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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re AUDREY M., a Person Coming
Under the Juvenile Court Law.

B277910
(Los Angeles County
Super. Ct. No. DK08859)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VIRGINIA C.,

Defendant and Appellant.

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

Elizabeth Klippi, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

Virginia C. (mother) appeals from the juvenile court's termination of her parental rights over Audrey M. (Audrey, born Feb. 2011). She also appeals from the denial of her petition under section 388 of the Welfare and Institutions Code.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention and Removal

Audrey first came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in December 2014, at the age of three years old, after she was left alone at the valet parking stand at The Grove shopping mall. A social worker eventually spoke to Audrey's father, Joseph M. (father), who said that Audrey's paternal aunt was supposed to meet him at the mall, but never showed. Father reported that he was a gypsy and had sole custody of Audrey through a gypsy tribunal. He said that mother lived in Texas with a new family and had minimal contact with Audrey.

After hearing about Audrey's abandonment from a relative, mother came to Los Angeles and met with the social worker. Mother confirmed that she lived in Texas and had not been in contact with Audrey for almost two years. In the gypsy culture it was customary for the first-born child to stay with the father.² Mother, however, now wanted Audrey to be with her. Mother reported that the paternal aunt drank a lot and took pills, had

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

² The record contains a stipulated custody order issued by the Superior Court of San Bernardino County in April 2013, indicating that mother and father had joint legal custody of Audrey and father had sole physical custody of Audrey.

once beat up mother, and had kidnapped Audrey. Mother also reported that she and father had domestic violence issues when they lived together and that father once grabbed her neck and pushed her against a wall and had twice locked her in a basement. Mother disclosed that she had a one-year-old son with her in Texas and that she was five months pregnant.

DCFS detained Audrey and placed her in foster care. In April 2015, the juvenile court sustained an amended petition filed on Audrey's behalf under section 300, which alleged that mother and father had a history of domestic violence and that mother had failed to protect the child and pursue criminal charges against father despite his violent tendencies. The court granted mother monitored visits and ordered DCFS to set up video contact for her. The court also granted reunification services. Mother was ordered to participate in a domestic violence support group for victims, parenting classes, and individual counseling to address case issues, including domestic violence, parental responsibility, and child protection.

Six-Month Review Period

In June, July and October 2015, DCFS reported that mother had not enrolled in any court-ordered services. According to mother, she had a difficult delivery by cesarean section in April 2015, and was on doctor-ordered bed rest. In July 2015, an Interstate Compact on Placement of Children (ICPC) was denied because the maternal grandparents, with whom mother was living, refused to be involved in the ICPC process. Mother was having monitored phone calls with Audrey three times a week for around 15 minutes. Audrey was "doing very well" in her foster placement.

At the six-month review hearing on October 20, 2015, the juvenile court continued reunification services.

Twelve-Month Review Period

In February 2016, DCFS reported that the social worker had called mother multiple times and left voicemails seeking updates on mother's progress with court-ordered programs. When the social worker finally spoke to mother, mother stated that she had not gotten any voicemails because her phone was not working. Mother also stated that she would try to enroll in classes. According to the social worker, mother asked "why father had not completed his programs. Mother stated that father was supposed to get Audrey back so she did not understand." The social worker explained that both parents were supposed to complete the court-ordered programs and both parents had the same opportunity to reunify with Audrey. Mother was having monitored calls with Audrey twice per week and sporadically calling and texting other times. Audrey continued to do well in her placement and was a "happy little girl." The caregiver thought Audrey was a great child, but was unwilling to adopt as a single parent with her own daughter.

At the 12-month review hearing on February 23, 2016, the juvenile court found that mother was not in compliance with her case plan, terminated reunification services, and set a section 366.26 hearing.

Section 366.26 Reports

On June 23, 2016, DCFS reported that Audrey was happy, engaging, developmentally on target, and thriving in her placement. Another family with a preapproved adoptive home study was interested in adopting Audrey. Several visits between Audrey and the family had gone well, and Audrey appeared to be

comfortable with the family. Mother continued having monitored phone calls with Audrey. Mother told DCFS she did not want Audrey to be adopted, and mother stated that she was participating in court-ordered services and would forward information to the social worker.

In September 2016, DCFS reported that Audrey had been living with her prospective adoptive family since July 5, 2016, and was adjusting well. The prospective adoptive family was enthusiastically planning the future and was eager to finalize Audrey's adoption. Mother had been having monitored phone calls with Audrey once per week.

Section 388 Petition

On September 20, 2016, the day of the section 366.26 hearing, mother filed a section 388 petition asking the juvenile court to change its February 23, 2016, order terminating reunification services and to order either that Audrey be placed with mother or that mother be granted additional reunification services or liberalized visits. Mother declared that she had completed parenting classes and individual therapy addressing domestic violence and knew how to protect herself and Audrey. She stated that she had delayed participating in services due to having a cesarean section and being hospitalized and on bed rest from April 2015 to October 2015. Attached to her section 388 petition was a counseling treatment summary dated September 6, 2016, which indicated that mother had participated well in therapy and had completed her therapeutic goals. Also attached to the section 388 petition was a certificate of completion of parenting classes, dated April 20, 2016, which reflected that mother had begun the eight-class course on March 2, 2016.

The juvenile court summarily denied mother's section 388 petition, finding (1) it did not state sufficient new evidence or change of circumstance, (2) it was not in Audrey's best interest, (3) there was no legal basis to reinstate reunification services beyond 18 months with a section 366.26 hearing pending, (4) it was premature to go from monitored weekly phone calls to home of mother, and (5) there was no proof of mother's participation in a domestic violence support group for victims.

