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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.R., A Person Coming Under the Juvenile Court Law.	B256787
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JAVIER L., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK91374)

APPEAL from orders of the Superior Court of Los Angeles County. Veronica McBeth, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Appellant.

Tarkian & Associates and Arezoo Pichvai, for Respondent.

Father J.L. appeals from separate dependency court orders: (1) denying his modification petition to reinstate reunification services with his son; and (2) terminating his parental rights in the child. We affirm both orders.

FACTS AND PROCEDURAL HISTORY

In February 2012 the juvenile court took jurisdiction of three-month-old J.R., who tested methamphetamine positive at birth, after finding he was at risk of harm because both parents were drug abusers who engaged in domestic violence and because mother had emotional problems. (Welf. & Inst. Code, § 300, subd. (b).)[1]

In August 2012 the court terminated mother's reunification services but continued father's services because he was complying with the case plan.[2] After that time, father's compliance declined. He did not show up for random drug testing on several occasions, his visits declined, and when he did visit he was reportedly uninvolved and unaffectionate. He did not call the child's foster parents to see how his son was doing, and frequently canceled his visits. Father also failed to communicate with the social worker assigned to his case.

In January 2013, shortly before a scheduled review hearing, father inquired about a drug abuse program and enrolled in an anger management program. On January 30, 2013, the juvenile court terminated father's reunification services. In May 2013 father petitioned the court to modify that order and reinstate his reunification services. (§ 388.) Father contended the modification was proper because he had completed an anger management course, was successfully drug testing, and had resumed visits with J.R. The trial court granted that motion in July 2013.

In December 2013 and January 2014 the Los Angeles County Department of Children and Family Services (DCFS) reported that father's reunification efforts had

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[1] All further undesignated section references are to the Welfare and Institutions Code.

[2] Mother is not a party to this appeal.

once more declined. Father waited three months before enrolling in individual counseling, was inconsistent with his random drug testing, and despite being allowed weekly visits with J.R., had visited the child just 13 times in the previous 6 months. On January 22, 2014, the juvenile court again terminated father's reunification services, ordered that foster care be the child's permanent plan, and set a hearing to select and implement a permanent plan. (§ 366.26.)

In the interim, father and mother had another child. In February 2014 mother told DCFS that she and father had engaged in domestic violence since the birth of their new child. According to mother, father grabbed her arms and struck her legs with sufficient force to leave bruises. Mother said that father also ran off with the new child, but returned him the next day. This led to an argument where father grabbed a knife and stabbed a mattress. The court issued a domestic violence restraining order against father in April 2014.

In May 21, 2014 father filed another modification petition in order to regain reunification services. Father's declaration stated that he had completed a drug program, consistently tested negative for drugs, was enrolled in parenting and anger management classes, and was receiving domestic violence counseling. He provided evidence of his participation in reunification services, including letters from counselors, certificates showing completion of anger management and parenting courses, and drug test lab intake forms with results omitted. The court set a June 4, 2014 hearing on both the section 388 petition and whether to terminate parental rights.

At the hearing on the section 388 petition, father testified that he regularly attended parenting and anger management classes, received consistent counseling, and submitted to drug tests. He said he visited J.R. twice a month for two hours each visit and that on each visit he brought the child snacks and technical toys. Father said he brought the toys because he wanted his children "to learn things, not to just play." He testified that the visits were "great," that it was difficult to leave when they ended, and that J.R. told him "that [he] want[s] to come home with me."

Father insisted that his required anger management classes had nothing to do with domestic violence and that the only reason he needed them was to help him deal with "the stress of the case . . . , not because I have an anger management situation." He described mother's February 2014 domestic violence report as "a situation that came up," and said he did not believe he was a domestic batterer. Father also testified that he left mother "due to the mom slacking" and because she distracted him from his duties as a parent. He admitted to continued use of marijuana but denied any drug addiction problems.

