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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B284889, B285817
(Los Angeles County
Super. Ct. No. DK11928)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

E.R.,

Defendant and
Appellant;

JASON S. et al.,

Appellants.

APPEALS from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant.

Marissa Coffey, under appointment by the Court of Appeal, for Appellants.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

This appeal follows the juvenile court's order terminating defendant and appellant E.R.'s (mother) parental rights to her two younger sons, appellants Jason S. (10 years old) and Jonathan S. (8 years old), and ordering adoption as their permanent plan. The juvenile court also ordered legal guardianship as to mother's oldest son Jessie S. (12 years old). Mother, Jason, and Jonathan appeal from the juvenile court's order terminating mother's parental rights to Jason and Jonathan. Mother and her two younger children argue the court erred in not continuing the permanency planning hearing so that the children could testify. They also argue the beneficial parental relationship exception to adoption existed and, therefore, the juvenile court erred in ordering adoption as the two younger children's permanent plan. Mother also appeals from the juvenile court's order summarily denying her Welfare and

Institutions Code section 388 petition.¹ As explained below, we affirm.

BACKGROUND

1. Events Preceding Section 388 Petition and Termination of Parental Rights

a. Voluntary Family Maintenance Services

In April 2014, the Los Angeles County Department of Children and Family Services (Department) received a referral related to mother's three children. The referral alleged emotional abuse and risk of emotional abuse by a paternal relative, G.J. During the investigation of the referral, it was reported G.J. had an extensive criminal history and recently had been released from prison. Because mother's husband (the children's father) was incarcerated for attempted murder, G.J. moved in with mother to help her care for the children.² Although mother and G.J. argued, the Department found no signs of abuse or domestic violence in the home. Eventually, the Department found the allegations against G.J. inconclusive.

During its investigation, however, the Department added substantiated allegations of general neglect against mother. The Department believed mother had poor parenting skills and that her drug abuse made it difficult for her to meet the children's basic needs. It was reported sometimes mother did not bring the children to school, and other times she was late picking them up after school. At the time, mother was on probation for a 2012

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

² The children's father remained incarcerated throughout these proceedings. He is not a party to this appeal.

conviction for possession of narcotics (methamphetamine). And by August 2014, a warrant had been issued for her arrest because she had not completed a substance abuse course, which was a condition of her probation.

In September 2014, the Department and mother agreed to voluntary family maintenance services, including a parenting education class, a substance abuse program, counseling, and random drug testing. By June 2015, however, mother had taken almost no steps to complete her voluntary family maintenance services. She had missed a number of drug tests, and all but one of the tests she did take came back positive for marijuana, with the other test producing an “invalid” result.

b. Initial Non-Detain Section 300 Petition

Thus, on June 24, 2015, the Department filed a non-detain section 300 petition on behalf of the children alleging one count under section 300, subdivision (b). Specifically, the petition alleged mother’s history of methamphetamine use and current use of marijuana placed the children at risk of serious physical harm. In connection with the petition, the Department reported the children “seem to be doing well with mother They are bonded with her, seem to listen when she gives them instructions, and have no problem expressing their opinions with her. The children seem well nourished and appropriately dressed with proper hygiene.” It was also reported, however, that although mother consistently stated she would enroll in the referred services, she never did. Mother also minimized the severity of the allegations against her and admitted to her continued use of marijuana. As a result, the Department filed the petition and again recommended that mother participate in

services including parenting education classes, a substance abuse program, counseling, and random drug testing.

In August 2015, prior to the adjudication and disposition hearing on the petition, the Department submitted a report to the court. The Department noted that, although none of the children saw mother smoke, mother admitted she continued to use marijuana, but had not used in the past three weeks and had enrolled in an outpatient drug program. Mother denied her marijuana use impacted her ability to care for her children, although she understood why the Department was concerned. Mother also explained that, when she was 17 years old, her father was in prison for murder and her mother passed away from cancer. As a result, mother became the primary caregiver for her three siblings. A Department social worker interviewed family relatives, all of whom believed the children were safe in mother's care. The Department reported, "At this time, the children's safety does not appear to be at risk while in mother's care. Mother is participating in drug treatment and reports 'taking things seriously' now that a petition has been filed."

