed medications (Risperdal and Trileptal). She also attended weekly one-on-one sessions with her counselor at the residential treatment facility and participated in group sessions and educational classes, such as relapse prevention.

“Mother stated that when she initially told her counselor at the facility in January 2016 that she ‘wasn’t planning on moving forward in a relationship with [Father],’ she was being truthful.⁷ Then, Father contacted her in April 2016 when he was incarcerated and told her he wanted to change and reunify with Lyric. According to Mother, when he was released from jail, Father told her he planned to enter ‘a sober living environment.’ Because she believed that Father ‘was clean and sober and going to do good,’ Mother told her counselor that she planned to pursue a relationship with him. The counselor granted approval for Father to visit Mother at the facility conditioned upon him submitting to a drug test. Father did not visit because Mother learned that he had used drugs and she cut off her relationship with him. She also told her counselor about his drug use.

⁷ “Two weeks later, outside the presence of her counselor, she told the dependency investigator that she did plan to continue a relationship with Father, according to the March 1, 2016 jurisdiction/disposition report.”

Mother conceded that her decision to communicate with Father while in her treatment program was a ‘bad’ one because he had not received drug treatment ‘and the chances of him changing were very slim.’ Mother stated she did not intend to reunite with Father.

“Mother testified that she wanted the juvenile court to place Lyric with her at the residential treatment facility. . . . She informed the court that she was in compliance with all of her programs and her drug testing requirement. She also testified about her participation in the grief recovery program and the tools she had acquired for dealing with her grief.

“During oral argument, attorneys for DCFS and Lyric urged the juvenile court to order Lyric removed from Mother’s custody based on her lengthy history of substance abuse and the fact she was only in the beginning stage of recovery.

“The juvenile court declared Lyric a dependent of the court and removed him from Mother’s and Father’s custody. He remained placed in foster care. The court acknowledged Mother’s progress, but ‘want[ed] to see three more months at least of solid recovery’ before considering placement with her. The court ordered reunification services and monitored visitation for both parents and granted DCFS discretion to allow overnight visits for Mother and Lyric at the facility.” (*In re Lyric C.*, *supra*, B277586, pp. 2-12.)

Additional Facts from Current Appeal

Reunification period

For one year after the jurisdiction/disposition hearing, the juvenile court allowed Mother to participate in reunification services. Mother was unsuccessful in reunifying with Lyric, for the reasons discussed below.

As set forth in DCFS's August 12, 2016 addendum report, Mother completed an in-patient drug treatment program at Foley House on June 9, 2016. She completed anger management and parenting courses there, and she began receiving mental health treatment for diagnosed bipolar disorder at a facility called Pacific Clinics.

After leaving Foley House, Mother moved into a homeless shelter because she could not locate a sober living site or other transitional housing with availability. The shelter did not allow children to visit or live there. Mother was working part-time "as a domestic," but was not earning enough to afford her own residence.

On July 27 2016, Mother enrolled in an outpatient aftercare program. She also was attending Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings, keeping in touch with her sponsor, and submitting to random drug tests (all of which were negative). Mother continued to receive mental health services twice per month at Pacific Clinics and was taking her prescribed psychotropic medication.

As of August 2016, Mother visited with Lyric for two hours per week. The foster father brought Lyric to a location that was halfway between his house and the shelter. Mother knew she was entitled to more hours of visitation, and DCFS advised her to request additional hours when she could fit them into her and Lyric's schedules. Lyric had speech therapy appointments and was going to start attending preschool a few days per week. The foster father informed Mother about the dates and times of Lyric's medical, dental, regional center, and speech therapy appointments, but Mother "usually [was] unable to attend the appointments."

At a progress hearing on August 12, 2016, the juvenile court granted Mother two hours of unmonitored visitation with Lyric “in a public setting” and four hours of monitored visitation, with the foster father and DCFS splitting the monitoring duties.

