

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

In re VALERIA B., et al., Persons Coming
Under the Juvenile Court Law.

B232556
(Los Angeles County
Super. Ct. No. CK73848)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

REINA H.,

Defendant and Appellant.

APPEAL from an Order of the Superior Court of Los Angeles County, Marilyn Mackel, Commissioner. Reversed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Marissa Coffey, under appointment by the Court of Appeal for Minors Valeria B. and Linda B.

Mother Reina H. appeals the dependency court's order summarily denying her Welfare & Institutions Code section 388¹ petition, contending the court erred in failing to hold an evidentiary hearing. We reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Detention: August 2008

The children came to the attention of Los Angeles County Department of Children and Family Services (DCFS) on July 6, 2007, as a result of a referral of general neglect allegations of Mother's two children, Valeria (born 2005, age two) and Michelle (known as Linda) (born 2006, age one). Mother, who was 15 years old at the time,² was accused of leaving the children unattended with her mother. The maternal grandmother informed DCFS that Mother, who had been the subject of a dependency proceeding, often left the children without telling the grandmother where she was going.³ J.V. is the father of Valeria; Santos H. is the father of Linda.

The family was provided with Voluntary Family Maintenance Services, and Mother agreed to participate in parenting classes, attend school daily and regularly, and ensure that the children were properly supervised at all times. In October 2007, Mother enrolled in parenting classes and completed her classes in March 2008. Mother enrolled for individual counseling at Excel, but stopped going after a few sessions because she felt she was not getting any help. During the course of the case plan, Mother was expelled from Riley High School for lack of attendance, and reenrolled at Reseda High. Mother continued to miss school and preferred to "hang out with her friends." Mother later enrolled at Locke High School, but continued to skip class.

¹ All statutory references herein are to the Welfare & Institutions Code unless otherwise noted.

² Mother was born in November 1991.

³ Mother's mother was severely addicted to cocaine, and frequently absent from the home. The grandmother's home was without electricity for two years and food was scarce, and was described as "complete and total chaos." Mother was detained in August 2009, and declared a dependent in a separate proceeding.

On March 25, 2008, an Immediate Response referral was generated on Mother, alleging emotional and physical abuse and general neglect. The children were witnesses of arguments and abuse between the grandmother and Mother at home, and Mother considered giving up the children to DCFS. Mother denied any emotional abuse, and blamed the problem on her adult sister who lived in the home. Mother told the social worker she wanted her children placed somewhere, but that one day she wanted to get them back.

In April 2008, during a team decision meeting (TDM), Mother discussed how overwhelmed she felt with the children and discussed adoption for them. Mother agreed to a Voluntary Family Reunification (VFR) plan pursuant to which Mother would remain with the grandmother, attend school, attend individual counseling, and the children would be placed in a foster home. In June 2008, the foster parent told the social worker that during a visit with the children, Mother appeared to be under the influence of drugs, and always attended visitation with her 30-year-old boyfriend. Mother's social worker asked her about Mother's drug use, and Mother admitted that she sometimes smoked marijuana but that she did not smoke when she visited the children.

In July 2008, Mother told the social worker she was three months along with her third child with her boyfriend, and continued to smoke marijuana. Mother had not been attending school, nor had she enrolled in individual counseling sessions. However, in late July, Mother enrolled in Shields for Families. Mother submitted one no-show drug test and one clean test in July 2008. The location of the children's fathers was unknown.

On August 1, 2008, DCFS filed a petition alleging counts under section 300, subdivision (b) (failure to protect) based upon Mother's illicit drug use, her inadequate supervision of the children, and subdivision (g) (no provision for support) based upon the children's fathers' failure to provide for their care.

On August 1, 2008, the dependency court ordered the children detained, and granted visitation of three hours, three times a week, but denied discretion to liberalize.

Mother was ordered to attend parenting education, drug rehabilitation with random testing, and individual counseling.

2. *Jurisdiction and Disposition: September 2008*

DCFS reported in September 2008 that the children were placed in foster care. Neither of the fathers had been located. DCFS had been unable to contact Mother because her phone was disconnected, and in August 2008 Mother stopped attending drug rehabilitation at Shields for Families.

DCFS's last minute information disclosed that Mother had not married either of the two fathers of her children. One had left Mother when he found out she was pregnant and Mother did not know the current location of either father. Currently, Mother was in a relationship with Alex R., who was 32 years old. Mother was the fifth of eight children. Mother was raped by a neighbor from age four to age seven. Mother went to counseling, and claimed it had helped her get over the abuse. Mother reported that she began smoking marijuana in 2001, but she only smoked once a month, and claimed that she had stopped when she found out she was pregnant with her third child. Mother was attending continuation school, was not working, and was receiving social security disability funds.

