Filed 11/28/12 In re D.D. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.D., a Person Coming Under the Juvenile Court Law.	B240782, B241204 (Los Angeles County Super. Ct. No. CK75380)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BRITTANY D., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn Kading Martinez, Commissioner. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

Brittany D. (Mother), the mother of now two-year-old D.D., appeals from the trial court's denial of a hearing on her petition under Welfare and Institutions Code section 388.[1] We affirm.

BACKGROUND

Section 300 petition

D.D. was born to Mother in May 2010. On August 25, 2010, when D.D. was three months old, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on his behalf. The petition alleged under section 300, subdivision (b), that Mother had a history of illicit drug use and was abusing marijuana, making her incapable of the regular care of D.D. Mother had tested positive for marijuana on June 14 and July 14, 2010, and D.D.'s sibling, E.W., was a dependent of the juvenile court due to Mother's drug abuse.[2] The petition also alleged that Mother had a history of engaging in violent altercations with D.W., her male companion. Mother told DCFS that she did not know who D.D.'s father was.

When the previous social worker visited Mother shortly after D.D.'s birth, Mother and D.D. were living with D.D.'s maternal great-aunt (MGA). Mother had been subject to random drug testing but had not been participating. Mother promised she would come in the following Monday. After she tested positive, Mother agreed to participate in a Voluntary Family Maintenance program (VFM).

In late June 2010, the social worker learned that Mother was no longer living with MGA but in Palmdale. Mother claimed to have a restraining order against D.W. On July 1, 2010, the social worker notified Mother that a team decision making (TDM) meeting was scheduled for July 7, and Mother said she would attend. Twice, on July 3 and July 5, the social worker tried unsuccessfully to meet with Mother and D.D.

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

[2] E.W. was three years old at the time of the petition. Two counts under section 300, subdivision (b) had been sustained against Mother as to E.W., and the case was set for a contested hearing on August 31, 2010, to terminate family reunification services. Mother never reunified with E.W., who was eventually placed under legal guardianship.

The social worker went to see Mother on July 7, 2010, after Mother missed the TDM; Mother explained that she had received a voice mail message about the TDM that did not include the exact time. Mother described instances of violence against her by D.W., and said that the restraining order was at the home of MGA. The social worker urged Mother to return with D.D. to MGA's home, and Mother said she would. The next day, however, MGA informed the social worker that Mother did not show up or call, and was refusing to return MGA's calls.

On July 13, the social worker met with Mother and D.D. Mother told the social worker that on July 4, she dropped D.D. off with her grandmother and her sister, so she and her friends could hang out and smoke a little marijuana. Mother tested positive for marijuana on the next day, July 14, 2010.

At a TDM held on July 16, 2010, the agreement was that D.D. would remain with Mother, who would drug test and achieve decreasing levels of marijuana from the level found on July 14, until the level was zero. Mother would reside with MGA until she got an apartment, keep the restraining order in effect for D.W., complete an upfront assessment, and follow all recommendations.

Twice on August 13 and 17, the social worker called Mother's current boyfriend's cell phone (Mother had provided this contact, claiming she could no longer buy minutes for her phone) but could not reach Mother. On August 18, MGA tried to call, telling the boyfriend to tell Mother to call the social worker.

When the social worker tried again on August 19 and Mother returned the call, Mother was upset, cursing and yelling at the social worker, telling her Mother did not want her to contact her boyfriend, and continuing to scream hysterically when the social worker asked for another phone number. The social worker met with Mother at the maternal great-grandmother's home. D.D. was well-groomed and dressed. Mother refused to tell the social worker where she lived, and said she had not tested because she did not have a bus pass (although the testing site was less than one mile away). Mother would not tell the social worker where she and D.D. were living, and became belligerent, not allowing the social worker to speak.

On August 20, the court held a TDM and concluded that because Mother failed to comply with drug testing, reside with MGA, and make herself and D.D. available to the social worker, D.D. would be taken into protective custody. D.D. was placed in foster care. The social worker left Mother a phone message (again on the boyfriend's phone) setting up visitation on August 23, 2010. Mother failed to contact the foster mother about the visit.

