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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ISAAIAH C.,

a Person Coming Under the Juvenile  
Court Law.

B235953

(Los Angeles County  
Super. Ct. No. CK82732)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MIGUEL C. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, Debra Losnick, Juvenile Court Referee. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant Miguel C.

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

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Miguel C. (Father) and Christina R. (Mother) appeal from the order terminating their parental rights over their son Isaaiah C.<sup>1</sup> Father also appeals from the order denying his Welfare and Institutions Code<sup>2</sup> section 388 petition.<sup>3</sup> We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In June 2010, the Department of Children and Family Services (DCFS) received a referral stemming from a verbal and physical altercation between the parents, after Father sought treatment at a local hospital for injuries. Father claimed Mother pushed him, causing him to hit a door and sustain an injury to his face. Mother claimed that, at one point, she kicked Father in the face with a wooden sandal, after which Father's mother took him to the emergency room.<sup>4</sup> The parents' explanations as to Isaaiah's whereabouts

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<sup>1</sup> In the appellate record, Isaaiah's name is often spelled incorrectly as "Isaiah."

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>3</sup> In her notice of appeal, Mother references a September 6, 2011 order in which she claims the court "refused to hear my [section] 388 petition." Mother did not file a section 388 petition and did not join in Father's petition below. On appeal, she has no standing to challenge the order denying Father's petition. (*In re D.S.* (2007) 156 Cal.App.4th 671, 673-674.)

<sup>4</sup> Father also went to the police station. He stated he had been assaulted by his girlfriend and wanted to file a police report. When advised that his girlfriend would be

during the altercation were inconsistent. Mother claimed that Isaaiah was at a neighbor's house. Father said Isaaiah was at home asleep. Later, Father claimed that Isaaiah was not at home when the domestic violence occurred. DCFS took 11-month-old Isaaiah into protective custody and placed him with his paternal grandmother, Yolanda R.

On June 21, 2010, DCFS filed a petition pursuant to subdivisions (a) and (b) of section 300. The petition alleged that Isaaiah was at risk of physical harm due to his parents' history of physical altercations and Father's failure to protect Isaaiah by allowing Mother to reside in the home with unlimited access to the child. The petition further alleged that Mother abused marijuana and that Father abused marijuana and alcohol.<sup>5</sup>

At the detention hearing held the same day, the court ordered Isaaiah detained with his paternal grandmother. The court ordered family reunification services, monitored visits a minimum of three times or three hours per week, and concurrent placement planning.

In its jurisdiction/disposition report, DCFS noted that Mother had no criminal history. Father had been arrested for domestic violence in December 2009 and January 2010, for false imprisonment, and willful cruelty to a child. No convictions resulted, in that the charges were dismissed. Parents, however, have engaged in a violent altercation resulting in injuries.

Parents had enrolled in programs designed to remedy the reasons that brought the family to the attention of DCFS, but would not talk to the department investigator. More specifically, on July 22, 2010, the dependency investigator spoke with Father and made a tentative appointment to meet. Father stated that he and Mother had been advised not to discuss the case, but he agreed to confer with counsel and get back to the investigator. Father did not call to confirm or cancel meeting, and parents did not keep their appointment.

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arrested, Father left the police station without filing a report because he did not want Mother to get in trouble. Scratches were observed on Father's face.

<sup>5</sup> Both parents had medical marijuana cards.

A social worker reported that parents were unemployed and that financial issues engendered conflict between them. Parents seemed to have enough money to buy medical marijuana but not an appropriate crib for Isaaiah. This strongly indicated that Isaaiah's best interests were not parents' first priority. DCFS could not assure Isaaiah's safety with his parents due to their domestic violence and because they "seem[ed] ill prepared to care for their child." DCFS recommended that the juvenile court sustain the section 300 petition and order six months of reunification services.

On August 10, 2010, Father and Mother submitted on the petition as amended. The juvenile court sustained count b-1 of the section 300 petition, which, as amended, alleged that Isaaiah's parents "have a history of engaging in altercations in the presence of the child, in which the mother violently assaults the father resulting in injury to the father. Such altercations on the part of the mother against the father and the father's failure to protect the child endangers the child's physical health and safety and places the child at risk of physical harm damage, danger and failure to protect." The court dismissed all other counts.<sup>6</sup>

The court declared Isaaiah a dependent child under subdivision (b) of section 300, removed him from the custody of his parents and ordered reunification services for both. Specifically, the court ordered them to complete a parent education class, attend domestic violence counseling, individual counseling to address case issues, including anger management. The court further ordered the parents to undergo 10 random drug tests. If any of the tests came back positive or if the parents missed a test, they would be required to complete a drug program. In addition, the court ordered monitored visitation for the parents and granted DCFS discretion to liberalize. Both parents signed the case plan.

