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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ABIGAIL S. et al., Persons
Coming Under the Juvenile Court
Law.

B277777
(Los Angeles County
Super. Ct. No. DK00230)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

GRISELDA G. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles
County. Kristen Byrdsong, judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant Griselda G.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant Hector S.

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

Appellants Griselda G. (mother) and Hector S. (father) separately appeal from the juvenile court's termination of their parental rights over daughters Abigail S. (Abigail) (born July 2013) and Andrea S. (Andrea) (born Aug. 2014). Additionally, mother appeals from the court's denial of her petition for modification pursuant to section 388 of the Welfare and Institutions Code.¹ We find no error and affirm.

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

FACTUAL AND PROCEDURAL BACKGROUND

Original Section 300 Petition—Abigail

The Los Angeles County Department of Children and Family Services (the Department) detained Abigail at birth, after she and mother tested positive for amphetamine and opiates.² Mother admitted using “crystal meth” throughout her pregnancy, including the day she went into labor. She reported suffering from depression and having attempted suicide. She claimed that father was unaware of her drug use. Father denied knowledge of mother’s drug use. He stated that he used to drink beer daily but had been sober for seven months.

The Department filed a section 300 petition on behalf of Abigail in July 2013. As amended, the petition alleged that mother had a history of substance abuse and a history of mental and emotional problems.

Detention Hearing

Mother and father appeared at the detention hearing. Father was found to be Abigail’s presumed father. Abigail was ordered removed from her parents with an assessment to be made for placement with father. The parents were granted monitored visits and family reunification services, including referrals to mother for substance abuse counseling and testing,

² At this time, mother had an open voluntary family maintenance (VFM) case with the Department concerning four other children, who are not parties to this appeal.

parenting classes and individual counseling, and referrals to father for drug testing, parenting classes and substance abuse awareness.

Jurisdiction/Disposition Report, Further Information and Hearing

Abigail was placed with father on September 27, 2013. Father was 43 years old and worked during the week and on Saturdays as a gardener, and his two sisters were caring for Abigail in his absence. Father had twice tested negative for drugs and was a no show four times.

Mother was 29 years old, unemployed, and was living in an inpatient drug treatment facility. She recognized that she was an addict and was willing to get help. Mother had been unable to visit Abigail due to her program.

The Department noted that a referral had been made a year earlier in September 2012 that mother and father were using drugs and it was recommended that father receive assistance through a VFM case, and another referral had been made against mother in 2006 that she was using drugs and alcohol. The last allegation was deemed “inconclusive.”

In early December 2013, mother appeared unannounced at the home of Abigail’s paternal aunt demanding a visit, caused a scene, and got into an argument with father. Mother was five weeks pregnant.

At the jurisdiction and disposition hearing on December 13, 2013, the court ordered the Department to provide family maintenance services for father and family enhancement services for mother, and ordered mother's visits to remain monitored.

Six-Month Review Hearing

For the six-month review hearing on June 30, 2014, the Department reported that Abigail was doing well in the care of her paternal aunts. Father lived in a separate apartment, but visited Abigail every night and when not working, and had provided her with the necessities of life. Father had completed four months of a substance abuse program. The Department was concerned that father's drug testing had not been random, since it took place when he appeared for classes. Mother had completed her six-month inpatient drug treatment program on February 21, 2014, and was enrolled in outpatient treatment and mental health services. She wanted to move in with father after she was due to give birth in August. Mother maintained regular visits with Abigail.

Mother and father were present at the hearing. The juvenile court found that father was in partial compliance with his case plan and ordered that he complete three consecutive random drug tests.

Twelve-Month Review Hearing

For the 12-month review hearing on January 5, 2015, the Department reported that mother had given birth to Andrea in August 2014. Because mother was in compliance with her case plan, it was agreed that the family would participate in a VFM case plan. Mother was living in father's apartment with Andrea, while father stayed with friends. Mother had completed a parenting class. Mother was consistently visiting Abigail and the Department liberalized her visits to unmonitored. Father was also visiting consistently and had three consecutive negative drug tests. Mother and father appeared at the hearing, and the juvenile court ordered Abigail to be placed with mother. The court continued jurisdiction and ordered the Department to provide family maintenance services.