As set forth in DCFS’s November 10, 2016 status review report, Mother continued to reside at the homeless shelter. In September 2016, she obtained employment working 40 hours per week at a convenience store. She worked a night shift, which allowed her to participate in her aftercare program, attend NA and AA meetings, submit to random drug tests (all of which were negative), attend psychiatric appointments and mental health counseling, and visit with Lyric during the day. Mother’s counselor at the aftercare program she attended three times per week stated “he ha[d] no concerns regarding her sobriety.” DCFS noted Mother “appear[ed] to have gained some insight with . . . the aftercare programs, counseling, and sponsor,” but also noted Mother “ha[d] not been consistent in attending her mental health counseling.”

As of November 2016, Mother still was only visiting Lyric for four hours per week, although the juvenile court had granted her six hours. She informed DCFS she could not increase her visitation due to all of the appointments and meetings she scheduled to comply with her court-ordered case plan. Moreover, she expressed that traveling to the visitation location by bus was time-consuming for her, and she recognized that the distance to the visitation also was “a hardship” for the foster father and she did “not want to disrupt Lyric’s placement” by requesting additional hours of visitation.

DCFS monitored the two-hour Monday morning visits, and the two-hour Friday morning visits were unmonitored at a mall.

Mother informed DCFS she liked visiting with Lyric in the morning “before she [became] too tired to really enjoy visiting with him.” The social worker who monitored the visits observed that, after the schedule changed to the present days and times, Mother appeared “to be less stressed when she [was] supervising her son during the visits, and [Lyric did] not constantly look to his caretakers for assistance or nurturing. Mother admitted that she was fearful of being criticized for her parenting style, but she seem[ed] more relaxed now.” According to the foster father, “there [were] no problems with Lyric after the visits.”

DCFS and the foster father kept Mother apprised of Lyric’s medical and speech therapy appointments. Mother attended an August 9, 2016 appointment where the doctor instructed her how to administer asthma medication to Lyric using a nebulizer. Mother made herself available to sign the necessary forms so Lyric could access medical and therapeutic services. Lyric attended a preschool program that “reinforce[d] the speech therapy.”

Mother told DCFS her “goal [was] to have her son returned to her care,” but she acknowledged she only had temporary housing and needed to save money to secure permanent housing. She explained she did not have a support system to assist her. She and DCFS agreed she should “wait[] an additional six months until she could get herself situated,” before seeking overnight visits. Mother also told DCFS she was “moving on in her life and no longer waiting for [F]ather,” and that he would “need[] to straighten his own life out, and remain drug free if he want[ed] to be a part of [Lyric]’s life.”

In a child welfare services case plan update attached to the November 10, 2016 report, DCFS stated Lyric appeared

comfortable in Mother's presence and bonded to her. The update also stated the foster parents were "taking excellent care" of Lyric and were committed to adopting him if reunification failed. One of Lyric's foster fathers worked full time outside the home and the other foster father stayed home with Lyric and another adopted son.

At the November 10, 2016 review hearing, the juvenile court ordered unmonitored visitation for Mother and also ordered DCFS to assess Lyric's maternal aunt to host overnight visits for Mother and Lyric.

In a January 20, 2017 addendum report, DCFS updated the court on Mother's housing situation. Mother informed the social worker she had to move out of the shelter by January 11, 2017, but intended to ask for a one-month extension on her stay. The social worker referred Mother to the on-site housing counselor at the shelter and also provided contact information for outside housing assistance referrals.

In a last minute information for the court, dated January 20, 2017, DCFS informed the juvenile court that Mother had not attended a Monday visit with Lyric for two months, since November 14, 2016. Mother informed the social worker she could no longer visit on Mondays because she worked in the evenings.

In the same report, DCFS stated Mother was homeless and living in her car, which was parked at her work where it had broken down. Mother stopped coming to the DCFS office to pick up her bus passes, although her car was inoperable. She claimed she could not pick up the bus passes for the last two months because she was working. DCFS learned from staff at the shelter that Mother had moved out on January 11, 2017, without asking for an extension of her stay.

DCFS expressed concern that Mother was using drugs again. She missed a drug test on January 12, 2017. Moreover, she was not in regular contact with her counselor at the aftercare program, who also expressed concerns about her to DCFS.

At the six-month review hearing on January 20, 2017, the juvenile court ordered Mother's visits to be monitored until Mother completed four, consecutive, negative drug tests. The court also continued reunification services.