Section 366.26 Hearing

At the section 366.26 hearing on September 20, 2016, mother testified that she had had three physical visits with Audrey since the case began in December 2014—one at the beginning of the case and two in the week leading to the section 366.26 hearing. Mother testified that she had weekly monitored calls with Audrey that lasted between one and 10 minutes, and that she did not visit Audrey more frequently because she was on bed rest from April through October 2015. Mother testified that when she saw Audrey in December 2014, Audrey called her "Mommy," and that on the day before the hearing they had a picnic and Audrey cried when she had to say goodbye.

During oral argument, counsel for Audrey asked that parental rights be terminated. The juvenile court found that Audrey was adoptable, terminated parental rights, and ordered adoption as the permanent plan. This appeal followed.

DISCUSSION

I. Section 388 Petition

Section 388 provides in relevant part: "Any parent . . . [of] a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . to change, modify, or set aside any order of court

previously made.” (§ 388, subd. (a)(1).) The parent bears the burden of demonstrating both a change of circumstance or new evidence and that the proposed change is in the best interests of the child. (§ 388, subd. (a)(1); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) A juvenile court’s denial of a hearing on a section 388 petition is reviewed for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) “““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.”” (*Id.* at pp. 318–319.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685–686; *In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

In contending that the juvenile court abused its discretion in denying her section 388 petition, mother points out that she had completed a parenting class and individual counseling that addressed domestic violence issues. While these accomplishments are commendable, they demonstrate only *changing* circumstances and not *changed* circumstances. (*In re Casey D., supra*, 70 Cal.App.4th at pp. 48–49 [To warrant a change of order, the moving party must show changed circumstances].)

As noted, in April 2015, the juvenile court ordered mother to participate not only in parenting classes and individual counseling, but also in a domestic violence support group for victims. Mother never enrolled in this last program and therefore failed to comply with her case plan.

Mother also delayed in participating in court-ordered services, doing nothing from April through October 2015. She claimed this delay was due to health reasons—a complicated caesarian section, a month-and-a-half-long hospitalization, and bed rest. But the record shows that mother still waited more than four months after her bed rest ended to begin her parenting classes. In fact, she did not do so until after the reunification period was over and she realized father would not regain custody of Audrey. We agree with DCFS that until that time, mother appeared content to do nothing but simply maintain the status quo of father caring for Audrey. Mother did not even return the social worker’s many calls seeking updates on mother’s progress and claimed her phone was not working. The juvenile court correctly found that mother’s long-overdue participation in two out of three court-ordered programs did not demonstrate a true change of circumstances. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450–1451 [mother’s alleged change of circumstances was not of “such significant nature that it requires a setting aside or modification of the challenged prior order”].)

Even if mother had demonstrated changed circumstances, her requested relief of having Audrey placed with her or being granted additional services or liberalized visits was not in Audrey’s best interest. Mother lived in Texas and had only seen Audrey in person three times during the case—once in December 2014 and not again for nearly two years until the week mother came to California for the section 366.26 hearing, at which she filed her section 388 petition. Her other contact was monitored phone calls. Thus, mother’s bond with Audrey was not strong. Where, as here, the section 388 petition has been filed after the termination of reunification services, “the focus shifts to the

needs of the child for permanency and stability.’ [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 526.) For nearly two years, Audrey had been deprived of permanence and stability.

“[Audrey’s] best interests are not to further delay permanency and stability in favor of rewarding Mother for her hard work and efforts to reunify.” (*Ibid.*) The juvenile court did not abuse its discretion in denying mother’s section 388 petition.

II. Section 366.26 Ruling

Mother contends the juvenile court erred in failing to apply the beneficial parent-child bond exception to the termination of parental rights. Under this statutory exception, the court may find that it would be detrimental to the child to terminate parental rights if the parent 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).)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Anthony B.* (2015) 239 Cal.App.4th 389, 397.)

Mother did not consistently visit or contact Audrey. When the case began in December 2014, mother told the social worker she had not been in contact with Audrey for nearly two years. After their visit in December 2014, mother did not visit Audrey again until the week of the section 366.26 hearing in September 2016. During the reunification period, mother initially had three calls with Audrey per week, then the calls took place twice per week, and then once per week, with sporadic attempts to call at

other times. Based on these facts, mother did not meet her burden of establishing the first prong of the exception.

Even if mother had consistently visited and contacted Audrey, she did not meet the second criteria to the statutory exception. This requires the parent to show that the 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.) Thus, to overcome the Legislative preference for adoption, the parent must demonstrate that severing parental rights “would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

While mother may believe that she has a strong, positive, emotional attachment with Audrey, the record shows otherwise. Mother only had three monitored visits with Audrey during this case, spread nearly two years apart, and all of her phone calls with Audrey were also monitored. Most calls lasted between one to 10 minutes. Mother argues that by the time of the section 366.2 hearing, she was the only person occupying a parental role in Audrey’s life because father had stopped visiting and because Audrey had only been with her prospective adoptive parents for two and a half months. But mother overlooks the facts that the prospective adoptive parents were providing for all of Audrey’s needs full time, while mother was not, and that Audrey had thrived with her former caregiver, who had also provided for all of Audrey’s needs. Mother points out that Audrey called her “Mommy” during their December 2014 visit and that they had a picnic a few days before the section 366.26 hearing. But this

shows, at most, that mother was a pleasant and friendly visitor in Audrey’s life, which is insufficient to overcome the strong preference for adoption.

“A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466; see also *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300 [“The mother also must show she occupies a parental role in the children’s lives”].)

Based on the facts here, we conclude this is not the extraordinary case calling for application of the beneficial parent-child bond exception to the termination of parental rights.

DISPOSITION

The juvenile court’s orders denying mother’s section 388 petition and terminating her parental rights to Audrey are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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