At the September 29, 2008 jurisdictional hearing, the court sustained the petition on the section 300, subdivision (b) counts as amended to allege marijuana use in place of illicit drug use, and sustained the counts under subdivision (g) as to the children's fathers. The court denied reunification services to the children's fathers, who had not been located. The court advised Mother that being pregnant at age 16 with her third child was a result of her childhood sexual abuse. Mother was ordered to attend individual counseling to address her abuse issues, enroll in a child sexual abuse program (CSAP) program for victims, and to enroll in drug rehabilitation with random testing. DCFS was to address the viability of the maternal grandmother as a monitor for visitation, which was to be attended only by Mother, the grandmother, and the children. The court ordered a Regional Center assessment for Valeria's hearing. On December 15, 2008, the court also ordered individual counseling and mental health assessments for Valeria and Linda.

3. *Petition with Respect to N.: January 2009*

In January 2009, Mother gave birth to a baby boy named N., whose toxicology screen was negative. DCFS filed a section 300 petition under subdivisions (b), (d), and (j) on January 13, 2009, alleging Mother's history of illicit drug use, failure to supervise her older children, and Alex's sexual abuse of Mother based on her underage status.

DCFS's detention report stated that N. was born healthy with a negative drug screen. Alex was at the hospital for N.'s birth and stated he wanted to support N. Mother had been participating in her counseling and substance abuse programs, but her attendance had been poor and she had missed treatment and was not drug testing. Mother continued to have conflicts with her own mother due to Mother's boyfriend. Mother had received no prenatal care since October 2008, and when she started bleeding late in her pregnancy, the social worker called for paramedics to take her to the hospital. DCFS noted that Mother had not been consistent with her programs, and her failure to appear for drug testing led DCFS to conclude Mother was using drugs. "Mother has not shown any interest in raising her level of life and she seems not to care for herself. She neglected herself and her newborn baby when she did not receive[] medical care for several months. . . . As a result of mother's partial participation in the case plan, services with drug treatment and mental health services, . . . one or more safety threats are present, and placement is the only protecting intervention possible for one or more children."

Prior to the detention hearing, Mother informed the social worker she wanted the children placed with her sister. At the hearing held January 13, 2009 (not reported), the court ordered DCFS to assess the maternal aunt for placement, and ordered reunification services for Mother and Alex.

4. *Jurisdiction, N.: March 2009*

DCFS's jurisdictional report for N. stated that N. was placed in a foster home. Mother told the social worker that Alex was not concerned that she was underage because she already had two children. The District Attorney had informed Alex it would not file

charges against him if he refrained from having any contact with Mother. Alex did not want N. placed with him because he could not care for him.

Mother continued to be a no-show for drug testing in December 2008. DCFS reported that Mother's "progress in her court ordered programs has been minimal Mother had not addressed her substance abuse problem with marijuana. Per mother's own statement, she has not attended substance abuse counseling as ordered by the Court. . . . [¶] Mother . . . gives no concrete explanation why she is not attending her programs." DCFS recommended no reunification services pursuant to section 361.5, subdivision (a)(10) based upon Mother's failure to complete her court-ordered programs.

DCFS's prerelease investigation on Mother's sister Alejandra H. disclosed she had been arrested for robbery at age 12 and received five years of probation. Alejandra had a history of juvenile offenses, including failure to attend school and running away from youth camp. At the time of DCFS's report, Alejandra had completed a placement of six months and was on probation until December 30, 2009. DCFS did not recommend releasing N. to Mother's sister.

DCFS's review report for Valeria and Linda stated that the children were thriving in their foster home. Both children had been referred to HUB Children's Hospital for a comprehensive evaluation, and Valeria's doctor had recommended she receive therapy for her diagnosis of attachment disorder, and she was being evaluated for speech disorders. Mother's attendance at shields for Families had been poor, but in February, Mother had resumed weekly group therapy. Mother was not qualified to participate in CSAP, and instead was receiving sexual abuse therapy from her therapist. Although Mother had been a no-show for drug tests in December 2008, her five drug tests in February 2009 were negative. Mother's visitation with the children was consistent and proper.

At the jurisdictional hearing for N. held March 23, 2009, the court sustained the allegations of the petition amended as to both parents.

5. *Six-Month Review, Valeria and Linda: September 2009*

At Valeria and Linda's review hearing, the court expressed some concern with Mother receiving unmonitored visitation because she had not participated in sessions with the speech therapist, the caregivers, and Regional Center. However, the court found that Mother had been in reasonable compliance with her case plan, and set the review hearings for all three children for August 13, 2009.

On September 23, 2009, Valeria and Linda's foster parents the H.'s filed a caregiver information form in which they alleged that on July 22, 2009, the children had been abruptly removed from their foster home. The foster parents stated that Valeria had severe emotional breakdowns when she had been placed with them; however, after five months, the outbursts had completely stopped. Valeria was a special needs child, and had gotten very close to her foster parents. The H.'s stated that they loved Valeria like their own child and Valeria was very cheerful and had interests in reading, drawing, dancing and gymnastics. Further, Linda had shown anger and disobedience after visits with Mother, and Linda's therapist was going to recommend weekly therapy to deal with Linda's anxiety.