In the March 15, 2017 status review report, DCFS recommended the juvenile court terminate Mother's reunification services. Mother had stopped attending her aftercare sessions and was terminated from the program on January 20, 2017. Mother complained that she was required to attend a six-month aftercare program and argued that three months should have been sufficient. Mother missed four random drug tests scheduled between January 1 and February 16, 2017 (the last date for which DCFS had a record), and had not submitted proof of attending any NA or AA meetings since September 9, 2016. Mother last saw her psychiatrist on August 30, 2016 (more than six months before this report) and last saw her mental health therapist in July 2016. As set forth above, Mother had reduced her visits with Lyric from two times a week to once per week. She missed three recent visits, stating she was ill, and failed to call the child consistently.

At a March 15, 2017 hearing, the juvenile court set the matter for a contested 12-month review hearing, and appointed the foster fathers co-holders of Lyric's educational and developmental decision making rights, with Mother.

As DCFS suspected, Mother had in fact relapsed. On March 13, 2017, she reentered the residential treatment program

at Foley House. Upon reentry, she tested positive for methamphetamine and marijuana. She tested negative thereafter. Also in March 2017, Mother began attending NA and AA meetings again, and receiving mental health services at Pacific Clinics. She also resumed visits with Lyric, once a week.

At the 12-month review hearing on May 2, 2017, the juvenile court terminated Mother's and Father's reunification services.

Mother's Section 388 Petitions and DCFS's Section 366.26 Report

On July 5, 2017, Mother filed a section 388 petition, seeking to have her reunification services reinstated. She argued her circumstances had changed in that she had "matured spiritually and emotionally," had accepted the loss of her daughter Chloe, was almost finished with her residential treatment program, and had been accepted into a subsequent one-year recovery program. She further argued it was in Lyric's best interest to reinstate reunification services because she had a strong bond with him (and was visiting twice per week) and could "protect, nurture, teach and love him." She attached letters of support from Foley House, her sponsor, her sister, and others, and also attached various certificates. The juvenile court summarily denied the petition, finding it did not state new evidence or a change of circumstances and the proposed modification did not promote Lyric's best interest.

On August 11, 2017, Mother filed her second section 388 petition, seeking reinstatement of reunification services and/or unmonitored visits, overnight visits or placement of Lyric with her at Lydia House. She argued her circumstances had further changed in that she graduated from the residential treatment

program at Foley House, was residing at Lydia House (a one-year program for women and children), had completed a therapy program at Pacific Clinics, and continued to visit Lyric two times per week. In addition to the arguments she raised in her prior petition, she argued it was in Lyric's best interest to modify the orders because she had "completed all the court orders and resolved the issues which made Lyric a dependent of the court," was "a different person," and had chosen "to continue [her] new and improved life."

Attached to her second petition, Mother submitted letters of support from Pacific Clinics (where she had completed 10 therapy sessions in two months) and Foley House. She also submitted a letter from Lydia House, outlining the one-year program she entered on August 1, 2017: "As a participant of our residential one-year New Life Rehabilitation Program, [Mother] has a daily routine of morning classes which include such subjects as GED prep, 12-step, anger management, relapse prevention, healthy relationships, ACE (Adverse childhood experiences), grief and loss, character development, life skills, financial management, career preparation and many more. Transportation to state certified parenting and domestic violence classes are optional. Afternoons include work therapy to encourage healthy working performance and soft skills for employment opportunities. Weekly counseling sessions are provided. The Lydia House also works in collaboration with the Department of Mental Health for additional therapy needs. [¶] Program participants are not permitted to work or seek employment outside of the facility during the first year of the program, nor are they permitted to possess a cell phone."

The juvenile court set a hearing on Mother's second section 388 petition and ordered DCFS to prepare a report responding to the petition.

On August 24, 2017, a program supervisor at Lydia House, submitted a letter to the juvenile court, citing the "amazing change" she had recently seen in Mother, after knowing Mother for more than two years. The supervisor stated: "Rather than running from her problems [Mother] made a choice to face them and change her perspective on life." The supervisor described Mother as "an inspiration to her peers and the staff."

