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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.T., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B287865  
(Super. Ct. No. 17JD-00100)  
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF SOCIAL  
SERVICES,

Plaintiff and Respondent,

v.

L.T.,

Defendant and Appellant.

L.T., the presumed father of four-year-old K.T., appeals a juvenile court order denying his petition for reunification services (Welf. & Inst. Code, § 388)<sup>1</sup> and terminating his parental rights. (§ 366.26.) Appellant was sentenced to three years state prison for felony child abuse and waived reunification services. On the eve of the permanency

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<sup>1</sup> Unless otherwise noted all statutory references are to the Welfare and Institutions Code.

planning hearing, appellant filed a section 388 petition for services. The trial court denied the petition on the ground there were no changed circumstances and found that delaying K.T.'s permanent placement was contrary to her best interests. We affirm.

*Facts and Procedural History*

On April 12, 2017, San Luis Obispo County Department of Social Services detained K.T. after the police found her alone in a motel room with a man who was under the influence of methamphetamine. Methamphetamine and drug paraphernalia were in the room, all within K.T.'s reach. K.T. was dirty, covered with scratches inflicted by her parents, and had methamphetamine, amphetamine, and THC in her system. Appellant and K.T.'s mother, C.V., were arrested several blocks away and charged with cruelty to a child with possible injury or death (Pen. Code, § 273a, subd. (a)) and receiving stolen property (Pen. Code, § 496, subd. (a)). During the intake interview, K.T. told a social worker that appellant scares her and tells her he doesn't like her.

On April 14, 2017, San Luis Obispo County Department of Social Services (DSS) filed a petition for failure to protect (§ 300, subd. (b)(1)) and no provision for support (§ 300, subd. (g)). The petition alleged that mother had a history of substance abuse, prostitution and homelessness, and that appellant had a history of criminal activity and substance abuse.<sup>2</sup> After K.T. was declared a dependent of the court,

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<sup>2</sup> Appellant pled guilty to felony child abuse in exchange for a three-year state prison sentence. DSS reported that appellant had 35 arrests/detentions/citations since 2003 and that a federal

appellant requested that K.T. be placed with the paternal grandmother even though the grandmother had never met K.T. DSS recommended that the trial court bypass services.

On July 21, 2017, appellant waived reunification services. Appellant's trial attorney verified that appellant had been advised about the consequences of waiving services "including the likelihood that parental rights will be terminated and the child placed for adoption." Appellant said that he was waiving services because his prison sentence would probably exceed the permissible reunification period. Appellant understood that if he was released earlier, that he could file a section 388 petition for reunification services at which time the bypass provisions would be litigated. When appellant entered the waiver, the trial court warned that DSS "is reserving their right to go forward, saying if you want to come back and say, 'I want services,' the Department is preserving their right to be able to say, 'no, sir. There are bypass provisions under the [Welfare and Institutions C]ode which would prevent that.'" The trial court accepted the waiver of services, bypassed services with respect to mother (§ 361.5, subd. (b)(11)), and set the matter for a November 2, 2017 permanent placement hearing.

DSS reported that K.T. was adorable, friendly, smart, and extremely likely to be adopted. The paternal grandmother, however, did not want to accept placement. Grandmother feared "that she would have to parent [K.T.] looking over her shoulder, always on the lookout for [appellant]

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extradition hold was pending in which appellant was looking at two to three years prison for mail fraud.

to show up or possibly take [K.T.] without permission.”

Grandmother did not believe it was in K.T.’s best interests.

On the eve of the section 366.26 hearing, appellant filed a section 388 petition for services on the ground that he expected to be released from prison in a few weeks. DSS argued that appellant faced another five months of incarceration and the federal government wanted to prosecute appellant for mail fraud which would result in more prison time. Appellant was an abusive and neglectful parent, had a lengthy criminal history, and had an untreated substance abuse problem. Giving appellant “six more months of reunification [services] would not be enough to justify putting the minor’s life on hold with the remote chance [appellant] could live a healthy and sober life. It is important that [K.T.] find stability and permanence as soon as possible.”