On August 19, 2015, mother entered a plea of no contest to the one-count petition and submitted to the juvenile court's jurisdiction. The court amended the petition slightly and sustained the amended petition. The juvenile court placed the children with mother and ordered mother to participate in counseling, drug abuse programs, drug testing, and parenting classes.

c. Supplemental Section 300 Petition, Detention, and Removal

From August 2015 through January 2016, mother did not comply with her family maintenance case plan. In a January

2016 report to the court, the Department explained mother had failed to appear consistently for drug testing and had not enrolled in a parenting class, a substance abuse program, or individual counseling. The Department stated mother “has yet to show ongoing sobriety to ensure the safety of the children. Her inability to provide evidence of consistent sobriety and participation in court ordered programs place the children at risk of ongoing emotional, physical and mental abuse. At this time, mother appears to have a serious substance abuse problem including a history of methamphetamine that is not being addressed. Additionally, mother has admitted to being overwhelmed and unable to focus on the needs [of] the children at school and her obligations to satisfy court orders.”

As a result, on January 22, 2016, the Department requested and the juvenile court ordered that the children be detained in foster care. Jessie was placed in one home, while Jason and Jonathan were placed in another.

A few days later, on January 27, 2016, the Department filed a supplemental petition under section 387. The supplemental petition alleged mother had failed to participate regularly in drug testing and her failure to comply with the court’s orders “endangers the children’s physical health and safety and places the children at risk of physical harm and damage.” The same day, the juvenile court held a detention hearing on the supplemental petition and ordered the children detained.

The next month, the court sustained the supplemental petition, finding its previous disposition had “not been effective in the rehabilitation or protection of” the children. The court terminated its earlier home of mother order and removed the

children from mother's care. The court again ordered mother to comply with her August 2015 case plan, including random drug testing, drug program, parenting classes, and individual counseling. Mother was given monitored visitation with the children. Following adjudication of the supplemental petition, the children were placed with I.G., a maternal cousin (maternal cousin).³ Mother moved out of her home so that maternal cousin could live in the home with the children.

d. Family Reunification Services

Over the course of the next six months, mother continued to struggle with her case plan. After moving out of her home, mother moved in with a friend. However, mother's friend asked mother to leave "because she was not focused on completing court ordered programs." Mother then moved to San Bernardino, but would not disclose her exact location to the Department. She expressed interest in moving to a residential substance abuse facility. Although mother completed a parenting course, she did not complete the court-ordered drug program, counseling, or drug testing. She attended the drug program and counseling regularly for approximately three and a half months, after which her participation trailed off and eventually ended. In addition, six of mother's 15 drug tests were positive for marijuana, five were negative, and four were no shows. Similarly, mother visited with her children regularly for approximately three and a half months, but in June 2016 she visited with them only once and between July and October 2016 (when she entered a residential treatment center) mother did not call or visit her children. The Department

³ In the record on appeal, maternal cousin sometimes is referred to as a maternal aunt.

reported that mother's "drug usage is clearly interfering with her visits and in trying to maintain a bond with her children. Her visits have decreased to only once during the month of June [2016]. It is evident that mother has not addressed her underlying needs in order to help resolve her substance abuse problem and be able to provide her children with a safe home environment at this time."

Meanwhile, the children were doing well with maternal cousin and had become bonded with her. The two older children did not appear to have developmental delays, but the youngest, Jonathan, was referred to the regional center for evaluation. All the children needed overdue dental work. And Jason and Jonathan participated in individual counseling. The children each indicated they missed mother and wanted to return to her care.

On August 17, 2016, at the six-month review hearing, the juvenile court extended mother's reunification services an additional six months. However, over those next six months, mother continued to struggle with her case plan. Although in October 2016, mother enrolled in a residential treatment program and appeared to be doing well, by January 2017 she was no longer at the program.⁴ And as of February 2017, the Department was unable to locate her. Maternal cousin took the children to visit with mother twice in December 2016. However, once mother left the residential treatment program, she again made no effort to call or to visit her children.

⁴ Mother was released from the residential treatment program because, while on a day pass with an escort, she bought water at a liquor store in violation of program rules.

Meanwhile, the children continued to do well with maternal cousin, who was willing to adopt the children if they were unable to reunify with mother. The Department reported the children seemed attached to maternal cousin, were comfortable in her home, well-mannered, and listened to her instructions. School records showed that, along with mother, maternal cousin had advocated for Jonathan during his annual school individualized education program (IEP) meeting, which addressed his speech and language impairment. In February 2017, the Department reported that Jessie told a Department social worker he “wants to live with his mother.” Jason told the social worker “he does not mind being adopted because ‘[maternal cousin] is still our relative.’” And Jonathan said “the possibility of adoption ‘is good because I like being with [maternal cousin].’”