An addendum report recommended that Mother participate in individual counseling, a parent education program, a substance abuse treatment program, and an anger management program. The report also recommended that Mother undergo random drug testing, and have monitored visitation with D.D.

At a hearing on August 25, 2010 which Mother (who had been given notice) did not attend, the court found a prima facie case for detaining D.D., ordered reunification services and monitored visitation, and noted: "Mother has a long history of substance abuse and it appears that she is not in full compliance with prior orders, and she has made up a lot of excuses just recently with the department as to testing, and she finally had a test, it was positive for illegal substances." The court continued arraignment and appointment of counsel to August 31. On that date, the court appointed counsel for Mother and continued the matter for a contested hearing. Mother continued to use the boyfriend's telephone number.

Jurisdiction/disposition report

The October 18, 2010 Jurisdiction and Disposition Report stated that Mother had been detained as a child as a result of her own mother's drug use and had been placed in guardianship with her maternal grandmother, who later rescinded the guardianship because of her poor health and Mother's behaviors. Mother was then placed in foster care. On October 8, 2010, Mother was two hours late for a scheduled appointment. In a phone interview, Mother stated that she began to smoke marijuana when she was 17 or 18, and it helped to calm her "bad temper." She stopped smoking a month ago and planned to enroll in a treatment facility in Tarzana.

The social worker who assessed Mother during the dependency proceedings for E.W., Mother's three year old, noted that Mother was domineering, and Mother and E.W.'s father argued using profanity in E.W.'s presence; Mother also engaged in a physical fight with her paternal aunt. After the court in E.W.'s case sustained a count involving Mother's anger management issues and ordered individual therapy, Mother started dating D.W. in the summer of 2009. The relationship was violent and Mother had visible injuries and bruises.

Mother lived with D.W. for a short time, breaking up right after D.D. was conceived (although she continued to see D.W.). Mother reported three physical confrontations with D.W. over small things, and had been hit in the mouth, slapped in the face, and kicked. Mother had a restraining order against D.W., and did not know where he was. Mother's mother stated that D.W. was disrespectful and profane, and threatened her. Mother's sister confirmed a physical fight between Mother and D.W., and her maternal grandmother confirmed that Mother did not handle conflict well, especially when angry.

Mother, who was unemployed, did not think DCFS should be involved in her family because she had not abused her children, although she was willing to enroll in the Tarzana treatment facility. D.D., now five months old, was developing normally.

When DCFS called mother on August 26 to schedule visitation, Mother was noticeably angry and used obscenities throughout the conversation. Mother did not maintain contact for some time, until on September 28 she called to say she had been ill with gallstones. When Mother stated she would cancel an October 1, 2010 visit because she did not have transportation, the social worker took her to the visit. Mother had not cooperated with random drug testing, and although she had attended some parenting classes she had not received a certificate. She had attended two domestic violence sessions, but overall had not complied with voluntary or court-ordered services.

The report recommended that the court sustain the allegations in the petition and place D.D. in suitable out of home care. The report further recommended that Mother receive reunification services, complete a parent education program, undergo random

drug testing, participate in a substance abuse treatment program and anger management program as well as a psychiatric evaluation, and have monitored visits with D.D.

Contested adjudication and disposition hearing

At the contested hearing on October 18, counsel for Mother represented that after the hearing on August 21, she had notified Mother (at the phone number Mother provided) of the October 18 hearing date. When counsel talked to Mother that morning, however, Mother said she did not have a ride and could not be there. Counsel asked for a continuance. Counsel for DCFS noted that Mother had been provided with transportation funds and had notice of the hearing. The court denied the continuance, stating that the social worker had assisted with transportation for Mother to come to court and visit D.D., and had very recently provided money for transportation; she "had a reasonable opportunity to get herself to court and she has not. And we are actually in the middle of trial."

After argument, the court ordered permanent placement services for E.W., Mother's three year old.

