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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re L.W., a Person Coming
Under the Juvenile Court Law.

B288320, B288959
(Los Angeles County
Super. Ct. No. DK16308A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

T.W.,

Defendant and Appellant.

APPEALS from orders of the Superior Court of Los Angeles
County. Marguerite D. Downing, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

This appeal follows the juvenile court's order terminating defendant and appellant T.W.'s (mother) parental rights to her two-year-old daughter L.W. and ordering adoption as L.W.'s permanent plan. Mother argues the beneficial parental relationship exception to adoption existed and, therefore, the juvenile court erred in ordering adoption as L.W.'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 both orders.

BACKGROUND

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

a. Mother's Earlier Arrest and Drug Use

In March 2015, mother was arrested for possession of methamphetamines and marijuana. She also tested positive for amphetamines in December 2015, when she was pregnant with L.W. Mother indicated she had smoked marijuana for more than 10 years and currently had a medical marijuana card for back pain.

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

b. Section 300 Petition

At her birth in 2016, L.W. tested positive for marijuana, and mother tested positive for marijuana, amphetamine, and methamphetamine. Mother admitted using both marijuana and methamphetamine during her pregnancy, including using methamphetamine a couple months before L.W. was born. She had marks on her body that were consistent with those of a chronic drug user. However, she denied having a drug problem. She stated she tested positive for methamphetamine at the time of L.W.'s birth because she accidentally had sipped a drink at a friend's house that contained the drug. According to a nurse at the hospital, however, methamphetamines cannot be passed through a drink.

Six days after L.W. was born, the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition on her behalf (petition). The petition alleged two counts, both related to mother's failure or inability to protect L.W. as a result of mother's use of marijuana, amphetamine, and methamphetamine. At the detention hearing held the same day, the juvenile court ordered L.W. detained. The court also ordered monitored visitation for mother, as well as random drug testing. L.W. was placed with her maternal aunt.²

In April 2016, prior to the adjudication and disposition hearing, the Department submitted a report to the court. The Department indicated that mother had enrolled in an outpatient drug program and L.W. remained placed with maternal aunt. In addition, a Department social worker reported mother continued to deny any problems with drug use. Mother told the social

² L.W.'s father did not appear below and is not a party to this appeal.

worker she had smoked marijuana for many years to alleviate pain from a back injury. She said that, with her obstetrician's knowledge, she smoked marijuana while pregnant with L.W., although she smoked less than normal. Mother again explained that she tested positive for methamphetamine when she gave birth to L.W. because she accidentally sipped a drink containing the drug the night before. Mother said she did not know how she tested positive for amphetamines at the time of L.W.'s birth. Mother wanted to reunify with L.W. The Department believed mother would benefit from family reunification services.

The adjudication and disposition hearing was held on May 24, 2016. The juvenile court amended the petition slightly and sustained the amended petition, declaring L.W. a dependent of the court. The court removed L.W. from mother's custody and L.W. remained placed with maternal aunt. The juvenile court ordered reunification services for mother and signed her case plan, which included monitored visits, drug testing, participation in drug and alcohol programs, parenting classes, and counseling.

c. Family Reunification Services

i. November 2016 Status Review Report

In November 2016, the Department reported mother was not faring well with her court-ordered case plan. The Department stated that in September 2016, mother had been arrested for possession of unlawful paraphernalia, and later was charged with possession of a controlled substance and possession of unlawful paraphernalia. She also had missed all of her 11 scheduled drug tests and was not enrolled in a parenting class, counseling, or a drug treatment program. Mother explained she had enrolled in an outpatient drug program earlier in the year, but she was asked to leave the program because she talked too

much in class. Mother said she wanted to enroll in an inpatient program in part because such a program would provide housing. However, because of the medication she used to treat her back pain (the marijuana chemical cannabidiol), she had been unable to enroll in an inpatient program. Although mother had stated she had a medical marijuana card, she later told a Department social worker that she was not under a doctor's care for her back condition. At the time of the November 2016 report, mother was unemployed and did not have her own housing, instead she stayed with friends and relatives.