Section 342 Petition—Abigail; Section 300 Petition—Andrea

On April 9, 2015, the Department filed a section 342 petition, alleging that mother had tested positive for methamphetamine on March 27, 2015; on prior occasions in 2015, mother was under the influence of drugs while Abigail was in her care; and mother had a history of substance abuse including alcohol and was a current drug abuser. The Department also alleged that father was a current drug abuser, and that he was under the influence of drugs on March 26, 2015, when Abigail

was in his care. The same day, the Department filed a section 300 petition on behalf of Andrea, with identical allegations.

New Detention Report and Hearing

For the new detention hearing on April 9, 2015, the Department reported that Abigail and Andrea were placed with the paternal aunts. Mother admitted to the social worker that she had been using methamphetamine with father in the presence of the girls, and that she had relapsed 10 to 12 times since February 2015. Mother stated she had been with father for three years and that “months in to the relationship,” they started using drugs together. She realized her relationship with father was unhealthy. Father denied using drugs and accused mother of lying out of spite and jealousy. On April 7, 2015, father tested positive for methamphetamine.

Mother and father appeared at the hearing. The juvenile court found father to be Andrea’s presumed father. The court ordered that Abigail and Andrea be detained in foster care, and granted mother and father monitored visits. The court ordered family reunification services to be offered, including inpatient substance abuse treatment and counseling for mother and referrals to father for substance abuse counseling, testing and parenting classes.

New Jurisdiction/Disposition Report and Hearing

Abigail and Andrea were placed together in a foster home with Mr. and Mrs. L. Father admitted he tested positive in April 2015, but claimed that was the first and last time he used drugs. He stated that he had returned to his drug treatment program.

The parents appeared at the hearing on May 21, 2015. The juvenile court sustained the petitions, ordered that Abigail and Andrea remained detained, and granted family reunification services and monitored visits.

New Six-Month Review Report and Hearing

For the six-month review hearing on November 19, 2015, the Department reported that mother struggled to participate in her court-ordered treatment programs. Mother had stopped participating in her substance abuse treatment program for more than a month. Between May and October 2015, mother had nine negative drug tests, but was a no show for five tests. Father also struggled with his court-ordered programs; he was not consistently drug testing. He and mother were living together. When mother and father had monitored visits with Abigail and Andrea, they focused on Andrea and struggled to engage Abigail, who appeared frustrated and turned to Mrs. L. for reassurance. Mother also had trouble arriving on time for the visits. Mr. and Mrs. L. were committed to adopting both girls. At the hearing,

mother and father requested a contested hearing and the matter was continued.

Interim Review Report

On January 27, 2016, the Department reported that both mother and father had tested positive for methamphetamine in December 2015 and January 2016 (mother five times and father twice). Despite the results, mother and father both denied having relapsed. Mother was also inconsistent with her therapy.

While the parents were in court on January 27, 2016, the juvenile court terminated their reunification services for Abigail and Andrea and set a section 366.26 hearing.

Section 366.26 Report

On May 25, 2016, the Department submitted its section 366.26 report. By this time, Abigail and Andrea had been with Mr. and Mrs. L. since early April 2015, or more than one year. An adoptive home study had been approved. Mr. and Mrs. L. appeared to have a close and loving relationship with the girls and were committed to the girls' well being. Mother's visits with the girls were consistent only when Mrs. L. transported the girls to mother's inpatient facility. Mother struggled to attend visits on time when they took place elsewhere. Father had become verbally aggressive with Mrs. L. and failed to redirect the girls when they hit each other. Mrs. L. asked the Department to help monitor his visits. Father became upset that the girls were

making normal progress, such as crawling and walking. Father was allowed to have visits for three hours, but consistently ended his visits 30 to 45 minutes early and sometimes halfway through the visits.

Mother's Section 388 Petition

In June 2016, mother filed a section 388 petition seeking reinstatement of family reunification services and to have the section 366.26 hearing taken off calendar. Mother alleged that she had entered an inpatient drug treatment program in February 2016, was submitting to random drug testing, and was regularly attending meetings and receiving medical services and individual counseling. She also alleged that she was visiting the girls weekly and was “committed to maintaining her sobriety and providing her children with a stable home” and that it would be in the girls’ best interest to reinstate family reunification services to “provide the children with another opportunity to reunify with their mother.” The juvenile court granted a hearing on the petition.