Before filing its response to Mother's section 388 petition, DCFS filed its August 29, 2017 section 366.26 report, in which it recommended the juvenile court terminate parental rights. DCFS reported Mother and Father were in contact when Mother relapsed. Recently, Mother and Father requested joint visitation with Lyric, which the social worker approved.

DCFS also stated Lyric was bonded with his foster parents, who wanted to adopt him. Foster father Sergio H., who was a stay-at-home father to his adopted son and Lyric, has a master's degree in education. The foster parents took Lyric to his various appointments and were able to meet his special needs (speech therapy and child developmental services). The adoption homestudy was approved on July 7, 2017.

On August 29, 2017, the juvenile court continued the section 366.26 permanency plan hearing to the date set for the hearing on Mother's section 388 petition.

DCFS submitted its September 28, 2017 addendum report, recommending the juvenile court deny Mother's section 388 petition. DCFS cited Mother's continued relationship with Father and her history of relapse.

Hearing on Mother's Section 388 Petition

The hearing on Mother's section 388 petition commenced on October 27, 2017.

Mother submitted trial exhibits in support of her petition, which were admitted into evidence. An October 12, 2017 letter from the program supervisor at Lydia House noted: "One of the biggest changes that I have seen in [Mother] is her ability to no longer be controlled by her emotions and her codependency. She does not have extreme ups and down[s] any longer. Although the death of her daughter will always be a painful memory, [Mother] is no longer mad at God and has been able to move through the grieving process in a healthy manner." The supervisor further asserted Mother was no longer in contact with Father and had asked the social worker if she could have separate visits with Lyric. According to the supervisor, Mother was "forced" to have joint visits with Father due to the foster parents' time constraints. The supervisor also stated that Mother was taking her psychotropic medications and had enrolled in mental health services. Mother also submitted an October 6, 2017 letter from her current sponsor, and proof of her attendance at 12-step classes at Lydia House.

The program supervisor from Lydia House testified on behalf of Mother at the hearing on the section 388 petition. The supervisor stated she met Mother in August 2015, the month after Lyric's birth, when Mother first entered the program at Lydia House with Lyric. Mother left the program in November 2015, without completing it, due to "some co-dependency issues with her [adult] son and [Lyric]'s father."

Mother remained in contact with the supervisor, and asked to return to Lydia House after she completed the residential

treatment program at Foley House in July 2017. Mother told the supervisor that “the one thing missing from [her program at Foley House] was her relationship with God. And she really wanted to come back [to Lydia House] and restart the New Life Program and continue through it.”

According to the supervisor, this time around, the staff at Lydia House were “all absolutely amazed at the amazing changes [they]’ve seen in [Mother].” Mother currently handled crises (such as dependency case-related issues) in “peace” and did not “overreact” or “go into a high and low bipolar-type attitude or response.” She “no longer use[d] her past as an excuse for her actions today.” She did not currently “need to have a man around in her life,” instead “having God fill that void.” She consistently took her medication and communicated with her sponsor by telephone.

The supervisor stated Mother was not in a relationship with Father, but she was aware Mother had had two telephone calls with him in the three months she had been at Lydia House. The calls were monitored by staff. The first call was around the time Mother entered the facility, and the second call was two weeks before the hearing, when Mother returned Father’s multiple calls because he left several messages stating it was an “emergency.”

The supervisor testified Mother consistently visited Lyric every Friday and Saturday in a public playground, taking a three-hour train ride each way to get there. The supervisor had not observed any visits. Mother complained to the supervisor that the playground setting did not afford her much “one-on-one time” with Lyric. If the court approved, Lyric could stay with Mother at Lydia House.

Mother also testified at the hearing on her section 388 petition. Mother stated she did not complete the program at Lydia House the first time in 2015 because her “adult son came to the property and caused some problems, and so [she] was asked to leave.” Mother admitted she was using methamphetamine after she left Lydia House in 2015, and before she enrolled at Foley House in early 2016 (before DCFS filed the dependency petition in this case), while Lyric was in her custody.