As of November 2016, L.W. remained placed with maternal aunt. When maternal aunt was at work during the day, maternal great grandmother cared for L.W. at maternal aunt's home. A Department social worker reported L.W. appeared "to be growing and developing in a healthy manner." Mother visited L.W. for three hours three times a week. Maternal aunt indicated mother's visits with L.W. were consistent and positive. In August 2016, when L.W. was five months old, a Department social worker observed mother visit with L.W. During the visit, mother was "attentive to and bonded well with [L.W.] Mother was very interactive with [L.W.] and [L.W.] responded well and in kind to mother." After mother's September arrest, however, maternal aunt did not allow mother to visit in her home. Instead, the visits were scheduled in neutral settings. In its November 2016 report, despite mother's lack of compliance with her case plan, the Department reported "it is evident that there is a bond between mother and child" and, because mother was visiting consistently with L.W., the Department recommended that the juvenile court continue reunification services for mother, which the juvenile court did at the six-month review hearing.

ii. May 2017 Status Review Report

In May 2017, when L.W. was more than one year old, the Department filed another report with the juvenile court. The Department reported L.W. appeared “to be well-bonded and emotionally attached to” maternal aunt and was doing well in her care. However, mother continued to struggle with her case plan. She failed to show for 10 out of her 11 scheduled drug tests, and the one test she did take in March 2017 tested positive for methamphetamine and marijuana. Although mother had begun individual counseling in January 2017, she had not enrolled in a drug treatment program or a parenting class. The Department also reported mother was unemployed and homeless. And in early 2017, mother was arrested for trespass. Eventually, the 2016 charges for possession of a controlled substance and possession of unlawful paraphernalia were dismissed, and mother pleaded no contest to, and was convicted on, the more recent trespass count. She was sentenced to 36 months of probation.

In its May 2017 report, the Department stated mother usually visited with L.W. once a week for two and a half hours. Generally, the visits were positive. A Department social worker observed two of mother’s visits with L.W., during which time mother was attentive to and playful with L.W. The social worker stated, “Mother reads to [L.W.], holds her and interacts with [L.W.] in a playful manner.” Nonetheless, because mother had “demonstrated little progress in the way of the case plan services and case plan objective of reunifying with [L.W.],” the Department recommended that the juvenile court terminate mother’s family reunification services.

iii. July 2017 Interim Review Report

In July 2017, the Department again reported mother was struggling with her case plan. Since the Department's last report (May 2017), mother had missed all three of her drug tests, had attended one individual counseling session, and had met once with a psychiatrist. Although mother had not enrolled in a drug treatment program, she had participated in an outpatient program for four months. And although she had taken four or five parenting education classes, she told a Department social worker she had not learned anything new because she previously had worked with children at a daycare center. At the time of the report, mother was living with maternal great grandmother because the great grandmother did not want mother living in her car on the streets. Mother also reported she had been diagnosed with bipolar disorder.

A Department social worker spoke with mother and asked her about both her drug use and her 2016 drug-related arrest. Mother told the social worker that an old friend recently revealed to her that, for years, he had been putting methamphetamine in mother's drinks "to see how she would behave." As to her 2016 arrest, mother stated the drugs and paraphernalia at issue did not belong to her and the charges ultimately were dropped. Mother also discussed her additional run-ins with the law since then. In addition to her February 2017 sentence to 36 months of probation for trespassing, bench warrants had been issued for mother related both to a February 2017 theft charge and to an April 2017 driving with a suspended license charge. The Department social worker noted scars on mother's arms and forehead, which according to the social worker were "indicative of extended use of methamphetamine."

Nonetheless, mother's visits with L.W. continued to go well. The visits were monitored and took place on Fridays at Department offices.³ Maternal aunt reported mother was appropriate and affectionate with L.W. A Department social worker similarly reported mother interacted appropriately, playfully, and affectionately with L.W.