Additional Information

Mr. and Mrs. L. were granted de facto parent status in July 2016. Abigail and Andrea called them “daddy” and “mommy.” The girls were doing well in their care.

Mother’s and father’s visits remained monitored and inconsistent. In May 2016, mother had three visits, but never

called to confirm another visit, which resulted in its cancellation; father had three visits, all of which he ended early, and he canceled one visit. In June 2016, mother had one visit with the girls, another visit was cancelled because mother never called to confirm, and mother cancelled two other visits; father had two visits that he ended early. In July 2016, mother had one visit, she never confirmed another visit, and she cancelled a visit; father had one visit that he ended early and he cancelled another visit. Mother provided snacks, groomed the girls, and played with them or watched movies. Father had trouble redirecting and setting boundaries for the girls (he let them stand on tables and run towards the parking lot).

Mother acknowledged that father contributed to her relapses by bringing drugs home. Her drug treatment counselor indicated they were working on mother's relationship with father, acknowledging mother had contact with father twice in July 2016. Mother was unemployed and father still occasionally gave her money. Mother admitted she had experienced domestic abuse with father, and she had visible marks and bruises when she enrolled in her inpatient program.

Following his last positive drug test in January 2016, father did not enroll in any drug treatment program or attend any support groups, and continued to deny he had relapsed. When the social worker informed him the Department's

recommendation was termination of parental rights, father responded, “Do whatever the fuck you want, it doesn’t mean a damn.”

Combined Sections 388 and 366.26 Hearings

On September 12, 2016, the juvenile court held the combined sections 388 and 366.26 hearings, beginning with mother’s section 388 petition. Among the documents admitted as evidence was a letter from mother’s inpatient treatment program stating that mother had completed her inpatient treatment program on August 24, 2016, and recommending that she enroll in outpatient treatment. The letter also stated that mother had completed her parenting classes and had tested negative on all drug tests. The court also admitted a log of visits between May and September 2016, which showed that mother and father each had two visits with Abigail and Andrea in August 2016, with other visits cancelled because the parents did not confirm, and mother had one visit in September.

After testimony by mother and Mrs. L. and argument by counsel, in which counsel for the girls and the Department argued for the denial of mother’s petition, the juvenile court denied mother’s section 388 petition. While applauding mother for her recent efforts at sobriety, the court noted that she had been in treatment before, she had relapsed, and she remained in contact with father, who had brought drugs into the home. The

court found there had not been a significant change in circumstances and that it was in the girls' best interest to remain in their current placement.

Turning to section 366.26, counsel for the girls and the Department argued for the termination of parental rights. The juvenile court found the girls were adoptable and that no exception to termination existed. The court terminated parental rights.

Mother and father separately appealed.

DISCUSSION

I. No Error in the Denial of Mother's Section 388 Petition

Section 388 permits a parent to petition the juvenile court to change, modify or set aside a previous court order. The parent has the burden of showing, by a preponderance of the evidence, there is both (1) a change of circumstances or new evidence and (2) the proposed modification is in the child's best interest. (§ 388, subds. (a)(1), (d); *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) "The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O., supra*, at p. 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) "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.” (*In re Stephanie M.*, *supra*, at pp. 318–319.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*In re Amber M.*, *supra*, at pp. 685–686; *In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

Mother argues that the juvenile court placed too much emphasis on the facts that she had previously completed an inpatient drug treatment and had relapsed. She argues that her efforts at her second inpatient treatment program were different because she was being honest with herself and that her most recent program had provided her with new coping skills. While mother may have demonstrated she could complete an inpatient drug treatment program for the second time, she had not demonstrated that she could successfully maintain sobriety. Indeed, mother had completed her second inpatient drug treatment program only 19 days before the section 388 hearing. Given her years-long history of drug abuse, including a referral dating back to 2006, a mere 19 days was not enough time to determine whether mother would be able to resist the triggers, including father and his use of drugs, that prevented her from maintaining sobriety in the past. We agree with the Department that “completing an inpatient drug treatment program, even with the best of intentions, amounted to changing circumstances, not a

genuine changed circumstances.” Mother’s circumstances were not of “such significant nature that [they] require[d] a setting aside or modification of the challenged prior order.” (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.)