Turning to the matter of D.D., the court found that D.W. was an alleged father. Mother's counsel requested dismissal of both counts, arguing that the marijuana level in Mother's positive tests was low, D.D. had always been well cared for when DCFS had observed him, and Mother was no longer in a relationship with D.W. Counsel for D.D. responded that Mother had not complied with the court's orders regarding E.W., and that she had not submitted to testing again after the two positive tests for marijuana. Dismissal would place D.D. back in Mother's care, and although she was young she had failed to comply with the court orders or participate in any court-ordered program, and continued to miss tests. Counsel for DCFS pointed out that the domestic violence with D.W. happened while Mother was pregnant with D.D., and that her anger issues continued because when DCFS attempted to contact Mother, she became angry and yelled obscenities.

The court sustained both counts, noting that Mother reengaged with D.W. when she was six months pregnant, resulting in significant domestic violence. Mother had a

longstanding drug habit, and continued to use marijuana. Mother had not verified compliance with orders "and especially hasn't verified substantial progress in addressing her issues of drug abuse, domestic violence and anger management," continuing to swear at the social worker. The court declared D.D. a dependent, removing D.D. from Mother's custody and providing Mother with family reunification services. Mother was to participate in individual counseling to address parenting, domestic violence, anger management, and drug abuse, as well as random drug testing. Mother was to have monitored visitation.

April 11, 2011 status review report

Six months later, on April 11, 2011, DCFS filed a status review report. D.D. remained in foster care, and Mother was listed as "no address." The report documented Mother's failure in October and November 2010 to show up for appointments, hanging up the phone when the social worker called and failing to return calls, and failing to show up for scheduled visits with D.D. In December 2010, Mother told the social worker she was trying to get a job to pay for the programs, and "she did not know why she had to do anything and that it was pointless because she would not get her children back." The social worker urged her to comply with the court orders, and Mother said she would attempt to do what she could. The social worker's visits with D.D. and his caregiver showed D.D. healthy and happy. Mother visited on Christmas, and then only once before the end of January 2011. D.D.'s caregiver would take D.D. to visit Mother whenever the caregiver was near Mother's home, but Mother was not always available, and did not take full advantage of visiting opportunities. The caregiver was interested in adopting D.D.

Mother had not complied with any of the court orders, enrolling briefly in a 90-day residential substance treatment program and leaving after two days because "'the people were crazy and the facility is dirty.'" She was not participating in individual counseling or parenting education, and had failed to submit to any of 12 scheduled drug tests. Mother told the social worker that she was moving and searching for a program in the new area; she refused to disclose her current address. Mother had not picked up her free bus passes. She had attended less than half of the available visits with D.D. (the

available visits were weekly, for 2-3 hours). During the visits she did attend, she would hold and play with D.D. for 15 to 20 minutes. Mother was attentive, and D.D. was responsive; she fed him and changed his diaper appropriately.

DCFS expressed "great concern" with Mother's "lack of effort to comply with any of the Court orders," and recommended that family reunification services continue and the matter be continued in six months.

May 10, 2011 contested six-month review hearing

The review hearing was continued from April 11, 2011 for a contested hearing, because D.D.'s counsel recommended that there be no more family reunification services. Although Mother was present at the earlier hearing on April 20, 2011, and counsel had informed her of the May 10 date, Mother was not present and counsel did not know why. Mother's counsel asked for a continuance, which the court denied.

DCFS requested that the court allow Mother's more family reunification services, and Mother's counsel joined. Mother's counsel argued that Mother had had transportation issues, and even her sporadic visits were enough to justify further reunification services. Mother was now enrolled in a program (the interim report stated that she had a May 9 appointment for an outpatient program at Prototype Women's Center).

Counsel for D.D. requested termination of family reunification services. Mother's inability to reunify with E.W. was because she did not participate in any court-ordered programs, and Mother was showing a similar pattern with D.D., saying she would enroll and then changing her mind. She had failed even to take a class after six months, did not visit D.D. consistently, and "simply does not have a relationship with this child."

