

Filed 11/3/17 In re H.P. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re H.P., A Person Coming Under  
the Juvenile Court Law.

B280396

(Los Angeles County  
Super. Ct. No. CK84140)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.A., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los  
Angeles County. Marguerite D. Downing, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal,  
for Defendant and Appellant A.A.

Jack A. Love, under appointment by the Court of Appeal,  
for Defendant and Appellant J.P.

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

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## **I. INTRODUCTION**

A.A. (Mother) and J.P. (Father) appeal from an order denying their petitions under Welfare and Institutions Code<sup>1</sup> section 388, subdivision (a)(1). The parents contend the juvenile court abused its discretion in summarily denying their section 388 petitions. We affirm.

## **II. BACKGROUND**

### *A. Detention Report and Hearing*

Mother and Father are the parents of their daughter H.P. (the child). On January 30, 2015, the parents took the 17-day-old child to the emergency room for severe vomiting. Hospital staff was concerned about discharging the child with the parents. Father appeared to be under the influence of substances and was agitated and aggressive with staff. Mother had a flat affect. On February 1, 2015, the Los Angeles County Department of

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

Children and Family Services (the department) received a referral concerning the child.

On February 2, 2015, deputies from the Los Angeles County Sheriff's Department entered the parents' family home and found a methamphetamine pipe and two baggies of methamphetamine. This resulted in a second referral to the department. A department social worker arrived at the hospital and met with a nurse there. The nurse stated Father was delusional because he claimed he was able to communicate with dogs and cats. He could be heard yelling at Mother when they were in the hospital room with the child. Father was holding the child in a possibly unsafe manner. When a doctor attempted to show Father how to properly hold the child, he became combative with the doctor. The nurse stated hospital staff decided to keep the child out of concern about Father.

Mother told the social worker she had been prescribed medication for depression but stopped taking it while pregnant. Mother was not currently under the care of a therapist or psychiatrist. In his interview with the social worker, Father stated he had been diagnosed with depression but was not taking medication for it. He stated he was currently taking medical marijuana. A psychiatrist conducted an indirect evaluation of Father and concluded he was "emotionally labile, stressed, suspicious and easily irritated." The paternal aunt informed the department that Father was hooked on drugs.

Mother was convicted of child cruelty in 2012 and was on probation at the time of the department referral. Mother also had a prior department history related to H.P.'s half-sister, Emily V. Emily V. was detained from Mother and placed in foster care. The maternal grandmother later adopted Emily V.

Father has an extensive history for drug-related crimes as well as robbery, beginning in the 1980s through 2015, and has been convicted of 13 felonies and five misdemeanors.

On February 5, 2015, the department filed a dependency petition on the child's behalf pursuant to section 300, subdivision (b) for neglect and failure to protect. For the first count, it alleged Father had a history of substance abuse and was a current abuser of illicit drugs and marijuana. The department alleged the Mother knew of the Father's drug use and failed to protect the child. For the second count, the department alleged possession of drug paraphernalia, namely methamphetamine and a drug pipe were found in the parents' home. The department alleged the presence of these items created a detrimental and endangering home environment for the child. For the last count, the department alleged Father had mental and emotional problems, including depression, delusional behavior, and emotional outbursts, which rendered him unable to provide regular care for the child.

The juvenile court found a prima facie case to detain the child. It placed the child with a paternal aunt. The juvenile court ordered family reunification services for the parents.

#### *B. Jurisdiction and Disposition Report and Hearing*

In the jurisdiction and disposition report, the department noted Mother's prior history regarding Emily V., which included her failure to protect Emily V. from sexual abuse by the stepfather. Mother denied the methamphetamine and drug pipe found at the parents' home were hers. She was on probation for a child endangerment conviction and was found in violation of that

probation for drug possession and incarcerated. Father was not available for an interview.