In its July 2017 report, the Department again recommended that the juvenile court terminate mother's family reunification services. The Department stated, "During this review period, mother's visitation with her one-year-old child, [L.W.], remained monitored. Mother has not submitted to court-ordered drug testing since 3/07/17 whereupon she tested positive for methamphetamines and marijuana. Furthermore, mother has not shown substantial progress in substance abuse treatment. More recently, mother stated that she plans to attend to outstanding warrants before she enters drug treatment. Mother has demonstrated very little progress in the way of court-ordered services. Furthermore, mother's mental health diagnosis is a concern to the Department."

d. Termination of Family Reunification Services; Mother's Continued Visits and Completion of Inpatient Drug Program; Concerns with Maternal Uncle

The 12-month review hearing was held in July 2017. At the hearing, the juvenile court found mother was in partial compliance with her case plan, but had not made sufficient progress. The juvenile court terminated family reunification services and scheduled the permanency planning hearing.

³ The Department's July 2017 report does not indicate how long these Friday visits lasted.

In November 2017, following termination of mother's reunification services, the Department reported the adoptive home study for maternal aunt had been approved and maternal aunt was committed to adopting L.W. The Department stated L.W. was very bonded with maternal aunt. The Department also reported mother continued to visit weekly with L.W., and her visits were appropriate and positive.

Soon after the adoption home study for maternal aunt had been approved, however, the Department filed a last minute information with the juvenile court asking the court to continue the permanency planning hearing. The Department reported it had received a referral alleging maternal uncle had sexually abused L.W. Although maternal aunt was not the alleged perpetrator, it was alleged she had allowed L.W. to have unmonitored contact with the maternal uncle, who had admitted to three separate instances of inappropriately touching L.W. when he was alone babysitting L.W. at maternal aunt's home.

Upon receiving the abuse referral, a Department social worker interviewed maternal aunt, who was shocked by the allegations. Maternal aunt apologized and cried throughout the interview. She indicated she was not close with maternal uncle, but had brought him back into her life when she began caring for L.W. Maternal uncle periodically helped maternal aunt on the weekends by babysitting L.W. Maternal aunt never suspected maternal uncle was acting or would act inappropriately with L.W. She agreed to the Department's safety plan for L.W., which included the requirement that maternal uncle not have access to L.W. The Department believed maternal aunt was taking appropriate steps to protect L.W. and, therefore, decided L.W. would remain in maternal aunt's care.

In November 2017, at what was scheduled to be the permanency planning hearing, the juvenile court granted the Department's request and continued the hearing to January 2018. The court also addressed mother's concern that maternal aunt was not allowing all of her court-ordered visits with L.W. The court reiterated that mother should be allowed three three-hour visits with L.W. each week. The court also ordered the Department to file a report addressing mother's visits in advance of the rescheduled permanency planning hearing.

In a December 26, 2017 report, the Department stated it had investigated the referral related to maternal uncle's behavior and had closed the investigation as "inconclusive and 'situation stabilized.'" The Department explained maternal aunt would no longer allow maternal uncle access to L.W., and L.W.'s forensic examination resulted in a finding of " 'Normal exam: Can neither confirm nor negate sexual abuse.'" The Department reported L.W. was safe and thriving in maternal aunt's care. L.W. sought maternal aunt for safety and comfort and was well bonded with her.

The Department also reported that, in October 2017, mother had completed a 60-day inpatient drug program. During the inpatient program, mother was able to visit with L.W. once a week for three hours at the program. Maternal aunt monitored those visits and said mother was very engaged with L.W. and L.W. did not seek out maternal aunt during those visits.

However, maternal aunt told a Department social worker that, since mother completed the inpatient program, her visits with L.W. had not been as engaging. Although mother was permitted to visit L.W. at maternal aunt's home three times a week for three hours at a time, her more recent visits had been

shorter and less productive. Maternal aunt said she allowed mother the full three hours for each visit, but generally mother visited with L.W. for one to two hours. Sometimes mother became discouraged when L.W. seemed to prefer staying with maternal aunt, although maternal aunt encouraged L.W. to sit with mother. Maternal aunt believed mother spent too much time trying to get L.W. to watch children's shows on her phone with the hope that L.W. would watch shows during the entire visit. Nonetheless, maternal aunt stated mother was affectionate, caring, and loving with L.W. and often brought snacks and toys for her.