The court ruled "by the preponderance of the evidence that return of [D.D.] to the custody of his mother would create a substantial risk of detriment to his well-being." Reasonable efforts at reunification had been made. In seven months, Mother had not verified compliance with any of the court's orders, had not enrolled in any programs, and "has not verified an iota of progress addressing the issues which have brought this child before the court." Mother's visits with D.D. were "few and far between," even thought

the foster mother had been proactive. D.D. was under three years old. Mother had failed to participate in similar programs with regard to E.W. "She has a pattern of what she intends to do but she doesn't follow through." The department had made reasonable efforts, and the foster parent regularly arranged visits. The court terminated family reunification services (noting that Mother would continue to receive transportation services for visitation), and set the matter for a hearing under section 366.26 on August 26, 2011.

Mother's first section 388 petition, August 26, 2011

Mother filed a request to change court order on August 26, 2011 (the date of the contested section 366.26 hearing), giving an address in Palmdale. The request stated that Mother had participated actively in Prototypes since May 9, 2011 (parenting, anger management, substance abuse program and random drug testing) and individual therapy since July 11, 2011. Mother had been visiting D.D. weekly since the last court hearing and would be moving to an apartment on September 1, 2011. The request asked for additional family reunification services and liberalization of visitation to unmonitored and weekend visits.

Denial of section 388 petition, August 26, 2011

Mother was present at the hearing on August 26, 2011, but DCFS had not submitted a report, so the court continued the section 366.26 hearing.[3] The court indicated that it had read the section 388 petition just submitted, and "I may not be inclined to grant the request of the 388." At the court's query, counsel for D.D. stated that she did not have a position on the request. The court stated that the formal disposition occurred 10 months earlier and Mother had enrolled in programs just two months ago. Mother was "at the very beginning of her programs. So I can't find that it's in the child's best interest to delay having permanency and stability." Counsel for DCFS stated agreement with the court, and counsel for D.D. submitted "on the court's

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[3] The court also continued the hearing to allow proper publication for the alleged father, D.W.

indicated." Counsel for Mother then argued that Mother had been enrolled for somewhat more than two months, was still within the 18 months of family reunification that she could receive, was visiting regularly, and was filing a lease agreement for September 1 with the court that day. The court responded, "The 388 petition request is not granted. 18 months is given as a maximum. This is a child under the age of three." Mother had notice at the disposition hearing that it was important to comply within six months, and "It was one day before the six-month hearing [Mother] enrolled in her drug-related program." Mother began her individual therapy just a month ago, had a long history of substance abuse, and was at the very beginning of her programs. "[T]herefore, there's insufficient changed circumstances such that it is in not in [D.D.'s] best interest to grant the request on the 388; and, therefore, the requests are denied."

The court order stated that Mother's section 388 request was denied because it did not state new evidence or a change of circumstances and was not in the best interests of D.D., adding: "Mother is at beginning of addressing her issues. Much more progress is needed. Also—requests discussed at hearing on 8-26-11." D.D. was living with his prospective adoptive parent, whose home study had been approved. The prospective adoptive parent stated that Mother had visited once or twice a month until September 2011, when Mother began to visit every weekend in a public location for about two hours, bringing D.D. toys and behaving appropriately.

Mother's second section 388 petition, January 24, 2012

Mother filed a second section 388 request to change the court order on January 24, 2012, asking for six additional months of family reunification services and unmonitored weekend visitation. The request gave Mother's address as "unknown," and stated that Mother had participated in Prototypes since May 9, 2011, and was in compliance; completed parenting on November 3, 2011; had her own apartment; and had regular visitation with D.D., "including unmonitored during Christmas holidays. See attached progress reports and letters." D.D was bonded with Mother and Mother had treated D.D.'s ringworm. A January 18, 2012 letter from Prototypes stated that Mother was attending two groups a day three times a week on parenting, alcohol and drug education,

codependency, and other issues, as well as individual therapy once a week. Mother had "shown a tremendous amount of development and growth however she continues to have anger outbursts and meets weekly with her therapist to address these issues that stand in her way."

