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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B296649
(Los Angeles County
Super. Ct. No. DK22555)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

MIGUEL T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Victor G. Viramontes, Judge. Affirmed.

Linda B. Puertas, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Six-year-old Lyla T. was placed into custody of the Los Angeles County Department of Children and Family Services (DCFS) on April 17, 2017 after her father, Miguel T., was arrested for beating and raping his girlfriend, Paloma R. On May 2, 2017, in advance of the jurisdiction and disposition hearing later that month, Lyla moved into the home shared by her maternal great-grandmother, Guadalupe Z., and her husband, Armando Z. The juvenile court assumed jurisdiction and ordered family reunification services at the jurisdiction and disposition hearing in May 2017. Citing father's incarceration and both parents' failure to comply with the court's orders regarding reunification services, the juvenile court terminated reunification services on February 9, 2018. The juvenile court ordered DCFS to move forward with permanency planning for Lyla.

Father was released from prison on April 17, 2018. Two months later, he filed a petition to reinstate reunification services under Welfare and Institutions Code section 388.¹ On March 5, 2019, the trial court entered orders denying father's section 388 motion and terminating parental rights under section 366.26. Father appeals from both of those orders. We find no error, and affirm the juvenile court's orders.

BACKGROUND

Lyla's mother, D.R., and father began dating in October 2009. Lyla was born a year later.

¹ Further statutory references are to the Welfare and Institutions Code.

On May 2, 2011, when Lyla was about six months old, father became angry with mother and began throwing her clothes and yelling at her. During the incident, father walked over to Lyla's baby swing and knocked it over. According to the police report detailing the incident, the swing "nearly struck" Lyla, who was seated nearby in her baby walker. The incident culminated in father throwing mother to the ground. Mother told police that father had also thrown her to the ground months earlier, and that mother's head had hit the ground during the earlier incident. On May 4, 2011, father was convicted of misdemeanor domestic violence, and completed 52 weeks of domestic violence classes as part of his sentence.

By August 2015, father was dating girlfriend, Paloma R. On August 6, 2015, the two argued as they sat in father's parked car. Father began yelling at girlfriend to get out of his car. When she did not comply, father opened the door, pulled girlfriend out of the vehicle, put her in a chokehold, and threw her to the ground. Father fled when a bystander called the police. On December 31, 2015, father was again convicted of misdemeanor domestic violence, and was again ordered to complete 52 sessions of "counseling."

On April 17, 2017, father again became angry at girlfriend. As Lyla and one of his girlfriend's children slept in another room, father bodyslammed girlfriend, tore her shorts off, and raped her vaginally and anally while telling her she deserved it. Father also choked, hit, and kicked girlfriend during the incident. Girlfriend eventually escaped when father's contact lens dislodged and he had to go to the bathroom to deal with it. The Montebello Police Department took Lyla T. into protective custody when they arrested father for beating and raping

girlfriend. During the investigation, girlfriend reported that there were at least 10 other incidents of domestic violence, nine of which had gone unreported. Among those, in July 2016 (while father was in the middle of a year of court-ordered domestic violence counseling), father broke girlfriend's finger during another domestic dispute.

After father's arrest, the police department released Lyla to DCFS, who placed her temporarily in a foster home.² On April 20, 2017, DCFS filed a section 300 petition against both mother and father alleging jurisdiction under section 300, subdivisions (a) (serious physical harm), (b)(1) (failure to protect), and (g) (no provision for support).

DCFS filed an amended section 300 petition on May 18, 2017. At a hearing on May 31, 2017, the juvenile court deemed the petition amended by interlineation and sustained counts a-1 (subjecting the child to the risk of serious physical harm), b-1 (father's failure to protect), and b-4 (mother's failure to protect). The court ordered reunification services, including ordering father to participate in a 52-week certified batterers' intervention domestic violence program, developmentally appropriate parenting courses, and individual counseling to address the issues that led to Lyla's detention. The court set the matter for a six-month review in early December 2017.

On September 25, 2017, father pleaded guilty to a single felony count of domestic violence with priors. He was sentenced to two years in state prison.

