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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.M. et al., Persons Coming Under
the Juvenile Court Law.

2d Juv. No. B236707
(Super. Ct. Nos. J068004, J068005)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

ELIZABETH M.,

Defendant and Appellant.

Elizabeth M. (Mother) appeals orders of the juvenile court denying her modification petition, declaring that her children C.M. and E.P. are adoptable, and terminating her parental rights. (§§ 388, 366.26, subd. (c)(1).)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On October 22, 2010, the Ventura County Human Services Agency (HSA) filed a dependency petition on behalf of eight-year-old C.M. and five-year-old E.P. The petition alleged that E.P., a medically fragile child, had an epileptic seizure at school because Mother did not provide her with prescribed medication and adequate care. The

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

petition also stated that police officers arrested Mother four months earlier for being under the influence of illegal drugs and that on October 20, 2010, she again was under the influence of drugs. Social workers visiting the family home found it to be unsanitary, with broken furniture and clogged toilets, placing the children at substantial risk of serious harm. (§ 300, subd. (b).)

The detention hearing report stated that the children's father died on August 23, 2009, from a drug overdose. HSA also reported that E.P. suffers from a significant neurodegenerative disease and from epileptic encephalopathy.

On October 25, 2010, the juvenile court detained the children, placed them in the temporary custody and care of HSA, and ordered HSA to provide family reunification services to Mother. HSA placed the children with their paternal grandparents in a pre-adoptive home.

The jurisdiction and disposition hearing report stated that Mother admitted to occasional methamphetamine use and that she agreed to participate in reunification services. The services plan required Mother to participate in general counseling, attend parent education classes, participate in a 12-step program, submit to random drug testing, and participate in an outpatient substance abuse program.

Following an uncontested hearing, the juvenile court sustained the allegations of the dependency petition, declared C.M. and E.P. to be dependents of the court, and ordered Mother to participate in the services plan. The juvenile court judge informed Mother that "[w]e review these cases every six months to see how you're doing and how the children are doing and make decisions about whether the orders should be changed."

During the six-month period following the jurisdiction hearing, Mother enrolled in and then was dismissed from a drug treatment program and a detoxification program. She continued to use methamphetamine and submitted positive toxicology tests. Mother also appeared to be under the influence of drugs when she attended a meeting with the HSA social worker.

Shortly before the six-month review hearing, HSA requested the juvenile court to terminate services to Mother and set a permanent plan hearing. (§ 388, subd. (c)(1).) The review report stated that Mother was pregnant, continued to use methamphetamine, and had not participated in the services plan. The report also stated that Mother's visits with the children were inconsistent and that she made inappropriate statements to them. For example, when C.M. declined a visit with Mother, Mother stated: "I should go over there and punch you in the face."

Mother testified at the review hearing and admitted that she used methamphetamine several days prior to the hearing. She explained that "all the pressure and everything [were] getting to [her]."

Following argument by the parties, the juvenile court granted HSA's motion to terminate services to Mother and set a permanent plan hearing. In ruling, the judge stated: "Mom is a mess, to put it pretty bluntly." The judge also stated to Mother: "[Y]ou have not made any progress at all. And these children shouldn't have to wait. . . . I don't think that you have participated regularly. I don't think you made any progress."

Three weeks prior to the permanent plan hearing, Mother filed a section 388 modification petition requesting reinstatement of reunification services. She supported her petition with a written statement explaining that she had completed a substance abuse program, had not used illegal drugs for three months, and her children were strongly bonded to her, among other things. The juvenile court summarily denied the petition without a hearing and ruled: "Mother appears to have done well in the past 3 months but her circumstances have not changed." The judge later stated that she did not think that Mother's "late participation in services and success in sobriety demonstrates that she'll succeed in the long term."

On September 28, 2011, the juvenile court held a permanent plan hearing. It received evidence of the permanent plan report and memoranda, and took judicial notice of the dependency file. Following argument by the parties, the court found by clear and convincing evidence that C.M. and E.P. are adoptable, and it terminated parental rights. In ruling, the court expressly rejected Mother's contention that the

beneficial parental relationship exception to adoption applied, finding that Mother did not have regular visitation and contact with the children and that she had not "fulfilled a parental role in [the] children's lives for a long time."