A letter from D.D.'s "step grandmother," P.N., stated that Mother was a good caregiver, D.D. was attached to Mother, and the foster mother had left D.D. with Mother for a week, after which he cried when it was time to leave. A letter from Mother stated that D.D.'s "step-grandmother" was the grandmother of her son Ryan, that she had been clean for eight months and had her own apartment, and felt she could now take care of her children, regretting that she had not been there for E.W. A letter from Ryan's aunt stated that she met Mother in September 2010. D.D. had had many overnight visits with Mother and Ryan's family, and that although Mother "needed anger management and interpersonal skills," she was different when D.D. was around, and Mother had shown "great improvement." A couple of times, the foster mother dropped D.D. off with diapers and didn't come back for a couple of days. She had seen Mother stop smoking marijuana and "get herself together."

February 14, 2012 denial of section 388 petition

The court considered the January 24 section 388 petition at this hearing, with Mother present, indicating, "I may not be inclined to grant her 388 petition request, but I do want to hear from [D.D.'s counsel] on that request."[4] D.D.'s counsel stated: "I'm in agreement with the court." The court asked whether counsel for DCFS wanted to be heard on the section 388 request, and counsel submitted. Mother's counsel then argued that Mother continued in the program, was doing very well on her own, and had her own place and support people. She had another child not before the court of whom she was taking good care. She had unmonitored visitation with D.D. "even though the department

[4] Mother filed a section 388 petition on the hearing date, providing proof of publication for the alleged father, D.W.

claim[s] otherwise."[5] Counsel for DCFS stated that Mother was no longer living in the county and had given birth to the other child while out of touch with the department. Mother stated that she currently lived in Pomona, where she had lived since September 1, 2011.

The court denied Mother's section 388 petition. The new evidence was that Mother had completed parenting education and was making good progress at Prototypes, but "she still has some important or significant progress . . . to be made." Mother made good progress in her substance abuse issues, but she continued to have anger management issues. Although she had regular visitation with D.D., "visitation in and of itself is insufficient to persuade the court that there is a parental bond such that it would be detrimental to terminate parental rights. And because there are still issues to be addressed, I cannot order unmonitored weekend visits."

The court asked counsel for D.D. whether it would be in D.D.'s interests to have unmonitored visitation. D.D.'s counsel recommended against additional reunification services ("this is unfortunately a little too late, and I just don't feel that it is in his best interest."). Mother's counsel rejoined that D.D. was with Mother "for some time" before removal, and D.D. had regular visits and "knows who the mother is." The court observed that D.D. had been with his mother for less than three months, and would soon be two years old. Mother was attempting to persuade the court that she had made substantial progress since the court discontinued reunification at the first six-month review hearing in May 2011. While Mother had done well in her drug rehabilitation, additional progress was necessary to verify that she could maintain a sober lifestyle. The court had ordered Mother into individual counseling to address anger management and domestic violence issues, Mother still had substantial progress to make, "[a]nd given the child's young age, I cannot find it's in the child's best interest to grant additional

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[5] Conflicting evidence was presented at the section 366.26 contested hearing, and the foster mother admitted that some of the visitation, although not overnight, was unmonitored. That was an informal arrangement allowed by the foster mother, who wanted to help Mother.

reunification." Mother's counsel stated that Mother had just asked her whether the court was considering the letter from Prototypes attached to the section 388 request, and the court responded that "[s]he's still at the beginning of making progress addressing her anger management issues." The February 14, 2011 order denying the section 388 petition stated, "Mother at beginning of addressing anger mgmt. issues. The requests were discussed at today's hearing."

As to the section 366.26 petition, the court set the matter for a contested hearing at the request of Mother's counsel. The court ordered Mother to provide her current address to DCFS, so that the department could set up a visitation schedule and approve any prospective monitors.