DCFS argued that after two and a half years father was "in absolute denial" about his domestic violence history and his drug problems. A DCFS report pointed out that despite repeat stints of reunification services father had failed to reunify with J.R. "due to his instability and inconsistency." The report noted that J.R. had been placed in a prospective adoptive home with a stable loving environment for more than a year. The child's counsel also recommended denial of the section 388 petition, arguing inconsistency by father, father's inability to "take any responsibility for himself and his own actions," misleading evidence presented by father in the form of old certificates of completion of reunification programs, and the length of time the case had been pending.

When the court took evidence on whether to terminate parental rights, father argued that J.R. would benefit from continuing their relationship and that the parent-child bond between them presented an exception to adoption as the permanent plan. (§ 366.26, subd. (c)(1)(B)(i).) In support of this assertion, father testified that J.R. referred to him as "Father" and reiterated that J.R. ended his visits by stating that he wanted to go home with father. Father stressed that he played with J.R. during their visits, brought him snacks, and "ha[d] been working to reunite with his child."

DCFS countered that while father was social with J.R., he did not fill the role of a true parent. J.R.'s lawyer also recommended terminating father's parental rights, incorporating by reference his arguments on the section 388 petition to assert that there was not enough evidence of the required bond between father and J.R.

The juvenile court denied father's section 388 petition because it found neither changed circumstances nor that it would be in J.R.'s best interest to reunify with father. In addition to the 2014 domestic violence incidents between father and mother, the court cited father's tendency to blame others for his mistakes and his misspent opportunities to reunify with J.R. over a two-and-a-half-year period. The juvenile court lamented that father had not "internalized" what he had learned from his reunification services.

The court then terminated father's parental rights after finding that father had not maintained a true parental relationship with the child. The court was troubled by the fact that the circumstances that resulted in J.R.'s detention persisted. The court also equated father's visits with play dates, and likened his approach to parenting J.R. to that of a babysitter. The court also found that it would be detrimental to J.R. to be reunified with father.

DISCUSSION

1. *The Court Properly Denied the Section 388 Petition*

Section 388, subdivision (a) provides that any parent having an interest in a child who is a dependent of the juvenile court may, upon grounds of change of circumstance or new evidence, petition the court to change, modify, or set aside a previous court order. The burden is on the petitioner to demonstrate by a preponderance of the evidence that circumstances have changed to the extent that modifying the previous order would be in the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) We review the denial of a section 388 petition for abuse of discretion. (*Id.*, at p. 318.)

Father contends the juvenile court abused its discretion when it denied his section 388 petition because he was in full compliance with the court's reunification orders. We disagree. The record reveals a 30-month pattern of intermittent participation in reunification services and demonstrates father's sporadic efforts to reunify with J.R. Father had backslid twice before, after initially complying with the court's orders. During those periods, he did not drug test and scarcely visited his son. Ten months later

the court issued a domestic violence restraining order against him for incidents that occurred after he completed an anger management course. Based on this, the court was free to conclude that father could not be relied on to follow through if given a third chance, and that despite his attendance in various counseling programs he was plagued by the same issues that led the court to assume jurisdiction in the first instance.

Relying on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1751 (*Blanca P.*), father complains about the court's finding that he "[did] not seem to have 'internalized' anything he ha[d] learned" from reunification services. The *Blanca P.* court held that the "failure to 'internalize' general parenting skills is simply too vague to constitute substantial, credible evidence of detriment," and declared that such thinking had about it an "offensive, Orwellian odor." (*Ibid.*)

This case is unlike *Blanca P.*, where mother had endured "countless hours of therapy" and was nevertheless denied relief based on an arbitrary interpretation of what she gleaned from that therapy. (*Blanca P., supra,* 45 Cal.App.4th at p. 1751.) In our case, the juvenile court expressed a reasonable expectation that after participating in reunification services father would have learned how to modify his behavior so that he no longer posed a risk of harm to J.R. The court said, "I have to see that father *learned* something from all these classes." (Italics added.) While questioning whether father had addressed domestic violence in therapy, the court stated, "[. . .] I have another incident that happens after all these times of going to domestic violence. Here I have this incident that happened just recently which tells me he has not *learned* very much from it." (Italics added.) Regarding father's testimony about other people's mistakes the court said, "That tells me father has not learned anything." The court added, "I have to see that father learned something about the domestic violence, father learned something about his anger management, father learned something about [his] drug program and not blame mother, the system, and everybody else."