At the six-month review hearing on December 6, 2017, the juvenile court ordered DCFS to file a section 388 petition to

² On May 2, 2017, DCFS moved Lyla to maternal great-grandmother's home, where she has remained.

terminate reunification services. DCFS did so, citing a “very high” risk that Lyla was still at risk for abuse and neglect by father, father’s inability to reunify because of the length of his sentence, and father’s failure to participate in the court ordered reunification programs.

The court heard DCFS’s section 388 petition on February 9, 2018. Although the court issued a release order for father to appear at the hearing, he signed a waiver acknowledging that he understood he had the right to be present for the hearing regarding termination of reunification services, he did not want to be physically present, and did not want to participate in the hearing by videoconference or by telephone. The trial court granted DCFS’s petition and terminated reunification services. In doing so, the trial court noted father’s noncompliance with the court’s reunification orders (and noted that the required programming exists in both county jail and state prison), and father’s likely inability to reunify within the time limits set forth in section 366.21, subdivision (f). The court set the matter for a permanency planning hearing under section 366.26 for June 11, 2018.

Father was released from prison on April 17, 2018, and visited Lyla that day. On April 25, 2018, father enrolled in domestic violence and anger management classes, and attended his first of 52 classes on May 2, 2018. On June 22, 2018, father enrolled in parenting classes. On June 25, 2018, father petitioned the juvenile court under section 388 to “return custody of Lyla to [father’s] care, or in the alternative, reinstate Family Reunification Services.” Citing changed circumstances, father stated: “I was released from custody on 4/17/18 and immediately enrolled in a Domestic Violence and Anger Management class on

4/25/18 which I attend on a weekly basis. Further, I have begun Parenting Classes on a weekly basis and am waiting to be accepted into individual counseling. I continue to visit Lyla, being caring and loving at visits.” The court set father’s petition for a hearing on July 25, 2018 and continued the section 366.26 hearing to the same date.

As father continued his domestic violence, anger management, and parenting classes, he also enrolled in individual counseling—on July 9, 2018—and visited and called Lyla.³ At a visit on July 3, 2018, Lyla started crying during her visit with father. Father denied knowing why Lyla was crying. Lyla reported that she was crying because father had screamed at her and she was scared. The same thing happened during a visit on July 13, 2018; Lyla cried, father denied knowing why, and Lyla reported that it was because father had screamed at her and she was scared. On July 23, 2018, father called Lyla and screamed at her until maternal great-grandmother intervened.

On July 24, 2018, the juvenile court continued the hearing set for July 25 to set father’s section 388 petition for a contested hearing. DCFS noted that “father has not demonstrated that he has gained any insight as to his behavior and actions that resulted in the detention of the child Lyla. The father is not yet able to demonstrate that he has rehabilitated and committed to managing his anger and refrain[ing] from physical violence and

³ DCFS was not satisfied with the frequency of father’s visits and consequently drafted a written visitation schedule, with which father never satisfactorily complied. Father’s court ordered individual counseling began on July 9, 2018 and “successfully terminated” on September 18, 2018 after a total of five sessions.

aggression. An assessment conducted by DCFS for the father . . . found that the risk for abuse and or neglect by the father . . . remains **‘Very High’** at this time.” (Original bold.) The juvenile court continued the matter to late September 2018. The matter was eventually continued again to November 2018 and then January, February, and March 2019.

In its review report for the September hearing, DCFS noted that father had failed to show up for a scheduled meeting with DCFS regarding his monitored visits with Lyla. After the court again continued the hearing from September to November 2018, father attended a meeting with DCFS on November 5 regarding his irregular visitation with Lyla. Father regularly cancelled visits with Lyla. In one instance, he cancelled a visit with Lyla to attend a concert, which caused Lyla to ask him if the concert was more important than visiting with her. DCFS prepared a written visitation schedule for father, and provided that to him on November 5.

Father complied with the DCFS visitation schedule until maternal great-grandparents relocated with Lyla on December 22, 2018. Between December 22, 2018 and the hearing on March 5, 2019, father visited Lyla six times.