In early February 2017, prior to the 12-month review hearing, the Department discovered mother was living with G.J. and a paternal great aunt. However, the Department was still unable to locate mother’s exact location. And on February 9, 2017, one week before the 12-month review hearing, mother enrolled in a new residential treatment program.

e. Termination of Reunification Services

The 12-month review hearing was scheduled for February 15, 2017. On that date, the court appointed maternal cousin as the educational rights holder for the children and continued the review hearing until March 15, 2017.

Mother testified at the continued hearing in March. She explained she was enrolled in her fifth residential substance abuse program, where she took a number of classes, attended meetings, and submitted to drug testing. She testified the maternal cousin brought the children to visit with her on site.

Mother expected to complete the program approximately five months later in August 2017. The Department urged the juvenile court to terminate mother's reunification services. The Department explained mother had been working with the Department since April 2014 and what began as a voluntary family maintenance case "escalated to a court family maintenance . . . because mother would not follow through with counseling and substance abuse programs to ensure the safety of her children. Mother still did not respond to court ordered programs, therefore, the children were detained She has had almost 3 years to resolve this problem but consistently used substances." Counsel for the children echoed the Department's position.

At the conclusion of the hearing, the juvenile court terminated mother's family reunification services and set the matter for a permanency planning hearing. Although at the time mother had not presented sufficient evidence to avoid termination of family reunification services, the juvenile court, counsel for the Department, and counsel for the children all applauded mother's most recent efforts and urged her to continue with her current program. They were hopeful mother might be in a position to file a section 388 petition in the future.

2. Section 388 Petition

On August 3, 2017, mother filed a section 388 petition asking the juvenile court to change its March 2017 order terminating her reunification services. Specifically, mother requested that the children be placed with her, that her visits with them be liberalized, or that reunification services be reopened. Mother explained she would be graduating from the residential treatment program later that month and had accepted

a part-time job at the treatment facility which would start soon. Finally, she stated she was working on relapse prevention and had “gained insight as to her past mistakes and worked hard in all her programs in order to learn how to deal with her substance problems and adequately parent her children.” Mother argued the requested order would be better for the children because they “are of a young age and bonded with their mother as mother has continually visited her children. All three children have a desire to live with their mother.”

Mother attached three letters to her petition. One was written by a certified addictions treatment counselor who had known mother since she was 15 years old. The counselor noted mother’s strength in overcoming the many significant obstacles she had encountered in her life, including her mother’s death when mother herself was young, her father’s incarceration for life, and the unexpected responsibility to raise her siblings. Another letter was written by a chemical dependency worker at the residential treatment program. He reported mother had “made positive progress towards her treatment goals – i.e. remained abstinent of all illicit substances, completed all of her required assignments as well as her Parenting and Conflict Resolution classes while continuing participation in groups such as Relapse Prevention.” He stated mother “seems to have made a serious commitment to recovery and becoming a productive, responsible member of society.” The third letter was written by mother’s substance abuse recovery sponsor. She had been in close contact with mother for the past six months, including weekly meetings and daily phone calls. The sponsor stated she had “no reason to believe that [mother] cannot care for her sons

adequately, if she is given a chance to co-parent until she is granted full custody.”

The juvenile court denied mother’s section 388 petition without a hearing. In its order denying the petition, the court indicated mother had not presented new evidence or a change of circumstances, and the requested change would not promote the best interest of the children.

3. Permanency Planning Hearing

The permanency planning hearing began on August 9, 2017 and continued on August 23, 2017. A few weeks before the hearing, the Department submitted a report to the court. The Department reported maternal aunt had been transporting the children for visits with mother approximately once every other week and mother had earned passes from her inpatient program to visit with the children. The visits went well and the children were happy to visit with mother. The Department also reported the children appeared content and comfortable with maternal cousin. Maternal cousin had advocated on behalf of all the children, especially for Jonathan, who struggled in school. A Department social worker reported the children all expressed their desire to return to mother’s care. However, the children also understood it might not be possible to return to mother at the time. “They all stated that they like living with [maternal cousin] and if they are unable to reside with their mother they would like to stay with [maternal cousin]. They are happy that [maternal cousin] is part of their family and that they will still be able to maintain a connection with their mother.”