2. Section 388 Petition

On January 3, 2018, mother filed a section 388 petition requesting that the juvenile court reinstate mother's family reunification services, take the permanency planning hearing off calendar, and allow mother to have unmonitored visits with L.W. with a plan that she eventually reach overnight visits. Mother stated that, since the court had terminated her reunification services, she had successfully completed an inpatient treatment program and had "participated in [i]ndividual therapy and parenting." Mother believed the requested relief would benefit L.W. because mother "desires to provide her daughter [L.W.] with a safe, stable and loving home. Also, mother and minor [L.W.] have a very strong parental bond and Mother is consistent with her visits; further, the caretaker reports Mother is 'caring and loving towards [L.W.] during the visits. She communicates with [L.W.]' " Attached to her section 388 petition, mother included a letter from a counselor at Latinas Recovery Home, indicating that on October 8, 2017, mother had completed a 60-day inpatient treatment program.

The next day, the juvenile court ordered a hearing to determine whether it would hold an evidentiary hearing on mother's section 388 petition. The court also ordered the Department to file a response to the section 388 petition.

In its response, the Department summarized a late-January 2018 interview between a Department social worker and mother. During the interview, mother told the social worker she was unemployed, living temporarily with maternal great grandmother, and approximately seven months pregnant with her son. Mother planned to move to Hemet after giving birth to her son. She also explained to the social worker that during her 60-day inpatient drug treatment program, she learned to recognize that the triggers of her drug use "are the people in her social circle." Mother said she was attending a "Mommy and Me" program, but when the social worker contacted the program, the person with whom the social worker spoke said she did not have a client with mother's name. Mother also told the social worker she had neither met with a counselor or psychiatrist nor received mental health services in approximately eight months. Mother stated she had an appointment scheduled with a "mental health clinician" in a couple of weeks, but she was unable to provide contact information for the social worker. Mother also had not provided certificates of completion for a parenting education program. The Department social worker asked mother about her plan to have overnight visits with L.W. Mother understood that she would not be able to stay with maternal great grandmother once her son was born. She also recognized that if she moved to Hemet, it would be difficult to transport L.W. the 90 miles between Los Angeles and Hemet because mother did not have a

valid driver's license. Mother believed a friend might be able to help.

Also in its response to mother's section 388 petition, the Department noted mother had completed five months of individual counseling as well as the two-month inpatient drug treatment program. The Department stated, "Overall, mother completed two months of drug treatment out of the 18 months that her case has been open. It is commendable that mother completed inpatient drug treatment and that she states that she is committed to remaining free of substance abuse. However, mother's lack of attention to her drug treatment until August of 2017 is concerning and ultimately hindered her reunification with her child." Meanwhile, the Department explained, L.W. had "remained placed with [maternal aunt] since her birth in . . . 2016. [L.W.] appears to have developed a healthy emotional attachment to her caregiver; [L.W.] is thriving in her current home environment which is stable and free of drug use or mental health issues."

On January 30, 2018, the juvenile court denied the section 388 petition without an evidentiary hearing. The court determined the petition did not state new evidence or a change in circumstances.

3. Permanency Planning Hearing

Prior to the permanency planning hearing, the Department filed further reports with the juvenile court. In each report, the Department noted maternal aunt not only was committed to adopting L.W. but also had provided a safe, loving, and nurturing home for L.W. since she was a newborn.

After a few continuances, the permanency planning was held on March 21, 2018, when L.W. was almost two years old.

Counsel for L.W. asked that the juvenile court terminate mother's parental rights to L.W., arguing adoption was in L.W.'s best interest. Counsel for the Department joined in that request. However, counsel for mother argued the parental relationship exception to adoption applied. Mother's counsel pointed to the Department's January 4, 2018 report, which indicated that although her visits were only one to two hours at a time, mother was "caring and loving with her daughter." Counsel argued mother had demonstrated a desire to be a parent to L.W. and had maintained consistent and appropriate visits with her, but the "circumstances have prevented [mother] from being physically engaged."