Because mother did not meet her burden of demonstrating the first prong of the test under section 388, we need not address the second prong of whether it would be in the best interests of Abigail and Andrea to grant mother further reunification services, though we discuss the issue of the girls’ best interests below.³

II. Termination of Parental Rights

Under section 366.26, subdivision (c)(1), if the juvenile court finds by clear and convincing evidence that it is likely the dependent child will be adopted, “the court shall terminate parental rights and order the child placed for adoption.” An exception exists when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

³ Other than asserting that she and the girls shared “extraordinarily strong parent-child bonds,” mother herself refers to her argument concerning the girls’ best interests under the issue of terminating her parental rights.

It is well established that a parent bears the burden of proving that termination would be detrimental to the child under section 366.26, subdivision (c)(1)(B)(i). (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) This is not an easy burden to meet. “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.*, *supra*, at p. 1350.)

Initially, we note that while father filed his own opening brief on appeal setting forth the facts pertaining to him, he did not set forth his own arguments, instead joining in mother’s arguments. Thus, our opinion mentions only mother’s arguments. (See *In re Mary G.* (2007) 151 Cal.App.4th 184, 208 [if order terminating parental rights of mother is reversed, order terminating parental rights of father must be reversed, despite the absence of independent error pertaining to him; Cal. Rules of Court, rule 5.725(a)(2)].)

Mother argues that she maintained regular contact and visitation with Abigail and Andrea throughout the three years of this dependency case. While mother’s visits became relatively consistent after she entered the second inpatient drug treatment program, this appears to be due to the fact that Mrs. L. was driving the girls to the program for the visits. After mother was

given permission to visit outside the program, she struggled to arrive on time. And even when Mrs. L. was transporting the girls to mother's program, on several occasions mother failed to call Mrs. L. prior to the visits to confirm them, which resulted in cancelled visits. This pattern of failing to confirm ahead of time continued through August 2016, just before the section 366.26 hearing in September 2016. While father consistently visited Abigail when she lived with his sisters, father's visits became less consistent as time went on. In the months before the section 366.26 hearing, father also failed to confirm visits and sometimes cancelled visits. And father regularly ended the visits early, sometimes by more than an hour. We cannot say that on this record mother and father maintained consistent visitation throughout the case.

But even assuming mother and father did meet the first prong of the exception to termination of parental rights by showing they maintained regular contact and visitation, they did not meet the second prong of showing that continuing their parental relationships would be beneficial to the girls.

The "benefit from continuing the [parent/child] relationship" exception in section 366.26, subdivision (c)(1)(B)(i) has been defined to mean that "the relationship 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.) “In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*)

While it is true that many of mother’s visits were appropriate and loving, it is also true that mother and father were sometimes attentive only to Andrea and struggled to engage Abigail. This left Abigail feeling frustrated, and she turned to Mrs. L. for reassurance. At most, father and mother were friendly visitors in the girls’ lives after the girls were taken from their custody. “Interaction between natural parent and child will always confer some incidental benefit to the child.” (*Autumn H. supra*, 27 Cal.App.4th at p. 575.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] 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.* (2002) 97 Cal.App.4th 454, 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”].)

By the time of the section 366.26 hearing in September 2016, Abigail was three years old and Andrea was two years old. Abigail had been out of mother's custody for all but four months of her life. Andrea was eight months old when she was detained from mother and was never returned to mother's custody. While Abigail was in father's custody for a year and a half, she lived with her paternal aunts during this time. Both girls had been living with Mr. and Mrs. L. for nearly a year and a half by the time of the section 366.26 hearing. They were bonded to Mr. and Mrs. L., called them “daddy” and “mommy,” and looked to them for comfort and assurance. The L. family was performing the day-to-day tasks of caring for the girls and ensuring they were safe and stable, not mother and father. “The children are entitled to stability and permanence through adoption. ‘Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.’” (*In re C.F.* (2011) 193 Cal.App.4th 549, 557, citing *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.)

In short, neither mother nor father made any showing that either Abigail or Andrea would suffer detriment or be greatly harmed if their relationships with mother and father were terminated. (*In re C.F., supra*, 193 Cal.App.4th at p. 555.) Accordingly, the juvenile court did not err in terminating mother's and father's parental rights.

DISPOSITION

The orders denying mother's section 388 petition and terminating mother's and father's parental rights over Abigail and Andrea are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, 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.