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

In re JOSE R. et al.,  
Persons Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAMIE C.,

Defendant and Appellant.

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B278530

(Los Angeles County  
Super. Ct. No. DK06487)

APPEAL from an order of the Superior Court of Los Angeles County, Terry Truong, Commissioner. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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In this dependency action, appellant Jamie C. (mother) appeals from an order summarily denying her petition for change of an order removing her children from her care. (Welf. & Inst. Code, § 388.)<sup>1</sup> Finding no abuse of discretion, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother has three children: S.R., born in March 1998, Jose R., born in August 1999, and Alexa P., born in August 2005.<sup>2</sup> Mother has a long history of substance abuse which affected her ability to care for her children, who often stayed with their maternal grandmother, Minerva R. (grandmother). Respondent Los Angeles County Department of Children and Family Services (the department) received referrals related to mother's drug use in October 2006, October 2013, January 2014, and February 2014. Following the February 2014 referral, grandmother applied to become the children's legal guardian.

In July 2014, mother struck grandmother in the face during an argument. Alexa intervened to protect her grandmother. Mother shoved Alexa and scratched her arm. The department was alerted to the altercation and sent a children's social worker (CSW) to interview the family. Alexa told the CSW

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<sup>1</sup> All further statutory references are to this code.

<sup>2</sup> The fathers of the children are not parties to this appeal.

she did not want to stay with mother and preferred to stay with grandmother. Grandmother said mother was aggressive and said things that made no sense.

On July 23, 2014, the department filed a section 300 petition on behalf of all three children. In identical language, counts a-2 and b-2 alleged the children were at substantial risk of serious physical harm based on the violent altercation between mother and grandmother in which Alexa had suffered scratches. Count b-1, failure to protect, was based on mother's history of drug use, current use of amphetamine and methamphetamine, two missed drug tests in June 2014, and prior convictions for possession of a controlled substance.

Mother, a registered offender of controlled substances, had failed to enroll in a required substance abuse program in her criminal case. At about the same time the dependency petition was filed, mother failed to appear at a progress report hearing in her criminal case, and a warrant was issued for her arrest.

Mother did not appear at the detention hearing for the children. At that hearing, the juvenile court found a prima facie showing had been made that the children were dependent minors, and released them to the department. The children were detained in shelter care because the department concluded grandmother did not have enough bedrooms in her home to accommodate all three children. Mother was granted monitored visits and program referrals for drug rehabilitation with random testing, parenting, and individual counseling to address anger management.

In its report for the jurisdictional and dispositional hearing, the department stated that mother's whereabouts were unknown. S.R. told the CSW that mother had been using

methamphetamine for the past seven years. As a result of mother's inability to get up in the mornings, S.R. had taken it upon herself to cook, clean, and care for her younger sister Alexa. In addition to playing with Alexa, S.R. was helping her bathe and go to school. Jose said he was upset by mother's inability to care for them and was annoyed by her drug-induced behavior. Alexa told the CSW that she was angry at mother and wanted to stay with grandmother. Grandmother, who had been caring for the children intermittently since 2007, confirmed to the CSW that mother's drug problem was negatively affecting mother's parenting ability. Grandmother also indicated that mother was in violation of her probation because she had not enrolled in a required drug abuse program.

In an addendum report, the department provided the juvenile court with evidence of mother's drug related convictions in 2006, 2012, and 2014. It also provided two declarations of due diligence which stated that mother's whereabouts remained unknown. At the court's request, the department provided an assessment of the home of a maternal relative, Ms. P., as a possible placement for the children. The department moved the children to Ms. P.'s home and provided an update to the court on their new placement.

As of late November 2014, mother's whereabouts were still unknown, and she had not contacted the department or Ms. P. to inquire about the children. The department reported in December 2014 that the children were adjusting well to their new home with Ms. P. The department recommended that because mother had not appeared or availed herself of services, termination of her reunification services would be appropriate.

On December 11, 2014, the juvenile court sustained the petition and declared the children to be dependent minors under subdivisions (a) and (b) of section 300. It ordered the children detained and suitably placed. Mother, who did not appear at the hearing, was granted reunification services.

There was no word from mother during the first review period. Her whereabouts remained unknown. The court found that her progress had been minimal at the six-month review hearing.