A few days before the start of the permanency planning hearing, and the same day mother filed her section 388 petition, the Department filed a last minute information with the court, to

which it attached a June 30, 2017 progress report from mother's inpatient program. The progress report indicated mother was doing well, except for her continued relationship with G.J. The report stated, "Currently, the only area of concern has been her significant other; however, client states the personal relationship will not detract from her priorities of completing program and reuniting with her children." A Department social worker contacted mother's case manager at the program, who told the social worker G.J. not only called "frequently to make sure [mother was] still there" but also visited mother and "was demeaning and controlling with mother," "was not respectful," and "spoke with [mother] in a manner that could wear on her esteem."

In its last minute information, the Department also reported maternal cousin had successfully advocated for an updated IEP for Jonathan and a psychological assessment for Jason, which resulted in an attention deficient and hyperactivity disorder diagnosis for Jason. Maternal cousin also enrolled the children in sports programs and kept them academically engaged and connected with their extended family.

At the start of the August 9 hearing, 12-year-old Jessie testified in chambers. Jessie stated he and his brothers spoke with mother on the phone almost every night and visited with her once a week for two hours. He testified he and his brothers enjoyed their visits with mother and he wanted the visits to last longer. Jessie also testified he understood mother was not ready to care for him, but he wanted to return to her care when she was ready. He did not want to be adopted, but instead stated he wanted maternal cousin to be his legal guardian until mother was able to care for him. Jessie also testified maternal cousin

took very good care of him and his brothers and that she loved them. He stated he loved her too. Neither Jason nor Jonathan attended or testified at the permanency planning hearing. After hearing argument, the juvenile court found the children were adoptable.

On the second day of the permanency planning hearing, mother testified. She stated that, for the past six or seven months, she had been speaking with the children every day on the phone, visiting with them once a week, and accompanying them to doctor's appointments. Mother also explained the children had strong bonds with each other and Jessie acted as a supportive older brother to the younger two. Mother also testified that Jonathan recently had been diagnosed with autism. Mother agreed that maternal cousin took excellent care of the children. And mother stated that, as of the month before, G.J. was no longer in her life. She testified she had been seeing G.J. for a couple of years and she did not "see why he is even being brought up" because "he's not in the picture anymore."

During mother's testimony, the juvenile court commented: "[T]here's no doubt there's a bond [between mother and the children]. I don't think that's the issue. The issue is weighing the bond, . . . there's a bond. I don't think anyone can dispute that." "Ultimately, it's the best interest of the children, and the bond that exists between the caregiver and the parents has to be weighed against each other."

Maternal cousin also testified on the second day of the permanency planning hearing. Although she was not aware of how or whether mother maintained a routine and schedule for the children before maternal cousin became involved, she believed she had to "[s]tart from scratch" when she began caring

for the children. She stated that, at the time, the children were “bouncing off the wall” and “had no structure, no guidance.”

Maternal cousin explained that, at school, Jonathan used to throw tables and chairs and Jason did not listen to his teacher and left his classroom when he felt like it. Maternal cousin stated she had to address these issues on a daily basis when she first started caring for the children. Maternal cousin testified that over time the children settled into their new routine and their behavior and school work improved noticeably. She stated she spent hours every day helping the children with school work and having them read to her.

Although maternal cousin believed the children shared a strong bond with mother, maternal cousin also stated that, sometimes during visits with mother, mother had difficulty stopping the children from arguing or fighting. Maternal cousin was able to stop the arguing. She believed mother was frustrated that the children appeared to listen to maternal cousin and not to mother. Mother told maternal cousin she “was taking away her being a mother to them.” Maternal cousin also testified mother did not appear at Jonathan’s IEP meeting in early 2017, which was during a time when mother had disappeared and maternal cousin was unable to contact her.

Maternal cousin explained she had changed her preference from legal guardianship to adoption because she could not fathom how the children would react if mother again disappeared for a long period of time. She did not “want to do legal guardianship and end up doing this all over again. I can’t do this anymore. The kids can’t take this anymore. It’s like a yo-yo back and forth. I can’t do it. [¶] Last year I was, like, legal guardianship. I’ll do it, but when [mother] started to do all these things, it’s not fair to

the kids nor me. I think the kids need to be in a structured home, in a safe environment, and I believe I can provide that for them.” Maternal cousin also testified Jonathan wanted to return to mother’s care. However, she also stated that during “the daily routine of their lives,” the children did not ask for mother.

At the close of maternal cousin’s testimony, counsel for mother unsuccessfully requested a continuance so that the two younger children could be brought to court to testify. Counsel wanted the two younger children to address whether mother provided structure in their lives, whether they asked for mother during a routine day, and whether anyone discussed with them adoption versus legal guardianship. Counsel for the children also unsuccessfully requested that Jonathan be allowed to address his desire to return to mother’s care.