On March 4, 2015, at the jurisdiction and disposition hearing, the juvenile court found by clear and convincing evidence that substantial danger to the physical health of the child existed, and there was no reasonable means to protect the child without removing her from the parents' physical custody. The juvenile court sustained the above-listed three counts. The court declared the child a dependent of the court and placed her in the department's care for suitable placement. The parents were granted reunification services.

The juvenile court ordered Mother to complete 10 random or on-demand drug tests, with any missed tests or positive test results requiring her to complete a full substance abuse program. The court also ordered her to complete a parenting class, sexual abuse awareness counseling, individual counseling, a psychological assessment, and a psychiatric evaluation. And the court required her to take any prescribed psychotropic medication. The juvenile court ordered Father to complete a drug and alcohol program with aftercare, random or on-demand drug testing, parenting class, individual counseling, a psychological assessment, and a psychiatric evaluation, and to take any prescribed psychotropic medication. The court ordered weekly monitored visitation with the child by each parent, but separately.

### *C. Six-Month Status Review Report*

As of the time of the six-month review report, Father had not enrolled in a substance abuse program or completed any drug

testing with the department. He stated his identification, belongings, and telephone kept getting stolen. Father was enrolled in a parenting class, but stopped going because he was unhappy with his treatment plan.

Mother tested negative for a drug test once. She failed to show up for any other testing with the department. A probation officer reported that Mother was testing negatively as part of her probation. Mother's last positive test related to her probation was in April 2015, when she tested positive for methamphetamine. She completed her parenting class, but did not enroll in sexual abuse counseling. Mother received mental health services, but her therapy and counseling sessions became erratic after she became homeless.

Paternal aunt monitored Father and Mother's visits with the child. Paternal aunt reported the visits were appropriate. The child appeared well bonded with paternal aunt. Both parents stated the child should continue living with paternal aunt.

#### *D. 12-Month Status Review Report and Termination of Reunification Services*

As of the date of the 12-month review, the parents had moved to four different residences. They had an "on and off" relationship. In October 2015, they got into a physical altercation. Mother reported Father hit her and forced her to use drugs, which compromised her transitional housing. In the department delivered service log, Mother told the department that Father would hit her mostly when he was high, upset, or off his medication.

By November 2015, the parents resumed their relationship and moved into paternal grandmother's home. In December 2015, the parents had another fight and left the paternal grandmother's home. Father informed the department that he feared Mother would sexually abuse the child. He claimed Mother had stated she became sexually aroused when the child's diaper was changed, which caused Father to "lose it."

Father initially enrolled at Second Chance recovery program. Due to funding issues at Second Chance, he subsequently enrolled with Shields for Families. Father was released from Shields for Families on January 22, 2016, for being disruptive and disrespectful to staff. His scheduled visit with the child, to be held at Shields for Families, had to be cancelled. Father became upset and cursed at Shields for Families' staff for not providing him appropriate counseling. The case manager at Shields for Families stated Father had a tendency to blame everyone else, did not take responsibility for his actions, and had a defiant attitude the entire time he was there. Father enrolled at a third drug treatment program, Latinos Unidos, in February 2016.

Father missed ten random drug tests with the department from September 2015 through February 2016. He continued to state his belongings were being stolen, including his identification, which prevented him from drug testing. He did not drug test at the department even after being provided alternative identification. Father had stopped attending mental health services at Hollywood Mental Health, but stated he had recently returned. He began to take psychotropic medication again.

Mother had also enrolled at Second Chance in November 2015. She subsequently went to Volunteers of America in December 2015. She left that program and entered into a transitional housing program called Jazz Stepping Stones. Mother missed nine drug tests with the department from September 2015 through February 2016. She still had not enrolled in sexual abuse awareness counseling. Her attendance for therapy remained sporadic; however, Mother successfully completed her probation.