During the next review period, the children continued to do well in the home of Ms. P., who was applying for legal guardianship under the Kinship Guardianship Assistance Payment (Kin-GAP) program. The department recommended that mother's reunification services be terminated due to her lack of contact with the children and insufficient progress toward addressing case issues.

Mother made her first appearance at the 12-month review hearing on September 25, 2015, and requested a contested hearing. (§ 366.21, subd. (f).) The court granted that request and continued the matter to October 15, 2015.

Mother obtained a number of referrals from the department on September 28, 2015, but none without waiting lists. She then obtained additional referrals for anger management counseling and drug testing. After providing the department with a negative drug test, mother had her first monitored visit with the children at a park. By mid-October 2015, mother had enrolled in anger management counseling, parenting classes, drug counseling, and individual counseling. The department related all of this information to the court, but continued to recommend that mother's reunification services be

terminated due to her inadequate participation and lack of progress in addressing case issues.

The court held a contested hearing under section 366.21, subdivision (f), at which it received written reports and documents as well as mother's testimony. At the October 15, 2015 hearing, the court found mother had not maintained regular contact or visits with the children, had not made significant progress in resolving the problems that led to removal of the children, and had not demonstrated the capacity or ability to complete the objectives of the treatment plan and provide for the children's safety, protection, and physical and emotional well-being. Based on these findings, the court concluded that returning the children to mother's custody would create a substantial risk of detriment to their physical and emotional well-being. It found there was no substantial probability the children would be returned to the custody of their mother within the next six months, and directed the department to proceed with permanency planning for the children. The court terminated mother's reunification services and scheduled a permanency planning hearing.

S.R. attained 18 years of age in March 2016. The juvenile court terminated its jurisdiction and dismissed her case in April 2016.

Mother filed a section 388 petition on September 22, 2016, seeking a change in the court's order as to Jose and Alexa. Mother provided evidence of her completion of an outpatient drug program at New Directions, consisting of 20 group meetings and drug testing. Her last drug test, which was negative, was taken on July 20, 2016. Mother also provided evidence of her completion of a parenting program, individual counseling, anger

management program, and of her regular visits with the children. Based on these changed circumstances mother sought to vacate the section 366.26 hearing and have Jose and Alexa returned to her care.

Without granting a full evidentiary hearing on the section 388 petition, the juvenile court summarily denied the petition on October 6, 2016. The court found the “request does not state new evidence or a change of circumstances,” and the “best interest of the minor(s) would not be promoted by the proposed change of order.” Mother filed a timely notice of appeal from the denial order on October 13, 2016.

According to the department’s October 13, 2016 status review report, Ms. P. was continuing to provide Alexa and Jose with a stable and loving home environment. Alexa was happy and doing well in school, but Jose was not. After Jose had received two F’s at school, Ms. P. was no longer allowing him to spend time at Starbucks. This upset Jose. He requested a new placement for himself and Alexa. When a CSW spoke with Ms. P. about Jose’s request, Ms. P. expressed her love for both children and her sadness over Jose’s request for a new placement. Ms. P. explained that their relationship had suffered because of two incidents. First, when she had asked Jose not to discuss her dating relationship with his sister S.R. and his friends, he laughed, and this upset Ms. P. Second, Jose recently brought home a guitar and laptop computer that purportedly had been given to him by a friend. Ms. P. explained to Jose that people do not give expensive items without expecting something in return, and he needed to return them. Jose insisted on taking the guitar with him on his next visit with his mother. He dropped the guitar and it was damaged. This upset Ms. P., who terminated

the visit, and Jose became upset with Ms. P. because he did not get to see his mother.

When the CSW spoke with Jose about his relationship with Ms. P., he rejected the suggestion of conjoint counseling and expressed anger at not being returned to his parents. Upon being told he had appeared happy during the CSW's monthly visits and also in photos taken with Alexa and Ms. P. at various "vacations, trips to Disneyland, dirt bike riding, Sky Zone, restaurants, family parties, Wolf Lodge, and etc.," Jose became upset. He "became teary eyed and said, 'You just said it, appeared to be happy. I didn't want to take any of those pictures she forced me.'" After further discussion, the CSW identified Jose's concerns: Jose was unhappy because Ms. P. had terminated his visit with mother; he does not like it when Ms. P.'s daughter calls Alexa a bitch even in jest; he does not want to eat dinner at the family table; and he wants to stay out at night until 9 p.m. The CSW related these concerns to Ms. P., who promised she would not interfere with Jose's visits with his mother; she would not allow her daughter to call Alexa a bitch; and she would not require Jose to eat dinner with the family.