After hearing argument, the juvenile court decided the children’s permanent plans. For Jessie, who was 12 at the time and had expressed his preference for guardianship, the court ordered legal guardianship. For the two younger children, Jason and Jonathan, the court ordered adoption and terminated mother’s parental rights to them. The court explained its obligation to consider the children’s best interest and “to provide for permanency, stability, something these children are obviously thriving on.” The juvenile court found mother failed to satisfy her burden that the beneficial parental relationship exception to adoption applied. The court stated: “Yes, she has a bond, a strong bond; but it’s chaotic. There’s been times when she’s not around. That’s been detrimental to the children in doing whatever she was doing, but the bond with the caretaker [maternal cousin] is very strong. [¶] The children have thrived, progressed in her care. She loves them, and they love her, and

the children may express a desire to be with their mother. They have never complained about being with their current caretaker. It's the court's impression they want to stay with the caretaker as well. They are kids. They are asked to decide really difficult situations, and I think the court has made a decision that's in their best interest." The court identified maternal cousin as the prospective adoptive parent and guardian.

4. Appeals

On August 23, 2017, Jason and Jonathan filed a notice of appeal from the juvenile court's order made that same day terminating mother's parental rights to them. A few days later, mother filed a notice of appeal from the same order. On October 6, 2017, mother filed an amended notice of appeal, which appealed not only from the order terminating parental rights but also from the juvenile court's August 9, 2017 order summarily denying her section 388 petition.

Also on October 6, 2017, however, mother filed a new notice of appeal challenging only the juvenile court's order denying her section 388 petition. That second appeal became appeal B285817. On January 5, 2018, we granted mother's motion to consolidate her second appeal with the instant appeal.

DISCUSSION

1. Section 388 Petition

Mother argues the juvenile court erred in summarily denying her section 388 petition, through which she asked the court to change its order terminating her reunification services. Mother claims the court should have granted her a hearing on her section 388 petition because she showed changed circumstances and that the requested modification would be in the children's best interest. Mother also argues the juvenile court

violated her constitutional right to due process. As explained below, we find no error.

a. Applicable Law

“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.’” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) “‘The burden thereafter is on the parent to prove changed circumstances pursuant to section 388 to revive the reunification issue. Section 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information.’” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) “Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child’s need for prompt resolution of his custody status.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Thus, “after reunification services have terminated, a parent’s petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child’s need for permanency and stability.” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) The parent’s best interests “are simply no longer the focus.” (*Ibid.*)

The juvenile court is not required to hold a hearing on a section 388 petition. “The parent seeking modification must ‘make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]’ [Citations.] 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 children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; Cal. Rules of Court, rule 5.570(d).)

b. Standard of Review

"We review the juvenile court's summary denial of a section 388 petition for abuse of discretion." (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) "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*, 7 Cal.4th at pp. 318–319.)

c. The juvenile court did not abuse its discretion.

Mother argues the juvenile court should have granted a hearing on her section 388 petition because she made the requisite showing of both changed circumstances and that the requested order would be in the children's best interests. As discussed below, we assume mother made a *prima facie* showing of changed circumstances, but conclude she failed to make the required *prima facie* best interests showing. As a result, the juvenile court did not abuse its discretion in summarily denying mother's section 388 petition.

As to changed circumstances, mother presented evidence that she had been enrolled in a residential treatment program for six months, was about to graduate from the program, and had accepted a part-time job working in the kitchen at the program. She included three letters supporting her petition, all of which

indicated mother was committed to the treatment program and her recovery. The Department argues mother's evidence demonstrated only that her circumstances were changing, but not that they had genuinely changed.

However, mother's evidence arguably shows changed circumstances. While previously mother had been unable to complete a drug treatment program, she now appeared poised to graduate from one. Similarly, while previously mother failed to submit consistently to drug testing or to stay sober for any appreciable amount of time, she appeared to have been sober and testing for months. And in the past mother had experienced difficulty staying employed, but now was scheduled to begin a part-time job in a matter of weeks. We assume these facts demonstrated a *prima facie* showing of changed circumstances for purposes of mother's section 388 petition.