In a November 17, 2010 interim review report, DCFS noted Isaaiah was doing well with his paternal grandmother. The parents, however, failed to drug test, did not

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<sup>6</sup> The court dismissed the drug allegations on the condition that the parents drug test 10 times. Given the parent's use of medical marijuana, their THC levels were expected to decrease over time.

visit regularly and acted inappropriately during visits. Paternal grandmother had received a threatening letter from an anonymous source, stating she was only caring for her grandson for the money and that bad things would happen to her. Paternal grandmother filed a police report regarding the letter.

DCFS further reported that Father and Mother had made no progress in meeting any of the case plan goals. In addition, they did not appear interested in obtaining services or taking the steps required to reunify with their son.

In a status review report prepared for the upcoming six-month review hearing, DCFS noted that Isaaiah was doing well in the care of his paternal grandmother. Mother and Father, however, limited their contact with the social worker to the beginning of the month to obtain their bus passes. They had not been forthcoming in discussing case issues with the social worker and had made no progress in completing any court ordered services. They failed to submit to any court ordered random drug testing, missing 12 drug tests each. As a result, the social worker gave Father and Mother referrals to drug treatment programs. Neither enrolled, however.

According to paternal grandmother, Father and Mother did not call regularly to check on Isaaiah and did not visit him regularly. When they did visit, they were often late and expected the paternal grandmother to buy them food and take them places. They also acted inappropriately during visits. They took Isaaiah out of his car seat and held him on their laps while the paternal grandmother drove. Father and Mother were not prepared for visits and did not provide adequate care for Isaaiah. They also blamed the paternal grandmother for DCFS's involvement and threatened that she would not have Isaaiah for long.

DCFS further reported that parents continued to blame others for their predicament and failed to take responsibility for their own actions. During this period of supervision, Father and Mother made little progress in meeting case plan goals and failed to address the issues warranting DCFS intervention. The parents lacked insight into the issues that brought their family to the attention of DCFS. DCFS recommended that

family reunification services be terminated for both parents and that a selection and implementation hearing (§ 366.26) be scheduled.

At the six-month review hearing held on February 8, 2011 (§ 366.21, subd. (e)), counsel voiced their disagreement with DCFS's recommendation. The court set a contested .21(e) hearing for March 8.

At the March 8, 2011 hearing, Father testified that he currently was enrolled in the Better Choices drug program. He had signed up for the program on February 9, 2011. It had taken him this long to enroll in a drug treatment program because he and Mother, who were trying to enroll together, could not afford the referrals given to them by the social worker. He found his current program himself. Father was aware that the social worker had reported that he failed to drug test since August 2010. He had been testing since signing up at Better Choices, however.

Father also testified that on February 9, 2011, he also signed up for a parenting program through Better Choices. He had attended seven classes of 10 needed to complete the program.

Father visited Isaaiah once a week for three hours. He could only visit his son on Sundays because the paternal grandmother worked Monday through Saturday.

Father and Mother asked the court to give them six more months of reunification services. Isaaiah's counsel asked the court to terminate reunification services. Although she acknowledged the difficulty the parents may have encountered in finding programs they could afford, there was no excuse for failing to drug test since August 2010 since it did not cost them anything. Counsel further noted that parents' visits with their son had been irregular and they exhibited inappropriate behavior during those visits.

DCFS joined in the arguments made by Isaaiah's attorney. DCFS further emphasized that neither parent was in compliance with the case plan and that the juvenile court did not have a basis to continue family reunification services for another six months.

The juvenile court terminated family reunification services, finding that "neither parent is in significant or substantial compliance" with the case plan. It then selected

June 30 as the date for the section 366.26 hearing and September 6 for a review hearing. On June 30, the section 366.26 hearing was continued to August 3.

In a supplemental section 366.26 report prepared for the August 3 hearing, DCFS reported that during a July 3, 2011 visit, the parents smothered Isaaiah and did not allow him to breathe. After two hours, Isaaiah became very irritable. Parents claimed that they would get Isaaiah back the following month, and Father complained about having to stay in one place for three hours. At the end of the visit, parents became very dramatic and corrected Isaaiah when he called his paternal grandmother “mommy.” This dramatic behavior agitated Isaaiah.

During a July 10, 2011 visit, the parents complained about the visits taking place at McDonalds. They claimed the location was not convenient and three hours was too long to spend there. Father became argumentative with his mother about the visitation schedule. A visit one week later went well.

DCFS further reported that in all likelihood the paternal grandmother would adopt Isaaiah once he was freed for adoption. Paternal grandmother loves Isaaiah deeply and “has done everything possible to provide him a stable and living home.” She is capable of providing him with a “safe, caring and nurturing environment” and appears devoted to meeting all of his needs. DCFS recommended that upon approval of the home study the court terminate parental rights.