Later, when the CSW informed Jose she had found a new placement for him, he elected to stay with Ms. P. because he did not want to leave Alexa. The CSW also followed up with Ms. P., who told the CSW she no longer was requiring Jose to have dinner with the family. His most recent visit with mother had gone well, and there were no new issues to report. The CSW interviewed Alexa, who said she hoped to reunify with mother one day, but was willing to accept a guardianship with Ms. P.

The department recommended a legal guardianship with Ms. P. as the permanent plan for Alexa, but due to Jose's recent



difficulties with Ms. P., sought a 90-day continuance in order to explore other alternatives for his permanent plan. The court addressed the department's request at an October 13, 2016 hearing. At that hearing, the court briefly mentioned its summary denial of mother's section 388 petition: "And I did rule on that 388, and that is denied. This is a changing circumstance with regards to [mother]. Keeping in mind, as well, if she is going to be filing another 388, she's going to have to be ready to have a home-of-parent order because her time has expired for family reunification services with her children."

As to Jose, the court found a permanency planning hearing was not in his best interests in light of his lack of desire for adoption or legal guardianship. The court continued his placement with Ms. P., and ordered the department to assist him with his upcoming transition to independent living on his 18th birthday. As to Alexa, the court scheduled a section 366.26 hearing at which guardianship with Ms. P. would be her proposed permanent plan.

At the conclusion of the October 13, 2016 hearing, Jose sought to have unsupervised visits with mother. The court replied: "That's up to her." "She has to file another petition. I've denied one petition because she just—she finished a program but I need her to be in the process of being in after-care, testing for the department. That's really what I'm looking for." The court explained that mother was "very late in the process, to be honest with you. So it's more likely that she may be able to reunify with you. I don't know about Alexa."

## DISCUSSION

Under section 388, a parent may petition to change, modify or set aside an order of the juvenile court based on a change of circumstance or new evidence. (§ 388, subd. (a)(1).) In order to obtain a full hearing on his or her section 388 petition, a parent seeking modification must make a prima facie showing. “There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.] We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion. [Citation.]” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) A reviewing court will not overturn the discretionary decision of a juvenile court unless the decision was arbitrary, capricious, or patently absurd. (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1456.)

In evaluating a section 388 petition, it is appropriate for the juvenile court to examine the entire factual and procedural history of the case. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.) The fact that circumstances are changing is not sufficient. (*Id.* at p. 615 [“petitioner must show *changed*, not changing, circumstances”].) “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.’ [Citation.]” (*Ibid.*)

The record shows that after the section 300 petition was filed in July 2014, mother did not appear in this case until the 12-

month review hearing in September 2015. She enrolled in court-ordered programs in October 2015, and, after obtaining a negative drug test, had her first visit later that month. By the time mother filed her section 388 petition in September 2016, more than 10 months had elapsed since her reunification services had ended. In reviewing the history of this case in conjunction with mother's section 388 petition, the juvenile court was troubled by the fact that because mother's last drug test was taken on July 20, 2016, the only indication of her continuing sobriety in October 2016 was her own word. The court's reluctance to accept mother's word as the sole evidence of her lack of current drug use was not an abuse of discretion.

In cases involving extensive drug use by a parent, a juvenile court may reasonably conclude that additional clean drug tests are necessary in order to demonstrate that circumstances are not merely changing but indeed have changed. (See *In re Mickel O.*, *supra*, 197 Cal.App.4th at p. 615.) Even assuming mother made a prima facie showing of her cessation of drug use, it was not an abuse of discretion to require additional clean tests. The juvenile court reasonably found that mother's belated completion of court-ordered programs on drug abuse, anger management and the like were not sufficient by themselves to meet the best interest test. To do that, mother must provide a new section 388 petition to show that her new-found sobriety is lasting, not temporary. We find no abuse of discretion in the juvenile court's ruling.

**DISPOSITION**

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.