

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re F.P., et al., Persons Coming Under the
Juvenile Court Law.

B235638

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK74133)

Plaintiff and Respondent,

v.

TIFFANY B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Donna Levin, Referee. Affirmed.

Roland Koncan, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Mother Tiffany B. challenges a juvenile court order denying her Welfare and Institutions Code section 388 petition without a hearing.¹ We affirm the trial court order.

FACTUAL AND PROCEDURAL BACKGROUND²

In 2008, DCFS detained mother's four children. Only two of those children ("the children"), are the subject of this appeal, F.P. and Fr. P. F.P. was four years old when DCFS removed the children from mother's home; Fr. P. was two years old. The juvenile court sustained a petition alleging the children were at risk of harm within the meaning of section 300, subdivisions (b), (g), and (j). According to the sustained petition, mother physically abused the children's two siblings; mother left the children alone without adult supervision; mother's home was filthy, unsanitary, and declared uninhabitable by a city inspector; and mother suffered from mental and emotional problems and had failed to take prescribed psychotropic medication.

Over the next two years, the juvenile court repeatedly determined the children could not safely be returned to mother. By early 2010, mother had partially complied with the case plan. However, at least two doctors had suggested mother might require psychiatric care, including medication. Despite these recommendations, mother delayed in seeking a psychiatric assessment until March 2010. As a result, at an April 2010 hearing 20 months after the case began, the court had no information about whether mother needed psychotropic medication. The juvenile court terminated mother's reunification services. Although the juvenile court found the children were adoptable, it also concluded exceptions to termination of parental rights applied. Thus, it selected

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

² Mother has initiated several prior appellate proceedings arising out this case. Respondent cites from the prior appellate records at length, but has not requested that we take judicial notice of the records. On our own motion, we take judicial notice of the appellate records in the following proceedings that were eventually dismissed or abandoned: *In re F.P.* (B223836) and *In re F.P.* (B229489).

guardianship as the permanent plan. In October 2010, the court appointed the children's paternal grandparents as their legal guardians.

Throughout the dependency, the children's father was incarcerated and serving a prison term of 40 years to life. At the disposition hearing in November 2008, the juvenile court ordered that father was not to receive reunification services. Father died in December 2010.

In April 2011, DCFS reported the children had adjusted well to living with the paternal grandparents. As the children's guardians, the grandparents had "demonstrated their ability and willingness to [meet] all of [the children's] needs." The children had developed a bond with their grandparents, and they shared a "warm and loving relationship that is evidenced by much affection and laughter." Mother continued to visit the children. DCFS indicated the children appeared to have a good time with mother. The paternal grandmother reported the children and mother interacted well, but the children exhibited no reaction when the visits were over. Both children said they were happy living with their grandparents.

On July 14, 2011, mother filed a request to change a court order pursuant to section 388. Mother asked the court to terminate the guardianship and return the children to her. In support of the petition, mother indicated "foul play" may have been a factor in father's death; mother was enrolled in a job training program and would receive a certificate in August; mother had earned certificates in parenting and currently had a "stable home"; and mother would be applying for a two bedroom apartment to accommodate the children. The petition also included the following statement:

"Mother believes that the children would be better off with her at this time since they have lost their father. She believes it in the best interest of the children for them to be placed with her because she has established a closer bond with the children. Mother wants to continue to become a better mother and want[s] the children to have a relationship with her. Mother believes it is not right for the children to lose both parents. Father is deceased as a result of possible foul play, and mother does not wish for the children to lose their relationship with both of their parents. Mother believes it is necessary that the children have continued contact with mother through placement with their mother. Mother has stated that she cares for the children by providing them with the things they need including feeding them, buying them their snacks, clothing, and toys.

Mother also spends time with the children and is present with the children on their birthdays. She also participates in the children's school programs such as the PTA and fundraising events at the school. Before the father passed away, he agreed and consented to the mother having custody of their children.”

On July 22, 2011, the juvenile court denied mother's section 388 petition without a hearing. The court indicated the request did not state new evidence or change of circumstances, and the proposed change would not promote the best interest of the children.

DISCUSSION

I. The Juvenile Court Did Not Err in Denying Mother's Section 388 Petition

Mother argues the juvenile court erroneously denied her section 388 petition. We find no error.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

“The juvenile court's determination to deny a section 388 petition without a hearing is reviewed for abuse of discretion. [Citations.] We must uphold the juvenile court's denial of appellant's section 388 petition unless we can determine from the record that its decisions ‘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.” [Citations.] [Citations.] [¶] ‘ “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” ’ [Citation.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Mother’s petition did not make a prima facie showing of new evidence or changed circumstances. Mother informed the court she had completed parenting courses and was enrolled in a job training program. However, mother had completed the parenting course in April 2009, and this information was provided to the court prior to the guardianship order. While mother’s participation in a job training program is laudable, her petition did not indicate she had new or more stable finances than she did previously. Mother stated in conclusory fashion that her housing situation was “stable,” but she apparently did not yet have housing adequate for the children. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593 [general or conclusory statements not a prima facie showing].) Mother also attached a letter from her psychologist from over a year earlier that reported on her progress. However, the letter was also provided to the court before it entered the guardianship order. This was not new evidence or evidence of changed circumstances. Similarly, at the time the court made the guardianship order, father was incarcerated and serving a prison term of 40 years to life. He had not been granted reunification services. Father’s absence from the children’s lives was, unfortunately, already virtually permanent at the time the court determined guardianship was appropriate. Mother’s petition did not establish a prima facie case of changed circumstances or new evidence.

Moreover, the petition failed to establish a prima facie case that terminating the guardianship and returning the children to mother would be in the children’s best interest. The children were reportedly bonded to their guardians, while maintaining a positive

relationship with mother. Mother did not allege that she was ready to have the children returned to her, in that she did not yet have appropriate housing; she did not indicate how she planned to care for them; and mother was silent regarding a significant issue that was outstanding at the time of the guardianship order: whether mother needed psychiatric medication, in addition to psychotherapeutic services. At most, mother's petition indicated her circumstances were changing. Further, the juvenile court had not terminated parental rights and there was no indication that mother would be unable to continue her relationship with the children. In light of the juvenile court's necessary focus on the children's need for stability and permanence, mother's changing circumstances were insufficient to make a prima facie showing that it would be in the children's best interests to terminate the guardianship and return them to mother's care. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

The juvenile court did not abuse its discretion in denying mother's section 388 petition without a hearing.

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.