Mother stated the reason she relapsed again, before she entered Foley House for a second time in March 2017, was due to the second anniversary of her daughter Chloe’s death. She stopped visiting Lyric at that time because she recognized it was not “good for [her] to be around Lyric” while she was using methamphetamine. Mother identified her “triggers” for relapse as “death, people who are drinking or using, [and] high-stress situations.” She stated the way she currently dealt with her triggers was through prayer and “spiritual connection.”

The hearing on the section 388 petition resumed on October 30, 2017, with Mother’s continued testimony. Mother discussed the things she learned in her parenting, anger management and relapse prevention classes, and stated she was working on step six of her 12-step program. She also stated she was taking her prescribed medication consistently.

Mother acknowledged that, during her latest relapse, she lived in a motel with Father after she lost her job, but denied they had been in a romantic relationship at any time after Lyric was detained in January 2016. She claimed the reason she and Father started having joint visits in the summer of 2017 was for the foster father’s convenience. She denied telling the foster father that she and Father had resumed their relationship. In

August, Mother asked the social worker if she and Father could visit separately. She stated she had no intention of resuming her relationship with Father.

Mother testified that the foster parents advised her about the dates and times of Lyric's medical appointments on two occasions, but they only gave her one week's notice, and she told them she needed more notice. The social worker invited Mother to attend a 12-hour class on fetal alcohol syndrome after Lyric was diagnosed with the condition, but Mother did not attend. She planned to attend an upcoming appointment in December during which Lyric was scheduled for an MRI. Mother stated she was aware Lyric went to speech therapy, received regional center services and had a problem with chronic ear infections, but she did not know how many times per week he went to his various appointments. She conceded she did not know what it meant that Lyric received regional center services, and she was not knowledgeable about fetal alcohol syndrome.

When asked by her counsel to describe her relationship with Lyric during visits, Mother responded: "Good. Close. He runs up to me and hugs me. We play. I read to him. We color. We just carved a pumpkin. Mother was visiting with Lyric twice a week for two hours each visit. She acknowledged she was entitled to additional hours of visitation, but stated the distance to visits and scheduling issues prevented her from visiting more. Mother called Lyric once a week.

Sergio H., one of the foster parents, also testified at the hearing on Mother's section 388 petition. Lyric, who was now three years old, had been in the foster parents' care for more than a year and half, since January 2016. Sergio identified Lyric's primary special needs as his speech issues and his fetal alcohol

syndrome. Lyric received special education services at his preschool. He also had chronic asthma and used Albuterol administered through a nebulizer as well as an inhaler.

Sergio testified he provided Mother with advance notice of Lyric's appointments, but she only attended the one appointment when she learned to use the nebulizer. She did not attend his school assessment for an individualized education program or the 12-hour class on fetal alcohol syndrome. Sergio stated, after he and his partner took the class on fetal alcohol syndrome, their "whole world changed" and they "finally understood" Lyric's behavior (e.g., his impulsivity). Although Mother did not attend appointments, she did answer the phone and provide information on two occasions when the foster parents called her during Lyric's medical appointments.

According to Sergio, Mother and Father requested that they be permitted to visit together. That arrangement was not made for the foster parents' convenience. Mother and Father told Sergio they were trying to get back together.

Sergio testified he would be concerned about Mother having unmonitored visits because she did not understand how to address Lyric's behaviors related to his fetal alcohol syndrome, including impulsivity and his need to "isolate himself" at times. During one visit, Lyric attempted to isolate himself, telling Mother to leave him alone and walking away. Mother followed, and Lyric ran to Sergio. Sergio stated, "if she knew why he was asking to be left alone, she wouldn't have done that" Sometimes during visits, Mother looked to Sergio to help her understand what Lyric was trying to express.

After hearing oral argument, the juvenile court denied Mother's section 388 petition, finding Mother did not show the

requisite change of circumstance or that reinstatement of reunification services or a modification of the visitation/placement order was in Lyric's best interest.

At the November 14, 2017, section 366.26 permanency plan hearing, the juvenile court incorporated the testimony from the hearing on Mother's section 388 petition. Lyric's counsel and DCFS argued in favor of termination of parental rights. Mother's counsel argued the parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) applied to her relationship with Lyric. Father's counsel also objected to termination of parental rights.