At the combined hearing on section 388/366.26 hearing, appellant stated that he waived services based on the expectation that K.T. would be placed with the paternal grandmother. Appellant claimed that he would be released from prison in the near future, sometime between April and June 2018. A California Department of Corrections computer, however, reflected that appellant’s release date was October 12, 2018.

DSS argued that granting appellant services would be detrimental to K.T. who should be placed in an adoptive home as soon as possible. Lori Hunstad, an adoption social worker, opined that a six-month delay to provide appellant reunification services would impair K.T.’s ability to bond with her adoptive parents. A prospective adoptive family was ready and willing to adopt but was not willing to take placement until

parental rights were terminated. K.T. was “in kind of a limbo state” and needed attachment and bonding therapy, but it had to wait until the change of placement occurred. Hunstad stated that K.T. was “exhibiting signs of anxiety, restlessness and needing to put down roots . . . . [S]he’s now four, every week is -- is a long time in a child’s life, and now we’re looking [at] months to actually even come to the 366.26 hearing . . . . [T]hat’s another six months. That’s a huge percentage of the child’s life.”

Denying the section 388 petition, the trial court found no change of circumstances and concluded that appellant knowingly waived services. Even if appellant was released from custody in the near future, it would not be in K.T.’s best interests to wait for appellant to become a fit parent. Proceeding onto the section 366.26 hearing, the trial court terminated parental rights and freed K.T. for adoption.

#### *Section 388*

Appellant contends that the trial court erred in denying his petition for services. We review for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation] . . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) To prevail on a section 388 petition, the parent must prove that circumstances have changed such that reunification is in the child’s best interests. (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) In ruling on a section 388 petition, the trial court considers “the seriousness of the problem leading to the

dependency and the reason for its continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

Here the problems leading up to the dependency were egregious. Appellant left three-year-old K.T. alone in a motel room with a man who was “on drugs.” K.T. was under the influence of methamphetamine and THC, had open sores on her skin and severely decayed teeth, and suffered drug withdrawals hours after her detention. In the words of the trial court, it was “severe abuse” and “really horrible neglect.”

Finally, we observe that appellant has not demonstrated that it is in K.T.’s best interests to have reunification services and delay permanent placement. There is no strong parent-child bond. Appellant had seven jail visits with K.T. before he was transferred to state prison. K.T. referred to appellant by his first name and thought the visits were scary. When appellant asked if she missed him, K.T. did not answer and turned away from appellant’s hugs and kisses. At the sixth visit, it took K.T. five or ten minutes to warm up to appellant before she felt comfortable enough to sit by appellant. Although appellant expected to be released from custody in a matter of weeks, he did not have a viable plan to reunify with K.T. Appellant was still subject to a criminal protective order that only allowed contact during court ordered visits. (*People v. L.T.*, San Luis Obispo Sup. Ct., case nos. 17M-01753/079-604729, 17f-032430-B/079-608920.)

Substantial evidence supports the finding that

reunification services would be contrary to K.T.'s best interests. The adoption social worker explained that it was K.T.'s third foster home placement and delaying permanent placement would undermine K.T.'s ability to bond to her prospective adoptive parents. The trial court did not abuse its discretion in denying the section 388 petition for services and freeing K.T. for adoption. (§ 366.26.) Ordering services at this late a date would deprive K.T. of a permanent, stable home in exchange for an uncertain future. (See *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081.) "Childhood does not wait for the parent to become adequate. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

*Disposition*

The judgment (order denying section 388 petition and order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

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Jacques Alexander Love, under appointment by the  
Court of Appeal for Appellant.

Rita L. Neal, County Counsel and Leslie H. Kraut,  
Deputy County Counsel for Respondent.