At the end of reunification services, a successful parent will have learned to stop the damaging behavior that led the court to assume jurisdiction. More than 30 months after J.R. was detained, however, there was evidence that father continued to use drugs

and engage in domestic violence with mother. In short, father did not learn the lessons taught in the counseling courses he attended. Given these facts, the court did not abuse its discretion by denying father's section 388 petition.[3]

2. The Beneficial Relationship Exception Did Not Apply on These Facts

If there is clear and convincing evidence that a dependent child is likely to be adopted and a previous determination that reunification services should be terminated, there is a presumption favoring adoption as the permanent plan. (§ 366.26; *In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) Guardianship or long-term foster care may be selected only if exceptional circumstances exist, as defined in section 366.26, subdivision (c)(1)(B)(i)-(vi). (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574 (*Autumn H.*).)

Father contends the order terminating his parental rights was improper under the beneficial relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) The beneficial relationship exception must be considered in light of the Legislature's preference for adoption when reunification efforts have failed. The exception does not allow a parent who has failed to reunify with an adoptable child to stymie an adoption simply because there is evidence that the child would derive some benefit from continuing a relationship with the parent. The exception "is not a mechanism for the parent to escape the consequences of having failed to reunify." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) In order for the exception to apply, the parent must have visited the child regularly and have maintained such a strong and beneficial parent-child relationship that terminating parental rights would be to the minor's detriment. (*Id.* at pp. 1348-1349.) Although daily interaction is not necessarily required, the relationship must be that of parent and child. A relationship that is merely friendly or familiar is not enough. (*Id.* at pp. 1349-1350.) A parent bears the burden of proving that the beneficial relationship exception applies. (*Id.* at p. 1350.) We will affirm the dependency court's order finding

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[3] Because we conclude there was ample evidence to support a finding of unchanged circumstances, we need not reach the other prong of the section 388 analysis – that the requested modification would be in the minor's best interests.

the exception inapplicable if the order is supported by substantial evidence. (*Autumn H., supra,* 27 Cal.App.4th at pp. 576-577.)

As father points out, the record shows that his most recent visits with J.R. were warm, affectionate, and generally positive. He hugged and kissed J.R. and tended to his needs by changing his diapers, feeding him snacks, reading to him, and playing with him. Father interacted well with J.R. and there had been no major concerns or issues regarding those visits.

We do not discount father's good conduct during his visits. That does not overcome the fact that, throughout most of this lengthy dependency proceeding father maintained a mostly spotty visitation record and never sought unmonitored visits. An April 11, 2014 report that characterized father's visits as affectionate also noted that after the 2014 domestic violence incident father failed to contact the social worker to resume visits with J.R.

In order for a beneficial relationship to exist between a parent and a child, particularly a young child, the *quantity* of visits matters as much as the quality. Infrequent interaction, no matter how enjoyable for the child, mitigates the child's ability to bond with a parent. "Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences." (*Autumn H., supra,* 27 Cal.App.4th at p. 575.)

The record is replete with examples of how, over the course of more than two years, father forfeited opportunities to build shared experiences with J.R. and form a meaningful father-son relationship. The relationship between father and J.R., while friendly, was not so beneficial to J.R. as to form an exception to adoption as the permanent plan, especially in light of the fact that the minor had spent virtually his entire life in foster care, and that his foster parents wanted to adopt him. As a result, we conclude that the order terminating parental rights was supported by sufficient evidence.

DISPOSITION

The orders denying father's section 388 petition and terminating his parental rights are affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.