Mother's third section 388 petition, March 27, 2012

Mother filed her third section 388 petition on March 27, 2012, requesting liberalization of Mother's visitation to unmonitored, including weekend overnights, and additional family reunification services. An attachment stated that Mother had completed a parenting class from the Pomona Unified School District, and had made so much progress in Prototypes that her individual therapy session was reduced from four times a week to two times a month; "Mother has been able to resolve her anger management issues." Mother has "another child who has not been removed by DCFS," had her own apartment, and was able to maintain a stable lifestyle very different from when she lost E.W. An August 17, 2011 letter from Prototypes stated that Mother "displayed a very negative attitude upon enrollment but that has since changed." Although her first drug test on enrollment (May 9, 2011) was positive, all other random test results were negative. Mother's attitude had improved, but additional treatment was recommended. A March 26, 2012 letter from a Prototypes therapist stated that Mother had learned to use coping strategies from therapy to reduce the frequency of her verbal outbursts, had met her treatment goal, and no longer needed intensive services. She would be transferred to a lower level program where she would receive therapy one to two times a month.

March 28, 2012 denial of section 388 petition

At the March 28, 2012 hearing, with Mother present, D.D.'s counsel argued that the third section 388 petition filed the day before was not timely. Although the documentation showed that mother was making progress, "the circumstances are changing, and they are not changed," and granting the petition would not be in D.D.'s best interests. The court stated that it was "very familiar with the case, and I have read all the documents. And having taken judicial notice, I'm not inclined to grant the 388 nor set it for hearing. I'm inclined to deny it." Mother's counsel replied that the third petition was different because it included a report from Mother's therapist, and "as of today, she actually has completed the court-ordered programs from parenting, individual counseling and substance abuse program, and she has not had any incident related to either domestic violence, substance abuse issue, housing, visitation that would concern the court. [¶] So the mother's actually asking that the court hear the matter fully before making a determination under 388." Counsel for DCFS stated it had not discussed the most recent petition with DCFS, and would submit the issue to the court and join in D.D.'s counsel's statement. The court stated: "we are at the 11th hour . . . and the 59th minute. And I'm not inclined to grant this," asking for more argument from Mother's counsel. Mother's counsel urged the court to construe the request liberally based in the information in the request. The court held a discussion off the record, and then denied the March 27 section 388 petition: "I do not find that there is sufficient change of circumstances on the first prong, and clearly it does not support it's in the child's best interest . . . ." The only new information since the February 14 section 388 petition was the letter from Prototypes dated March 26, 2012, which indicated that Mother was being transferred to a lower level program: "This does not say she has completed her programs. It just simply says that she still has needs, but not as intense. [¶] And given the totality of the evidence, the history of this case—and I've taken judicial notice—I do not find that this is sufficient new evidence for me to grant the request. [¶] And I don't have any evidence presented on this 388 . . . to support [that] there's a prima facie showing that it's in the child's best interest." Although the petition was "not particularly timely," the court

did not fault Mother for "filing this because she thought she had the opportunity." The order denying the request stated that Mother had shown neither change of circumstances or that a change would be in D.D.'s best interests, and counsel had argued at the March 28, 2012 hearing.

After a contested section 366.26 hearing on March 28, April 26, and May 8, 2012, the court terminated Mother's parental rights and transferred custody and control of D.D. to DCFS for adoption planning and placement.

Mother filed two timely appeals, one following the denial of her second section 388 petition and one following the termination of parental rights, which we consolidate for disposition. Mother's sole argument is that the court erred in denying her a full evidentiary hearing on her section 388 petitions.

DISCUSSION

Although as described above, the court entertained argument from counsel on each of Mother's three section 388 petitions and took judicial notice of the supporting documentation, the court declined to conduct a full evidentiary hearing. Mother contends this was error.

"A party may petition the court under section 388 to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that (1) there is a change of circumstances or new evidence, and (2) the proposed change is in the child's best interests. [Citations.] The petition must be liberally construed in favor of its sufficiency. [Citations.] 'The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing.' [Citation.] '"[I]f the petition presents any evidence that a hearing would promote the best interests of the child, the court will order the hearing." [Citation.]' [Citation.] 'However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the

petition.' [Citation.] In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. [Citation.]" (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 257–258; see § 388, subd. (d).) We review the summary denial of the petition for abuse of discretion. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.)