Nonetheless, we conclude mother failed to satisfy the second requirement under section 388, namely a *prima facie* showing that the requested change to the court's order would be in the children's best interests. Mother's petition stated the requested change would be better for the children because they were young, bonded with her, wanted to live with her, and had continually visited with her. Although it was undisputed the children loved their mother and hoped to return to her care, it was also undisputed they loved maternal cousin and were content and thriving in her care. Their school work had improved, their behavior had improved, they had received medical and dental care, and Jason and Jonathan had undergone mental health evaluations and received helpful diagnoses and services. They were in a loving, structured, and stable environment. On this record, it was not an abuse of discretion to find mother failed to

make a prima facie showing that, after the matter had been pending since September 2014, it would be in the children's best interests to reopen reunification services in August 2017, thus prolonging the children's temporary placement and disrupting the stability in which they were thriving. "Childhood does not wait for the parent to become adequate." (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.)

Moreover, as mentioned above, at the time the juvenile court ruled on mother's section 388 petition, G.J. was still very much a part of mother's life, calling and visiting her at the treatment program. This raised the possibility that, if the children were returned to mother's care or if visits with mother were liberalized, the children would be exposed to G.J.'s threatening behavior. On appeal, mother claims the Department "approved of" her relationship with G.J. and, therefore, the juvenile court should not have considered her relationship with him. This is not supported by the record. Although the Department did not specifically identify G.J. as a source or supporter of mother's drug abuse, the Department did not "approve of" mother's relationship with him. To the contrary, the record paints G.J. in a negative light. Mother does not explain why the juvenile court should not have considered the evidence of the risk G.J. posed both to her recovery as well as to the children.

The cases on which mother relies do not change our analysis. Although in each case the court reversed a summary denial of the parent's section 388 petition, each case is factually distinct from the instant case. In one, the parent demonstrated changed circumstances and best interests because she (1) had completed a reunification case plan with respect to her older children and had regained custody of them, and (2) her younger

children, who remained detained, shared a strong bond with the older children. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 669.) Here, none of the children had been returned to mother's care when she filed her section 388 petition. In two other cases cited by mother, the parent submitted a letter or declaration from her doctor or therapist stating the parent was currently able to parent her child. (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1409, 1416; *In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1798.) Although mother submitted three letters of support here, only one addressed her ability to parent the children and it did not state she currently could care for her children full time. Rather, the letter stated there was "no reason to believe that she cannot care for her sons adequately, if she is given a chance to co-parent until she is granted full custody." And in another case on which mother relies, the parent had negative weekly drug tests for over two years and had completed numerous parenting and educational classes. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.) Here, given mother's long history of relapsing into drug abuse, her six months of sobriety—although absolutely commendable—is factually distinct from the parent's two years of sobriety in *In re Aljamie D.*

Accordingly, because mother did not make a prima facie showing that it would be in the children's best interests to modify the court's order terminating reunification services, we conclude the juvenile court did not abuse its discretion in summarily denying mother's section 388 petition.

d. The juvenile court did not violate mother’s due process rights.

Mother also argues that, by denying a hearing on her section 388 petition, the court violated her due process rights. We disagree.

As our Supreme Court has made clear, the entire dependency scheme—including the “escape mechanism” provided by section 388—protects the parents’ due process rights. (*In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 307, 309, 310.) “The dependency scheme, when viewed as a whole, provides the parent due process and fundamental fairness while also accommodating the child’s right to stability and permanency.” (*Id.* at p. 307.) As explained above, because mother failed to make the required best interests showing here, the juvenile court did not err in summarily denying her section 388 petition. In other words, the juvenile court did not violate the applicable statutory scheme, which scheme our Supreme Court has held protects a parent’s due process rights. Thus, there was no due process violation.

2. Denial of Continuance of Permanency Planning Hearing

Mother also argues that, at the close of the permanency planning hearing, the juvenile court abused its discretion when it denied her request to continue the hearing so that Jason and Jonathan could testify. Jason and Jonathan join in this argument on appeal. As discussed below, we find no reversible error.

In the dependency context, continuances are granted for good cause only. (§ 352, subd. (a); Cal. Rules of Court, rule 5.550(a).) In considering a request for a continuance, the juvenile court must “give substantial weight to a minor’s 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.” (§ 352, subd. (a).) We review the juvenile court’s order denying a continuance for an abuse of discretion. (*In re J. I.* (2003) 108 Cal.App.4th 903, 912.) We will not reverse unless, but for the error, the result would have been more favorable to the appellant. (*In re James F.* (2008) 42 Cal.4th 901, 918; *In re Celine R.* (2003) 31 Cal.4th 45, 59–60.)