On August 3, the juvenile court, pursuant to the parents’ requests, set the matter for a contested hearing on September 6.

In anticipation of the next hearing, DCFS reported that Isaaiah appeared to be happy and that he was “noticeably cared for very well.” He was comfortable in his surroundings and was bonded to his paternal grandmother, whom he called “mom.”

Father and Mother continued to visit Isaaiah sporadically. The paternal grandmother and a paternal aunt reported that Father and Mother showed up to visits with bruises, bite marks and scratches. During one visit at which only the Father appeared, Father had bruises or marks on his face, “which he claimed to have receive from a ‘fight because of the mother.’” Paternal grandmother and maternal grandmother informed the

social worker that Father and Mother continued to use drugs. During a visit in March 2011, Mother had a medical bottle containing marijuana in her purse. Father and Mother were often inappropriate when interacting with paternal grandmother and tended to start arguments at the end of visits. Father and Mother also used foul language in Isaaiah's presence and were verbally aggressive toward paternal grandmother who no longer was willing to monitor visits. Father and Mother failed to submit to any court ordered drug tests and to demonstrate to DCFS that they had enrolled in a drug treatment program.

On September 6, Father and Mother failed to appear at the selection and implementation hearing. At the commencement of the hearing, the juvenile court noted that the paternal grandmother and paternal aunt were present in court. The court further noted that "[i]t's 9:45. Despite the fact that there was a power outage this morning and people were not allowed in the building, at a certain point in time there is no longer a line at the front door. The parents are not here, and I am prepared to go forward."

Father's counsel advised the court that Father had filed a section 388 petition<sup>7</sup> earlier in the morning and asked that the petition be heard before the contested section 366.26 hearing. The court stated that it did not have the petition and would look at it but noted that "it is not timely." Counsel for Isaaiah agreed that the section 388 was not timely and reminded the court that "[w]e were last here on August 3rd when the parents set the matter for the contested hearing."

When the court stated it was going to proceed, Father's counsel and Mother's counsel asked that the matter be continued. Both attorneys noted that there had been a problem in the building, their clients had been present at every other hearing and they did

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<sup>7</sup> On September 6, 2011, the date of the contested section 366.26 hearing, Father filed a Request to Change Court Order (§ 388). Therein he asked for custody of his son and, alternatively, for reinstatement of reunification services. Father alleged that he had complied fully with the juvenile court's orders and provided correspondence and certificates verifying that, as of August 2, 2011, he had completed 15 group sessions of anger management counseling and 10 group sessions of drug counseling. Father stated that he had visited Isaaiah regularly, along with Mother, and that it was in his son's "best long term interest to be placed with us."



not know why they were not present. Mother's counsel further asked for a continuance to allow Mother to file a section 388 petition.

The juvenile court denied the requests for a continuance on the grounds that no good cause had been shown. The court further stated, "The fact that the parents may have been here at other hearings does not excuse their absence today."

Counsel for the parents then asserted the parent/child relationship exception to the termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). Father's counsel argued that Father fully complied with his case plan, visited Isaaiah regularly and had a relationship with him. Mother's counsel argued that Mother had been visiting Isaaiah, who had lived with her for half of his life.

Isaaiah's counsel objected to the representation that the parents had visited regularly. Counsel directed the court's attention to a status review report in which the social worker states that the parents have been inconsistent in their visitation. They are often late to visits and sometimes fail to show up. When they did visit, they talked about case issues, used foul language in Isaaiah's presence and verbally abused the paternal grandmother who monitored the visits.

Isaaiah's counsel further emphasized that the child has lived with his paternal grandmother for most of his life and that no exception could be shown. Counsel asked the court to terminate parental rights.

The juvenile court noted that "[h]aving a relationship with a child and visiting regularly even though I don't feel that these parents have visited regularly as counsel would like me to think is not enough to meet the exception under [*In re* ]*Autumn H.* [(1994) 27 Cal.App.4th 567] and [*In re* ]*Beatrice M.* [(1994) 29 Cal.App.4th 1411] and, frankly, [section] 366.26 — there is no exception nor legal impediment, noting counsel for the parents' objections." The trial court found by clear and convincing evidence that Isaaiah "is very likely to be adopted and is adoptable," and terminated Father's and Mother's parental rights and ordered that Isaaiah be placed for adoption.

Sometime thereafter, the juvenile court signed an order denying Father's section 388 petition on the ground that it "terminated parental rights September 6, 2011

after hearing on the record.” The court’s minute order states that the petition was denied because Isaiah’s best interest would not be promoted by the proposed change of order. These appeals by Father and Mother followed.