The juvenile court found Lyric was adoptable and no exception to termination of parental rights applied. Accordingly, the court terminated Mother's and Father's parental rights and identified adoption as the permanent plan.

Mother appealed from the October 30, 2017 order denying her section 388 petition and the November 14, 2017 order terminating parental rights.

DISCUSSION

Mother contends the juvenile court abused its discretion in denying her section 388 petition and erred in finding the parent-child relationship exception to termination of parental rights did not apply to her relationship with Lyric.

Section 388 Petition

Under section 388, "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) "The parent bears

the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "The change of circumstances or new evidence 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.'" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) "In considering whether the [parent] has made the requisite showing, the juvenile court may consider the entire factual history of the case." (*Id.* at p. 616.) We will not reverse an order denying a section 388 petition unless the parent demonstrates the trial court abused its discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

The trial court did not abuse its discretion in denying Mother's section 388 petition. Mother did not show a significant change of circumstance that would merit reinstatement of reunification services or granting unmonitored visitation. Mother had only been sober for seven months after her most recent relapse. She was once again in the very early stages of recovery, after using methamphetamine for more than 20 years. While signs indicated circumstances were *changing*—and that is laudable—they certainly were not *changed* yet.

Nor did Mother show reinstatement of reunification services or unmonitored visitation was in Lyric's best interest. Lyric was in a stable home where he had lived for more than a year and half and where he was receiving excellent care for his special needs. Delaying permanency, in the hope that Mother would remain sober and reunify with Lyric, was not in his best interest. Granting unmonitored visitation, when Mother was not equipped to address Lyric's special needs and still looked to the

foster father for guidance during monitored visitation, was not in his best interest either.

Exception to Termination of Parental Rights

“At a hearing under section 366.26, the court is required to select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) When the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the court must terminate parental rights unless the parent opposing termination can show that one of the exceptions set forth in section 366.26, subdivision (c)(1) applies. (*Tabatha G., supra*, at p. 1164.) “Because a parent’s claim to such an exception is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

“The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions.’” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.) To satisfy the burden of proving the parent-child relationship exception to termination of parental rights under section 366.26, subdivision (c)(1)(B), a parent must demonstrate that he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The second prong of this exception requires the parent to demonstrate that his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would

gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Even frequent and loving contact between a child and a parent is not sufficient, by itself, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one” because “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile “ ‘court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ ” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of the interaction between the parent and the child, and (4) the child’s particular needs.’ ” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

“Reviewing courts have applied various standards of review when considering trial court determinations of the applicability of these statutory exceptions to termination of parental rights. In *In re Jasmine D.* [, *supra*,] 78 Cal.App.4th [at page] 1351, the court observed that both the substantial evidence test and the

abuse of discretion test have been applied, and the court stated that ‘[t]he practical differences between the two standards of review are not significant. “[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only ‘ “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.” . . . ’ ” [Citations.] However, the abuse of discretion standard is not only traditional for custody determinations, but it also seems a better fit in cases like this one, especially since the statute now requires the juvenile court to find a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)[(B)].) That is a quintessentially discretionary determination. The juvenile court’s opportunity to observe the witnesses and generally get “the feel of the case” warrants a high degree of appellate court deference. [Citation.]’ ” (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)

Under either the substantial evidence or abuse of discretion standard of review, we will not disturb the juvenile court’s decision terminating parental rights because Mother did not establish the parent-child relationship exception applied to her relationship with Lyric. Mother did not present evidence demonstrating her four hours of weekly visits with Lyric promoted his well-being in a manner that outweighed the well-being he would gain through the permanence of adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Nor did she present evidence demonstrating Lyric would be “ ‘greatly

harmed' ” if her parental rights were terminated. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.)

Lyric had known stability with the foster parents for more than a year and a half. The evidence showed Mother had a friendly relationship with Lyric, but not a parental one. She played with Lyric during visits, but looked to the foster father to address Lyric's medical, developmental, and emotional needs. This case does not present the “exceptional circumstances” in which a court is warranted in preserving parental rights and choosing a permanent plan other than adoption. (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.