At a hearing on March 5, 2019, the juvenile court denied father’s section 388 petition and terminated father’s and mother’s parental rights under section 366.26. In denying father’s section 388 petition, the trial court concluded that “circumstances are changing rather than changed,” and that assessment was outcome determinative for the court. Father argued and the court addressed whether father had established a parental bond exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). The court concluded that “the benefit

accruing to the child from the relationship with the father is not outweighed by the benefit through permanency.”

Father timely appealed.

DISCUSSION

A. Section 388

“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 . . . , petition the court . . . for a hearing to change, modify, or set aside any order of court previously made The petition . . . shall set forth in concise language any change of circumstance . . . that is alleged to require the change of order” (§ 388, subd. (a)(1).)

“‘The petitioner requesting the modification under section 388 has the burden of proof.’ [Citations.] With a few exceptions, the petitioner seeking modification must satisfy a preponderance of evidence standard [citations].” (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116.) “The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*)).

We review juvenile court orders on section 388 petitions for abuse of discretion. (*Casey D., supra*, 70 Cal.App.4th at p. 47.)

“‘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.* (1994) 7 Cal.4th 295, 318-319.)

Lyla was detained on April 17, 2017, and the juvenile court took jurisdiction and ordered family reunification services on May

31, 2017. On February 9, 2018, noting father's failure to comply with (or begin to comply with) any part of the court ordered reunification plan—almost a year after it ordered reunification services—the court terminated reunification services. Father was released from prison in April 2018, began anger management and domestic violence courses (for the third time) in May, and in late June 2018, three days before he filed his section 388 petition, enrolled in the parenting classes the court had ordered 13 months earlier.

Father broke girlfriend's finger during an argument while he was taking court ordered domestic violence courses for a second time. Shortly after he finished that round of domestic violence courses, father raped and beat girlfriend while Lyla slept nearby. During his third series of domestic violence courses, and while his section 388 petition was pending, father repeatedly screamed at Lyla during visits to the point that she cried because she was scared of him. Two days before he was initially to have his section 388 petition heard, father screamed at Lyla until maternal great-grandmother intervened and directed him to stop.

These facts are significant as much for their content as for their timing.

“Under the current dependency scheme, except in limited circumstances, a parent is entitled to 12 months of reunification services, with a possibility of 6 additional months, when a child is removed from a parent's custody. (§ 361.5.) The juvenile court must review the case at least once every six months. (§ 366.) At the dispositional hearing, and at each review hearing prior to permanency planning, there is a statutory presumption that the child will be returned to parental custody. At the dispositional hearing, the burden is on the state to prove, by clear and

convincing evidence, that removal of the child from the parent's custody is necessary. At 6-, 12-, and 18-month review hearings the juvenile court must return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being. (§§ 361, subd. (b), 366.21, subds. (e) & (f), 366.22, subd. (a).) At the review hearings the state must also present evidence that reasonable reunification services have been provided to the parent. (*Ibid.*) *If the child may not safely be returned to the parents within a maximum of 18 months from removal, the court must develop a permanent plan for the child.* Prior to terminating reunification services, the court must make a determination that it would be detrimental to the child to be returned to the parent's custody. (§§ 366.21, subd. (f), 366.22, subd. (a).)

"In between the normal review hearings the parent has the assistance of both a social worker and an attorney. In addition, throughout the reunification period and thereafter, the parent has the continuing right to petition the court for a modification of any of its orders based upon changed circumstances or new evidence pursuant to section 388. [¶] *Once reunification services are terminated, the focus shifts to the needs of the child for permanency and stability.*" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308-309, italics added (*Marilyn H.*).)

"The Legislature has recognized that a parent who has a child removed for neglect, abuse or substantial risk thereof, in most cases should be provided with services to assist the parent in overcoming the problems that led to removal. (§ 361.5.) It has also recognized that, in order to prevent children from spending

their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate.” (*Marilyn H.*, *supra*, 5 Cal.4th at p. 308.)

The juvenile court terminated reunification services because it understood that the *successful completion* of reunification services was necessary for it to be satisfied that father had addressed the issues that led to Lyla’s detention. The juvenile court *terminated* reunification services when it became apparent that father *could not complete* those services before it would be required to hold a permanency planning hearing for Lyla. The court *denied* father’s section 388 petition because father *had not completed* those services by the time of the hearing—almost two years after Lyla was detained.