Here, counsel for mother requested a continuance at the close of the permanency planning hearing. Jason and Jonathan were not present at the permanency planning hearing and counsel wanted to call both of them to rebut maternal cousin’s testimony and to testify regarding their bond with mother. On appeal, mother argues Jason and Jonathan not only would have rebutted maternal cousin’s testimony that they did not ask for mother when they were away from her, but they also would have testified they wanted to return to mother’s care. As the juvenile court stated, however, it was undisputed that the children loved and shared a strong bond with mother and that the children preferred to return to mother’s care. To the extent Jason and Jonathan would have testified that they asked for mother when they were away from her, such testimony would have supported the already undisputed fact that the children loved and shared a bond with mother. Because mother did not show good cause for the requested continuance, we conclude the juvenile court did not abuse its discretion in refusing to continue the permanency planning hearing.

Jason and Jonathan also argue that the juvenile court erred because it failed to comply with either subdivision (d) of section 349 (subdivision (d)) or subdivision (h)(2) of section 366.26

(subdivision (h)(2)). The Department does not address this argument. Subdivision (d) and subdivision (h)(2) both require the juvenile court to afford children 10 years of age or older the opportunity to testify during dependency hearings of which they are a subject. If such a child is not present at a hearing, the juvenile court must inquire as to the child's absence and continue the hearing if the child was not properly notified or wishes to be present. (Subds. (d) & (h)(2).) However, the court is not required to continue a hearing if the court finds a continuance would not be in the child's best interest. (Subd. (d).)

Here, the juvenile court did not make the required inquiry with respect to Jason, who was absent from the permanency planning hearing and was almost ten and a half at the time. This was error. However, we conclude it was harmless error and, therefore, not grounds for reversal. Jason and Jonathan have not shown it was reasonably probable that, had the court continued the permanency planning hearing so that Jason could testify, the result would have been more favorable for them or for mother. On appeal, Jason and Jonathan speculate as to what Jason might have said if called to testify. Other than supporting the already undisputed facts that the children loved and were bonded with mother and preferred to return to her care, it is not clear what more Jason might have said. Accordingly, the error was not reversible error. (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 59–60.)

3. Termination of Parental Rights and the Beneficial Parental Relationship Exception to Adoption

Finally, mother argues the juvenile court erred when it held the beneficial parental relationship exception to adoption did not apply. Jason and Jonathan join in this argument as well. As discussed below, we disagree and affirm the juvenile court's order

terminating mother's parental rights to Jason and Jonathan and ordering adoption as their permanent plan.

a. Applicable Law

“At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299.) At that stage of the proceedings, the preferred plan for the dependent child is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.) “If there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic.” (*In re Zacharia D., supra*, 6 Cal.4th at p. 447.)

Nonetheless, there are statutory exceptions to the preferred plan of adoption, one of which is relevant here. “One exception to adoption is the beneficial parental relationship exception. This exception is set forth in section 366.26, subdivision (c)(1)(B)(i) which states: ‘[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ” (*In re Noah G., supra*, 247 Cal.App.4th at p. 1300.) Thus, at the permanency planning hearing, the juvenile court conducts a two-step inquiry. “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates

judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 645–646.)

For the beneficial parental relationship exception to apply, the parent “has the burden of proving her relationship with the children would outweigh the well-being they would gain in a permanent home with an adoptive parent.” (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Courts consider “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an ‘“emotional bond” ’ with the child, ‘“the parents must show that they occupy ‘a parental role’ in the child’s life.” ’” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Noah G.*, at p. 1300 [“Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. [Citations.] The mother also must show she occupies a parental role in the children’s lives”].) “Moreover ‘[b]ecause 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 Breanna S.*, at p. 646.)

b. Standard of Review

In reviewing challenges to the juvenile court’s decision as to the applicability of an exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, depending on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.) We “apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues,” such as the existence of a beneficial parental relationship. (*Ibid.*) However, given the existence of a beneficial parental relationship, we review for an abuse of discretion the juvenile court’s determination as to whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*Ibid.*; see *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Such decisions are “ ‘quintessentially discretionary.’ ” (*In re J.S.*, *supra*, 10 Cal.App.5th at p. 1080.) “In the dependency context, both standards call for a high degree of appellate court deference.” (*Ibid.*)

c. The juvenile court did not abuse its discretion in terminating mother’s parental rights to Jason and Jonathan.