In November 2015, Mother had cancelled four visits with the child in a row. Father's visits were difficult to arrange because of his repeated moving and conflicts with paternal aunt. The department arranged for his visits to occur at the department with a department monitor. Father displayed angry behavior during his visits, causing the child to cry. He would become more frustrated at the child's crying and accused paternal aunt of "putting things in her head." Father failed to appear for two visits, but was more consistent on visits after February 2016. Both parents wanted more time to reunify with the child. Paternal aunt expressed interest in adopting the child if reunification services should fail. The department reported the child was thriving in paternal aunt's care.

In a March 22, 2016 report for the court, the department indicated that both parents had enrolled in drug treatment programs. In an April 20, 2016 supplemental report, the department indicated Father had completed two months of in-patient drug treatment at Latinos Unidos. He had missed five drug tests between January 14 and March 11, 2016, but had completed three consecutive negative drug tests from March 15 through April 7, 2016. He had consistently visited the child since



enrolling at Latinos Unidos. The visits generally went well, though Father relied upon Mother or the monitor to calm the child when she cried.

Mother enrolled in a substance abuse program at the Los Angeles Centers for Alcohol and Drug Abuse (L.A. CADA). According to a March 21, 2016 L.A. CADA progress letter, she completed eight group counseling and two individual counseling sessions. On March 3, 2016, Mother self-reported to L.A. CADA that she had used cocaine and was having problems that would trigger her use of drugs. Mother missed all six drug tests with the department from January 5 through March 28, 2016. Mother consistently visited the child since February 2016, and the visits went well.

At a May 19, 2016 contested section 366.21, subdivision (f) hearing<sup>2</sup>, Father submitted letters dated April 20 and May 19, 2016 from Latinos Residential Program. The May 19 letter indicated the program was a 90 to 120-day residential substance abuse program. Father had completed 83 recovery group classes, 29 education awareness group classes, six individual sessions, 34 outside Narcotics Anonymous and Alcoholics Anonymous meetings, and 10 negative drug tests results since February 16, 2016.

Mother submitted two letters from L.A. CADA dated May 17, 2016. One letter indicated Mother completed 27 group sessions, seven individual sessions, and three negative drug tests results. The other letter demonstrated Mother completed 24

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<sup>2</sup> A section 366.21, subdivision (f) hearing is to determine the permanent plan for the child, including whether the child will be returned to the parents' physical custody.

group sessions, eight individual sessions, seven of 18 parenting classes, and eight negative drug test results as of March 3, 2016.

After receiving evidence and hearing argument, the juvenile court terminated the parents' reunification services and set the matter for a permanent planning hearing.

#### *E. Permanency Planning and Section 388 Petitions*

In a section 366.26 report dated September 20, 2016, the department reported the parents had continued visiting the child consistently for the past four months. The parents were attentive and well-mannered during these visits. The child remained strongly bonded to paternal aunt. The child looked to paternal aunt for comfort when upset and for reassurance in unfamiliar places. Paternal aunt was unsure whether to pursue legal guardianship or adoption of the child as of August 30, 2016. The child followed paternal aunt everywhere and spontaneously hugged and kissed paternal aunt.

On November 3, 2016, Father petitioned under section 388 for a change to the May 19, 2016 court order which terminated reunification services. He requested the child be returned to his custody, or alternatively, that his visitation rights be liberalized to include unmonitored weekday visits and weekend overnights. He asserted the child was bonded to him and that it would be in the child's best interest to reunify with Father.

In an attachment to the petition, Father wrote he had completed a 90-day program at Latinos Adult Men's Recovery Home on June 16, 2016 and submitted a corresponding certificate from the agency. Also attached to the petition was a letter from the agency indicating he had completed a 120-day program there

and noted he had participated in numerous group classes and individual sessions, Narcotics Anonymous meetings, and submitted 14 negative drug tests. Father also provided an attachment indicating his drug testing had terminated in September 2016.

Father also indicated he was under the care of a LAC+USC psychiatry resident. A resident that had seen Father since July 2016 wrote that Father was stable with his current treatment. His current diagnosis was major depressive disorder (mild, recurrent), persistent depressive disorder, and history of polysubstance use disorder.