After hearing argument, the juvenile court found by clear and convincing evidence that L.W. was adoptable and it would be detrimental to return her to mother's physical custody. The court stated, "[L.W.] has been detained since she was six days old. Her visitation is inconsistent in that the caretaker [maternal aunt] allows the mother to have actually more visitation than the court minimally ordered and she indicates that the mother's visits are sometimes 45 minutes. And apparently [L.W.] refuses to visit with her mother. [¶] The mother spends a lot of time on her cell phone, trying to get [L.W.] to look at children's programs, with a hope that she will sit still and watch the phone. [¶] Mother is loving and caring, but she has never played a parental role; therefore, the court finds that no exception to adoption applies in the case." The court found that, although mother had maintained regular visitation with L.W., L.W. had not established a bond with mother. The court also found that any benefit accruing to L.W. as a result of her relationship with mother was outweighed by the benefit L.W. would receive from the permanency and

stability of adoption and that adoption was in her best interest. Thus, the juvenile court terminated parental rights to L.W. and ordered maternal aunt as the prospective adoptive parent.

4. Consolidation of Appeals

On February 14, 2018, mother appealed the juvenile court's January 30 order denying her section 388 petition without an evidentiary hearing. On March 22, 2018, mother appealed the juvenile court's March 21 order terminating her parental rights as to L.W. We granted mother's motion to consolidate her two appeals.

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 reinstate her family reunification services, to take the permanency planning hearing off calendar, and to liberalize her visits with L.W. to be unmonitored. Mother claims the court should have granted an evidentiary hearing on her section 388 petition because she made a prima facie showing of changed circumstances and that the requested modification would be in L.W.'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 [section 388] 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 disagree with mother’s claim that we should review the juvenile court’s summary denial of her section 388 petition de

novo. The proper standard of review is abuse of discretion. “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 in denying mother’s section 388 petition without an evidentiary hearing.

Mother claims she made a *prima facie* showing of changed circumstances by virtue of her completion of a two-month inpatient drug program. Although we commend mother for seeking treatment for her drug abuse, we agree with the Department when it states mother showed her circumstances were changing, rather than changed. Such a showing was insufficient to satisfy her burden. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Casey D.* (1999) 70 Cal.App.4th 38, 49.) A section 388 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.” (*In re Casey D.*, at p. 47.)

Here, by completing a two-month inpatient drug program, undoubtedly mother took a step in the right direction. However, that step came after this dependency case had been open for 18 months and after mother had struggled for years with drug use.

In addition, after filing her section 388 petition, mother still had not completed (or provided proof of completion) of other portions of the case plan, including counseling and parenting classes. Thus, in the context of this case, completion of the inpatient program simply did not constitute a prima facie showing mother's circumstances genuinely had changed, as is required for a successful section 388 petition. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250; see also *In re Amber M.* (2002) 103 Cal.App.4th 681, 686 [mother's 372 days of sobriety insufficient to show changed circumstances in light of her more than 17 years of substance abuse, previous relapses, and other parenting deficiencies]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423–424 [father's 200 days of sobriety insufficient to show changed circumstances in light of his many years of substance abuse and previous relapses].)

In addition, it is not clear why mother waited to file her section 388 petition three months after she completed the inpatient drug treatment program and on the eve of the permanency planning hearing, which at that time had already been continued once. Section 388 petitions are disfavored when brought on the eve of a permanency planning hearing at a time when the focus is on the child's need for a stable and permanent home and not on the parent's desire for reunification. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 48.)

Finally, mother also states in conclusory fashion that her section 388 petition made a prima facie showing that the requested relief would be in L.W.'s best interest. Other than stating mother loved L.W., shared a bond with L.W., and consistently visited with L.W., neither the section 388 petition

nor mother's briefs on appeal indicate why reinstating mother's reunification services would be in L.W.'s best interests. Conclusory allegations are not sufficient. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) At the time of mother's section 388 petition, maternal aunt had cared for L.W. since she was only days old, shared a strong and loving bond with L.W., provided L.W. with more than just the necessities of life, and was committed to providing L.W. a stable and permanent home. In light of these facts, and despite mother's love for and consistent visits with L.W., mother failed to show that her desire to reopen reunification services or to participate in unmonitored or overnight visits with L.W. was in L.W.'s best interest.