Mother appeals and contends that the juvenile court erred by: 1) summarily denying her modification petition, and 2) deciding that the beneficial parental relationship exception to termination of parental rights did not apply. (§ 366.26, subd. (c)(1)(B)(i).)

DISCUSSION

I.

Mother argues that the juvenile court erred by denying her modification petition without a hearing asserting that she presented prima facie evidence of changed circumstances. She points out that she did not receive 12 months of reunification services and only began making substantial progress on rehabilitation following the six-month review hearing.

Section 388 provides that any interested person may petition for modification of an order in a dependency proceeding upon showing changed circumstances. Subdivision (d) of that section requires the court to order a hearing "[i]f it appears that the best interests of the child may be promoted by the proposed change of order" A parent seeking modification of an order has the burden of making a prima facie showing that the proposed modification will be in the child's best interest. "'There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the [child].'" (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.) If a petition does not show sufficient change of circumstances or new evidence showing that it would be in the best interests of the child to modify the order setting the section 366.26 hearing, the petition may be denied without a hearing. (Cal. Rules of Court, rule 5.570(d); *In re Lesly G.* (2008) 162 Cal.App.4th 904, 912 [statement of general rule].) We review the juvenile court's summary denial of a section 388 petition for an abuse of discretion. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

The juvenile court did not abuse its discretion by summarily denying Mother's petition because her three-month recovery from drug abuse was nascent and her children are now in a stable adoptive home. Mother's recent accomplishments in obtaining a sober responsible lifestyle reflect changing, not changed, circumstances. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [nature of addiction is such that one must abstain for much longer than 120 days to evidence reform]; *In re Casey D.*, *supra*, 70 Cal.App.4th 38, 49 [distinction between *changing* and *changed* circumstances].) For six months following the jurisdiction hearing, Mother continued to abuse methamphetamine although she was pregnant with her third child and her parental rights to C.M. and E.P. were at stake. Three months of sobriety, in light of Mother's methamphetamine addiction, does not establish changed circumstances.

Mother also did not bear her burden of establishing that reinstatement of reunification services would be in the best interests of her children. The children are bonded to their grandparents, who are committed to adopting them. Each child's well-being has improved while living with the grandparents. C.M. has made progress in school and E.P.'s health has improved. E.P.'s school nurse reported that although E.P. will have lifelong health and development issues, medical care and therapy at this stage of her life will yield significant gains in health, mobility, and living skills. The evidence does not show that it is in the children's best interests to return to Mother's care.

II.

Mother contends that the juvenile court erred by not applying the beneficial parental relationship exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) She points out that C.M. and E.P. are older children, they have resided with her for a substantial portion of their lives, and C.M. was sad that she could not return to Mother's care. Mother adds that she provided for E.P.'s medical needs responsibly until she became overwhelmed by the death of the children's father and a later divorce.

Section 366.26, subdivision (c)(1) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless the court finds a compelling reason for determining that termination

would be detrimental to the child due to an enumerated statutory exception. The "beneficial parental relationship" exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must show that the parent-child bond is a substantial positive emotional attachment such that the child would be greatly harmed if parental rights were terminated. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a parental relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D., supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship exists where children in mother's care a good part of their lives].)

The juvenile court did not err by rejecting Mother's assertion of the exception because she did not establish that her relationship with the children outweighs the strong statutory preference for adoption. C.M. informed the social worker that her mother had missed visits. The paternal grandparents reported that Mother sent inappropriate text messages to the family and on one occasion, threatened to "punch [C.M.] in the face." By the time of the permanent plan hearing, C.M. was refusing visits with Mother. The permanent plan report stated that "[C.M.] has expressed her concerns about being returned to [Mother] and her not being able to meet her or her sibling's needs."

C.M. and E.P. were also thriving in their grandparents' care. C.M. was happy and was progressing toward her grade level standards in school. E.P. continued to gain weight and her significant medical needs were attended to by her grandparents. The benefit, if any, of returning the children to Mother is far outweighed by the stability and care they have received and will continue to receive from their paternal grandparents. Under the circumstances, the beneficial parental relationship exception does not apply.

The orders are affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Pamela Rae Tripp, under appointment by the Court of Appeal, for
Defendant and Appellant.

Leroy Smith, County Counsel, Jaclyn Smith, Assistant County Counsel, for
Plaintiff and Respondent.