## **DISCUSSION**

### ***Continuance***

The parents contend that the juvenile court abused its discretion when it denied their counsels’ requests to continue the section 366.26 hearing. No abuse of discretion has been demonstrated.

In dependency cases, continuances are discouraged. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604.) The juvenile court, however, may grant a continuance upon a showing of good cause. (§ 352, subd. (a).) A continuance may not be granted if it is “contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minors’ need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. (*Ibid.*) Denial of a request for a continuance will not be disturbed unless there has been an abuse of discretion. (*In re Giovanni F., supra*, at p. 605.)

Over the course of the dependency proceedings, the juvenile court repeatedly advised both parents that it would proceed in their absence. The first advisement was made at the detention hearing held on June 21, 2010. The court explained: “Each and every time you are here the court will advise you, if you don’t return, the court can proceed without you and may decide issues against you, including finding these allegations true and make placement decisions for your son. So it is very important for you both to be here.”

When the matter was called for the six-month review hearing (§ 366.21, subd. (e)) on February 8, 2011, the matter was continued to March 8. Before recessing, the court reminded the parents: “And I know you already know this, but each time you are here

the court will remind you, if you don't return, the court can proceed without you and may decide issues against you. So it is very important for you to return."

On March 8, the contested six-month review hearing was held. After the court terminated family reunification services and set the matter for a section 366.26 hearing on June 30, the court reminded the parents that it could proceed without them and decide issues against them if they did not return to court. The court emphasized that "the next hearing is a very important one. So please make sure you are here."

On June 30, the juvenile court continued the section 366.26 to August 3 because it had not received an approved home study. The court ordered the parents to return on August 3 and reminded them, "if you don't return, the court can proceed without you and may decide issues against you."

On August 3, the parents asked the court to set the matter for a contest. The court granted the request and continued the matter to September 6 for a contested section 366.26 hearing. The court "[o]rder[ed] both parents to please be here at 8:30 on the morning of September 6 without further notice, order, or subpoena" and once again admonished them that it could proceed without them and decide issues against them if they did not return to court.

On the morning of September 6, 2011, the courthouse had a power outage, during which the courthouse was closed to the public. Once the problem was resolved, the public was allowed to enter. The contested section 366.26 hearing, which had been scheduled for 8:30 a.m., commenced at 9:41 a.m. Isaiah's paternal grandmother and paternal aunt were present for the hearing; Father and Mother were not.

Father's and Mother's attorneys asked the court to continue the matter. Counsel emphasized that their clients had been present at all other hearings but were unable to proffer an explanation for their clients' absences. The juvenile court denied the request because good cause for a continuance had not been shown.

Although there was a temporary power outage at the courthouse the morning of September 6, there is no evidence that the parents came to the courthouse that morning or attempted to contact their attorneys or the court to proffer an explanation for their

absence. Assuming that they did come to court, there is no explanation as to why they did not wait for the courthouse doors to open. Absent a showing of good cause for a continuance, the trial court acted well within its discretion to deny counsels' requests for a continuance of the section 366.26 hearing. (§ 352, subd. (a).)

### ***Section 388 Petition***

Section 388 provides a means for obtaining modification of previous orders in a dependency hearing "upon grounds of change of circumstance or new evidence." (*Id.*, subd. (a).) It further provides, in pertinent part, that "[i]f it appears that the best interests of the child may be promoted by the proposed change of order . . . , the court shall order that a hearing be held" on the petition for modification. (*Id.*, subd. (d).)

A section 388 petition is construed liberally in favor of granting a hearing to consider a parent's request for modification. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1798.) If the petition presents any evidence that a hearing would promote the child's best interests, the court must order a hearing. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Hashem H.*, *supra*, at pp. 1798-1799.) A hearing would promote the child's best interests if the parent makes a prima facie showing that the proposed modification would promote the child's best interests. (*In re Marilyn H.*, *supra*, at p. 310; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526-527, fn. 5.) We review the trial court's decision not to order a hearing for abuse of discretion. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.)

The juvenile court did not abuse its discretion in denying Father's section 388 petition without a hearing. While Father presented evidence of some changed circumstances, this evidence was insufficient to establish that a change in Isaaiah's placement was in his best interests. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464-465.) The parents' inappropriateness during visitation, their failure to submit to court ordered drug testing, and Father's appearance at visits with bite marks and scratches demonstrates that the issues that brought this family to the attention of DCFS have yet to be resolved and that Isaaiah would be at risk in Father's custody. Inasmuch as Father failed to show

that a change of placement would be in Isaaiah's best interest, the court acted well within its discretion in denying Father's petition without a hearing. (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 516; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414.)

### **DISPOSITION**

The order terminating Father's and Mother's parental rights and the order denying Father's section 388 petition are affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.