There is no dispute here as to the first step of the inquiry: Jason and Jonathan were adoptable. Rather, the dispute centers on the second step of the inquiry: Whether the beneficial parental relationship exception applied such that it was error to terminate mother’s parental rights as to Jason and Jonathan.

On the record before us, we agree with mother that a beneficial parental relationship existed between mother and her two younger children. It was clear the juvenile court believed as

a factual matter that a bond existed and the Department does not truly dispute that conclusion. Given the existence of this bond, we must consider whether the juvenile court abused its discretion in finding that the bond between mother and her two younger children did not outweigh the well-being the children would gain in a permanent home with maternal cousin. (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) We conclude the juvenile court did not abuse its discretion.

Here, Jason and Jonathan clearly derived some benefit from their bond with mother. The children loved mother and she loved them. The children enjoyed their visits with mother and indicated their preference to return to her care. It is just as clear, however, that Jason and Jonathan also benefited from being in the care of maternal cousin. While in maternal cousin's care, all three children made noticeable improvements academically and behaviorally. In addition, both Jason and Jonathan received needed mental health diagnoses and services. As the juvenile court indicated, the children "thrived" in the care and stability maternal cousin provided. Finally, it was undisputed that the children struggled emotionally when mother twice disappeared for long stretches of time during the pendency of these dependency proceedings.

The juvenile court was tasked with deciding whether the stability and permanency Jason and Jonathan would experience if adopted by maternal cousin outweighed the detriment they would experience if mother's parental rights were terminated. At the permanency planning hearing, the paramount concern is the best interests of the children. "The overriding concern at the section 366.26 hearing was the provision of a stable, permanent home in which [the minors] could develop a lasting emotional

attachment with [their] caretaker.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.) Although mother makes the unsupported claim that the juvenile court should not have weighed the benefits the children derived from their relationship with mother against the benefits they derived from being in a stable environment with maternal cousin, the juvenile court properly weighed such factors. (*Ibid.*) Moreover, although Jason and Jonathan would rather return to mother’s care, the law recognizes that the children’s wishes are not necessarily determinative of their best interests, but are one element of the equation. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087.)

We cannot say the juvenile court exceeded the bounds of reason in finding the benefits of adoption outweighed the potential detriment to Jason and Jonathan of terminating the parental relationship. Thus, we conclude the court did not abuse its discretion in finding the beneficial parental exception to adoption did not apply.

Mother’s reliance on *In re Scott B.* (2010) 188 Cal.App.4th 452 does not change our conclusion because it is factually distinct from this case. In *In re Scott B.*, Division Three of this district reversed the juvenile court’s order terminating the mother’s parental rights. The preteen minor there, Scott, had visited consistently with his mother every week for two years, with his mother missing only one visit in that time. (*Id.* at p. 467.) Scott’s court-appointed special advocate stated it was “imperative” Scott maintain a relationship with his mother. (*Id.* at p. 465.) In addition, the Court of Appeal found significant that “Scott’s emotional makeup^[5] will not enable him to endure interruption

⁵ Scott was autistic and when, for example, his mother had surgery and was seriously ill, his behavior regressed to growling,

of his long-standing frequent visits with [his] Mother.” (*Id.* at p. 471.) In contrast, here, although Jason and Jonathan clearly love mother and it was undeniably challenging for them when mother disappeared for months at a time, the record does not indicate that, in mother’s absence, the children were unable to function, required intensive services, or were not sufficiently supported by maternal cousin. *In re Scott B.* does not change our decision here.

Similarly, Jason and Jonathan’s reliance on *In re Amber M.* (2002) 103 Cal.App.4th 681 is not persuasive. In that case, the Court of Appeal reversed the termination of parental rights, finding the beneficial parental relationship exception applied. In contrast to this case, however, in *In re Amber M.*, a psychologist who had conducted a bonding study, a therapist, and the minor’s court-appointed special advocate all opined it would or could be detrimental to terminate the parental relationship between the minors and their mother. (*Id.* at pp. 689–690.) We have no such evidence here.

biting, lying, and not sleeping. The juvenile court had to order intensive services for him, which, along with his mother’s support, helped stabilize him. (*In re Scott B.*, *supra*, 188 Cal.App.4th at pp. 462, 465.)

DISPOSITION

The August 9, 2017 order denying appellant E.R.'s Welfare and Institutions Code section 388 petition is affirmed. The August 23, 2017 order terminating appellant E.R.'s parental rights as to Jason S. and Jonathan S. is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.