The relief Mother sought in her three section 388 petitions was the resumption of family reunification services and liberalized visitations, including overnight and unmonitored visits. The evidence presented in Mother's first section 388 petition was that she had actively participated in Prototypes, had not had a positive drug test since she enrolled on May 9, 2011, and her attitude had improved. The second petition included evidence that Mother was in compliance with her treatment and had shown a tremendous amount of growth, but continued to have anger outbursts. The third petition, filed a day prior to the section 366.26 contested hearing, included a letter from Mother's therapist dated March 26, 2012 stating that Mother had learned coping strategies and had used them to reduce the frequency of her verbal outbursts, no longer needed intensive services, and was being transferred to a lower level program. The petitions also stated that Mother had visited regularly with D.D. and had had unmonitored visitation. Letters from Mother's extended family stated that D.D. was attached to Mother and cried when the visits ended.

Mother argues that she presented new evidence that her circumstances had changed, as she had entered a treatment program in May 2011, had tested negative after an initial positive drug test, had participated in counseling programs, and had progressed from needing intensive therapy to manage her anger outbursts to needing only occasional therapy. As the court acknowledged, Mother had made progress. As to Mother's anger issues, however, this is evidence of only changing, not changed, circumstances, as she continued to need therapy for anger management. To require a hearing, a parent must show changed, not merely changing, circumstances. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Further, "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." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

Mother did show significant progress in addressing her substance abuse and her domestic violence issues. She had not completed her program, however, continuing to require lower level therapy for her anger management issues. Nevertheless, even if this sufficed to establish a prima facie case of significantly changed circumstances, Mother made no prima facie showing that a change of order would be in D.D.'s best interests. D.D. had been with the foster mother since he was three months old. Mother showed a decided lack of interest in visiting D.D. for the first nine months after his removal, and did not stay in touch with DCFS, attend scheduled appointments, or appear at noticed hearings. It is true that Mother acquired a stable address and attended regular visitation with D.D. (due in part to the active efforts of the foster mother) after she entered the Prototypes program, but that belated visitation alone is not enough to establish a prima facie case that D.D.'s best interests would be served by more reunification efforts or that Mother had a strong bond with D.D.

At the time Mother filed her initial section 388 petition, D.D. had been out of her care for a year, ever since he was three months old, and was living with a foster mother who was willing to adopt him. By the time of her third and last petition, D.D., by then almost two years old, had been in the foster mother's care for 19 months. There was no prima facie showing why delaying permanency proceedings would have been in D.D.'s best interests. Although Mother was exerting herself to improve, there was "no showing of how the minors' best interests would be served by depriving them of a permanent, stable home in exchange for an uncertain future. [Citations.]" (*In re Jackson W.*, *supra*, 184 Cal.App.4th at p. 260.) Further, once reunification efforts have been terminated, the minor's interests in stability and permanency are the primary concerns of the juvenile court, outweighing the parent's interest in reunification. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best

interests of that child.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Consequently, "'[t]he presumption favoring natural parents by itself does not satisfy the best interests prong of section 388.' [Citation.]" (*In re Jackson W.*, at p. 260.)

Construing Mother's section 388 petitions liberally, their allegations would not have sustained a decision that modifying the order would be in D.D.'s best interests, and Mother therefore was not entitled to an evidentiary hearing. The summary denial of the section 388 petitions was not an abuse of discretion.

Although Mother makes no substantive argument regarding the court's ultimate decision to terminate parental rights, for the reasons discussed above, we find no error in the juvenile court's conclusion that D.D. was adoptable and that termination of parental rights was in his best interest.

DISPOSITION

The court's orders denying Brittany D.'s petitions pursuant to Welfare and Institutions Code section 388 and terminating parental rights are affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.