Father represented he had stable housing and social security income. An attached letter from Jacob's Ladder Home indicated he had moved into their sober living facility on June 16, 2016. Father was compliant with all house rules. Also attached was a "Community of Friends" housing intake form, filled out by Mother on September 1, 2016. Mother indicated on the form she was applying to live in "Amistad Apartment" with a household consisting of Father, Mother, and the child.

Mother filed her own section 388 petition on November 23, 2016, seeking a change to the May 19, 2016 court order. She also asked for the child to be returned to her custody or alternatively for unmonitored weekday and overnight weekend visits. She represented she was very bonded to the child and could provide a stable home. Mother indicated she had completed her substance abuse program at L.A. CADA and was actively engaged in aftercare treatment.

Mother submitted the same September 1, 2016 "Community of Friends" housing intake form noted above. She also submitted a September 1, 2016 letter from L.A. CADA with a

completed certificate, which indicated Mother completed the primary substance abuse outpatient education and treatment program. The L.A. CADA letter demonstrated Mother had completed many group sessions and individual sessions, and submitted eight negative drug test results. She completed a parenting education course through L.A. CADA as well. As of September 6, 2016, Mother was attending “Seeking Safety for Women Group” classes at L.A. CADA. The classes were a “psycho-educational process group” substituting for domestic violence survivors classes. Mother attached a November 16, 2016 letter from a resident at LAC+USC Medical Center which indicated Mother had been receiving psychotherapy and pharmacological treatment for major depressive disorder since August 18, 2016. Mother also had enrolled at Los Angeles Trade Technical College.

The department responded to both petitions on December 23, 2016. The department recommended denying Father’s petition. The department believed completion of a 90-day program was not sufficient to show he had resolved his years-long substance abuse problem. Father also did not appear to be attending aftercare services. The department noted both parents were living together again and were no longer in sober living facilities. The department expressed concern about the parents residing together and the dangerousness of the home environment given the parents’ prior history of domestic violence and drug use. The department noted that during an interview with a social worker on December 6, 2016, Father appeared physically hurt and was shaking. His jaw was swollen and he could barely talk. Father claimed he had fainted, hit his head,

and chipped a tooth. The department indicated Father had similar injuries while he was using drugs.

The department also recommended denying Mother's petition. The department reiterated its concerns about the parents living together. Additionally, Mother had still not completed her sexual abuse awareness counseling. On December 20, 2016, the department social worker interviewed Mother's addiction treatment counselor at L.A. CADA. He reported Mother made good progress during her six months of treatment. However, he was concerned that Mother remained in a relationship with Father, a recovering drug addict. The counselor stated that a relationship between two recovering addicts often fails because one person will trigger the other to use drugs again. On December 21, 2016, the program director at Jazz Stepping Stones sober living program reported that Mother stopped living there in September 2016 and was living with Father.

The juvenile court set a hearing for December 23, 2016, to determine whether an evidentiary hearing under section 388 should be granted or denied for both parents' petitions. At the hearing, the juvenile court denied a full hearing on the petitions. The court stated that the parents had to show both changed circumstances and that the requested order was in the child's best interest to grant a section 388 hearing.<sup>3</sup> The court found

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<sup>3</sup> Regarding Mother's petition, the juvenile court denied it on December 14, 2016 based on the request not being in the child's best interest and that the circumstances had not sufficiently changed. However, the court also ordered a hearing for December 23, 2016 on whether to grant or deny an evidentiary

Father's sobriety for a year was not enough of a changed circumstance.