Thus, even if we were to assume mother had demonstrated a prima facie case of changed circumstances, she failed to demonstrate that L.W.'s best interests would "be promoted by the proposed change of order." (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) As such, 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 an evidentiary hearing on her section 388 petition, the juvenile 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 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, the juvenile court did not err in summarily denying mother's 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. Termination of Parental Rights and the Beneficial Parental Relationship Exception to Adoption

Mother also argues the juvenile court erred when it held the beneficial parental relationship exception to adoption did not apply. As discussed below, we disagree and affirm the juvenile court's order terminating mother's parental rights to L.W. and ordering adoption as the 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 raised 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 . . . [¶] . . . [¶] (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.*, 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 finding the beneficial parental relationship did not apply.

It is undisputed that L.W. would be adopted within a reasonable time. And, as the Department correctly concedes, it is

undisputed that mother maintained regular visitation and contact with L.W. Similarly, it cannot reasonably be disputed that mother loves and maintained a loving relationship with L.W. Thus, for purposes of the beneficial parental relationship exception to adoption, our focus is on whether mother demonstrated her relationship with L.W. outweighed the well-being L.W. would gain through the permanency of adoption. (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) As discussed below, we conclude the juvenile court did not abuse its discretion in finding mother did not make this required showing.

Outside of her first few days in the hospital, L.W. has spent her entire life in maternal aunt's care. Maternal aunt made arrangements for childcare, ensured L.W. attended appropriate medical appointments, monitored mother's visits with L.W., and provided a nurturing and enriching home environment for L.W. Maternal aunt and L.W. are indisputably bonded and L.W. is thriving in her care. The Department reported that although mother and L.W. shared a bond and mother was loving and appropriate with L.W., mother never had an unmonitored visit with L.W. and, during some visits, mother became frustrated because L.W. seemed to prefer maternal aunt. Sometimes mother cut her visits short, while other times it appeared mother wanted L.W. to watch programs on mother's phone the entire visit. It also was reported L.W. looked to maternal aunt for comfort and security during visits with mother. In short, mother failed to show she occupied a parental role in L.W.'s life. As noted above, "[n]o 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.*, *supra*, 247 Cal.App.4th at p. 1300.) As a result, and despite mother's consistent and positive visits with L.W., we conclude the juvenile court did not abuse its discretion in finding the benefits of adoption outweighed any detriment L.W. might experience as a result of termination of mother's parental rights.

On appeal, mother extols the importance of the parent-child relationship. Although we do not disagree with mother as to the importance of the parent-child relationship generally or that mother shared a loving relationship with L.W. here, we do disagree that mother demonstrated the existence of the beneficial parental relationship. As previously noted, at the time of the permanency planning hearing the focus is no longer on maintaining the parent-child relationship. Rather, the focus is on the child's need for permanency and stability. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In order to overcome the preference for adoption, mother was required to demonstrate her relationship with L.W. outweighed the well-being L.W. would gain in a permanent and stable adoptive home. (See *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) This mother could not do. As a result, and after having tried for almost two years to protect and encourage mother's relationship with L.W., the juvenile court properly ordered adoption as the permanent plan.

Finally, mother also notes in her reply brief on appeal the inappropriateness of social engineering. Again, while we do not disagree with mother's disdain for social engineering, we do not agree that social engineering has "inserted itself into this situation." There is no indication the juvenile court considered or compared mother's and maternal aunt's socio-economic positions. Rather, as indicated, the record amply demonstrates that while

mother enjoyed consistent and loving monitored visits with L.W., she did not occupy a parental role in L.W.'s life. Instead, that role was filled by maternal aunt, who provided for L.W. her entire life.

DISPOSITION

The January 30, 2018 order denying appellant T.W.'s Welfare and Institutions Code section 388 petition is affirmed. The March 21, 2018 order terminating appellant T.W.'s parental rights as to L.W. is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.