Father contends that it would be reasonable for the trial court to infer from his post-incarceration compliance with court ordered reunification services that the circumstances leading to the termination of those services had changed. Father was no longer incarcerated; father was in the process of complying with the orders; father visited Lyla; father called Lyla; father wanted the court to restore his custody of Lyla.⁴

Father’s incarceration was not the circumstance father needed to change. Completion of the services as a measure of father’s commitment to Lyla’s wellbeing is the change the juvenile court repeatedly explained it needed to see. Father had repeatedly taken and completed domestic violence courses. Father had repeatedly abused his romantic partners after taking

⁴ For her part, Lyla consistently told DCFS, maternal great-grandmother, and father that she enjoyed her visits with father, but wished to continue living with maternal great-grandmother.

and completing those courses. Father repeatedly screamed at Lyla *while* enrolled in domestic violence and anger management courses. While father's post-incarceration efforts to comply with the court's orders were admirable, his continued actions vis-à-vis Lyla—screaming at her and visiting only sporadically—make it eminently reasonable that the court would require father to *complete* services before concluding that the circumstances that caused it to terminate reunification services had *changed*.

On that basis, we cannot conclude that father demonstrated to the trial court that the circumstances that led it to terminate reunification had changed.

“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.” (*Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) The trial court did not abuse its discretion when it denied father's section 388 petition; Father did not demonstrate either *changed* circumstances or that the modification would have been in Lyla's best interests.

B. Section 366.26

“‘A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.’ [Citation.] It is designed to protect children's ‘compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.] ‘The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom

reunification efforts with their parents have been unsuccessful.’
[Citation.]

“The court has four choices at the permanency planning hearing. In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption . . . ; (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds ‘that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.’ (§ 366.26, subd. (c)(1).) The circumstance that the court has terminated reunification services provides ‘a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more’ of specified circumstances. [Citation.] . . . [¶]

“We thus see that if the child is adoptable . . . [,] adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, *in exceptional circumstances* [citation], to choose an option other

than the norm, which remains adoption.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53, original italics.)

Father argued in the trial court and contends here that the exception delineated in section 366.26, subdivision (c)(1)(B)(i)—alternately referred to by the parties and the juvenile court as the beneficial relationship or parental bond exception—requires us to reverse the trial court’s order terminating father’s parental rights. Father contends the juvenile court’s factual determinations are not supported by substantial evidence and that the juvenile court abused its discretion when it concluded that the benefit to Lyla of being adopted outweighed the detriment to Lyla of terminating father’s parental rights. (See *In re K.P.* (2012) 203 Cal.App.4th 614, 622 (*K.P.*).)

We disagree with father’s conclusion that the juvenile court determined no beneficial relationship or parental bond existed. The court did not make that finding. As in *K.P.*, *supra*, 203 Cal.App.4th at page 622, the juvenile court concluded only that the relationship between father and Lyla was “qualitatively insufficient to constitute a compelling reason for determining that termination of [father’s] parental rights would be detrimental to” Lyla. The juvenile court based *that* determination on the frequency and quality of father’s visits with Lyla. Father counters that he frequently visited Lyla in December 2018, that his in-person visits grew more regular in November and December 2018, and that it was maternal great-grandparents’ relocation that caused his visits to become sporadic after December 22, 2018 (and up to the March 5, 2019 permanency planning hearing).

The record contains ample evidence, however, that father’s visitation became more frequent only *after* DCFS pointed out the

deficiency and set a written visitation schedule. Father cancelled multiple visits with Lyla leading up to December 2018, including one so that he could attend a concert. And *during* some of his visits, even while father was attending anger management and domestic violence classes and requesting that reunification services be reinstated, father screamed at Lyla enough to scare her and cause her to cry. After December 22, 2018, father's visitation drastically diminished again.

Father did not demonstrate that termination of his parental rights would be detrimental to Lyla or that "the relationship [between Lyla and father] conferred benefits to [Lyla] more significant than the permanency and stability offered by adoption." (*K.P., supra*, 203 Cal.App.4th at p. 623.) On the record before us, we find no abuse of discretion.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

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