### III. DISCUSSION

Section 388, subdivision (a)(1) states in part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." The juvenile court may summarily deny the modification petition if it fails to allege the necessary facts specified in section 388. The parent need only make a prima facie showing to trigger the right to proceed with a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310; *In re J.P.* (2014) 229 Cal.App.4th 108, 127; *In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) A prima facie showing refers to facts that support a favorable decision if the parent's evidence is credited. (*In re B.C.* (2011) 192 Cal.App.4th 129, 141; *In re Edward H., supra*, 43 Cal.App.4th at p. 593.) The petition must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a); *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Marilyn H., supra*, 5 Cal.4th at p. 309.) In determining whether the petition makes the requisite showing, the juvenile court may consider the entire factual and procedural history of the case. (*In re J.P., supra*, 229 Cal.App.4th at p. 127; *In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.) A hearing is warranted if the petition presents evidence or alleges facts that a

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hearing. The juvenile court subsequently denied Mother's petition on December 23, 2016.

proceeding would promote the child's best interests. (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 415; *In re Jackson W.*, *supra*, 184 Cal.App.4th at p. 257.) We review an order denying a section 388 petition for an abuse of discretion. (*In re Jasmon O.*, *supra*, 8 Cal.4th at pp. 415-416; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

Liberally construing Father's petition, Father has shown he was maintaining sobriety as of February 2016. However, prior to February 2016, he had been removed from a substance abuse program for defiant behavior. Evidence also showed Father missed numerous drug tests with the department from the outset of the case through March 11, 2016. Mother had stated in October 2015 Father forced Mother to use drugs with him. Father's criminal history indicated a struggle with substance abuse since the 1980s. The department social worker noted that on December 6, 2016, Father had injuries similar to when he was still abusing drugs. The juvenile court reasonably found that recent sobriety when compared to a multi-year struggle with substances was insufficient changed circumstances. (See *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687 [in affirming section 388 petition denial, the court noted that the Mother's substance abuse had begun more than 17 years earlier; while she had been clean for 372 days, she had previously relapsed twice during the course of the case].) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.] "[C]hildhood does

not wait for the parent to become adequate.” [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Liberalizing Mother’s petition, Mother has completed many of her case plan requirements, but it is undisputed she never completed the required sexual abuse awareness counseling. The sexual abuse awareness counseling was a reasonable requirement. Mother’s prior history with the department was about her failure to protect her eldest daughter from serious sexual abuse. Significantly, Father also expressed concern that Mother might sexually abuse the child. Like Father, Mother had also missed numerous drug tests. Furthermore, their plan to live together raised issues from Mother’s L.A. CADA counselor. Mother and Father also had a history of domestic violence, which Mother stated occurred when Father was high, upset, or not on his medication.

Additionally, the parents have not made a prima facie showing that it is in the child’s best interest to be returned to the parents’ custody. Factors to consider for a child’s best interest include: “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) “[A] primary consideration in determining the child’s best interest is the goal of assuring stability and continuity. (*In re Stephanie M.* [*supra*,] 7 Cal.4th [at p.] 317.) When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role. (*Ibid.*) That need often will dictate the conclusion that



maintenance of the current arrangement would be in the best interests of that child. (*Ibid.*) Thus, one moving for a change of placement bears the burden of proof to show, by a preponderance of the evidence that there is new evidence or that there are changed circumstances that may mean a change of placement is in the bests interest of the child. (*Ibid.*; see § 388; *In re Audrey D.* (1979) 100 Cal.App.3d 34, 45.)” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

Here, the child was referred to the department when she was just over two weeks old. At the time of the December 2016 hearing, the child had spent almost her entire life with paternal aunt. Though the parents asserted they were bonded to the child, the child was also very bonded to paternal aunt, and looked to paternal aunt when upset and for reassurance in unfamiliar environments. As discussed above, the parents’ participation in substance abuse recovery, although commendable, was recent when compared to the length of their substance abuse history. The parents’ consistent mental health services was also recent, since July 2016 for Father and August 2016 for Mother. Given the case history, neither parent has shown a prima facie case that the child’s best interest would be served by placing the child with either parent or expanding their visitation rights. Accordingly, the juvenile court did not abuse its discretion by denying both parents a full section 388 hearing.

#### IV. DISPOSITION

The order denying the section 388 petitions is affirmed.  
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LANDIN, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.