DCFS's report for the September 10, 2009 stated that Linda and Valeria were in a new foster home, and DCFS asserted that the social worker's abrupt decision to remove the children and her use of the police to do so was in the children's best interest and in the "best interest of maintaining the family system," and that the "staff who works with Southern California Foster Family Adoption Agency [FFA] became an impediment to the family reunification process." In particular, the FFA refused to follow the court's orders, showed little respect for the mother's parental rights, and DCFS and the court's authority in general. The FFA staff insisted on monitoring visits, asked the social worker (Maria Castilla) to keep the mother away from a medical appointment for Valeria in which Valeria was to be examined for what turned out to be an unfounded child abuse allegation because Mother had pierced Valeria's ears during an unmonitored visit. The agency reported Mother to the child abuse hotline. The hospital spoke with another social worker

and learned that Mother, pursuant to court order, was allowed to participate in medical visits. In addition, DCFS felt that the children's therapist was biased and sided with FFA.

Mother submitted a letter to the court in which she stated that she had a problem with FFA because they did not understand Hispanic culture and wanted to take her children away from her because they wanted to adopt them. Mother requested DCFS to place her children in a home closer to her so that she could reunify with them, and after their placement in their new foster home, Mother was able to visit them regularly. Mother asserted the children were doing well and did not have "any of the behaviors the prior agency said they had because of me."

FFA submitted a letter to the court dated September 4, 2009 in which it asserted that FFA had filed a complaint with the Ombudsman and Regional Administrator of DCFS regarding Castilla's removal of Valeria and Linda from the foster home of the H.'s. In that home, the children had been thriving and were enrolled in special education classes to meet their developmental needs. Currently, the children were not receiving such programs. Further, the social worker's supervisor wanted to limit the current therapist, Lisa Altemus, to one more visit, and told the therapist that DCFS did not trust FFA.

FFA complained to the Regional Director of DCFS that Castilla was chronically unavailable—her voice mailbox was full, she did not return calls when they were able to leave a message, did not respond to faxes, did not make a single visit to the H's home during the time the children were placed there, failed to have a TDM pursuant to DCFS policy before removing the children from the home, promised the children they would continue with their current therapist, gave the children's attorney false information about the need to change therapists, and failed to obtain a Regional Center referral for the children for 15 months, and failed to address Valeria's speech problems. FFA had to call Castilla's supervisor several times in order to reach Castilla. FFA pointed out that at the time the children were originally placed with FFA, Mother, who was 16 years old at the time, had requested a voluntary placement because caring for the two children was too

much for her; at the time Mother was seriously considering adoption for the children. FFA was asked for a concurrent planning placement because of the children's ages and the possibility that Mother wanted them to be adopted. The children were later moved (with the approval of Castilla) to the H.'s home.

FFA believed the children's abrupt removal from the home was unsupported, as Castilla "gave various reasons for her actions, none of which were clear cut, or justified re-traumatizing the girls in this way. For example, one reason given was that the birth mom had requested the removal. However, when [Mother] called to arrange her visit with the girls, she reported that she had no idea they were being moved. She was surprised and upset that they would have to adjust to a new home and clearly stated she had no problems with the current foster parents. Ms. Castilla also stated that the agency and foster parents were not being supportive of reunification. Everyone at the agency, and the foster parents, were well aware that there was a very good chance the girls might be reunited with the birth mom at the August 28, 2009 hearing." Further, the foster parents supported Mother during her visits; the therapist treated the girls individually and did joint counseling with Mother and Valeria to facilitate attachment and how to provide structure and provide appropriate discipline. FFA denied DCFS's allegations concerning the hospital visit at which Mother was allegedly excluded.

An evaluation of Valeria disclosed that Valeria's hearing was normal. Otherwise, she was uncoordinated and clumsy; hoarded objects and lined up objects and "carpet[ed] the floor with newspapers on a daily basis." Her interaction with her peers was difficult, and she did not engage in pretend play. Valeria had prolonged rages where she would refuse to be comforted. Valeria had reactive attachment disorder, likely fetal alcohol exposure, spatial perception problems, and speech and language delay.

6. Review Hearing: August 2009

DCFS's report for the six-month review hearing on N. and the 12-month review hearing on Valeria and Linda stated that all three children were placed with the P. Family. DCFS claimed that the July 22, 2009 removal from the previous foster home was

necessitated by Mother's complaints of the continuous harassment by the FFA during her visits, and false accusations of child abuse. After an investigation of FFA, DCFS determined it was in the children's best interests to remove them from their placement. DCFS contended the involvement of the police in the removal did not traumatize the children, and that the children's transition to the new placement had been normal. The children continued to adjust in their new placement. Mother had three negative drug tests and three no-show tests.

A TDM was held August 6, 2009 to evaluate Mother's compliance with her case plans. Alex participated in the meeting. The TDM committee agreed that Mother should continue to receive reunification services, including unmonitored visitation. The committee recommended that N. be released to Alex when Alex had obtained suitable housing.

Valeria had been diagnosed with global developmental delays, fetal alcohol syndrome, and reactive attachment disorder. Speech therapy was recommended. Both children were to receive individual counseling with a new therapist (Lily Libid). Mother was receiving sexual abuse counseling. Visitation with all three children had been consistent and going well.

DCFS concluded that Mother was continuing to progress in her case plan. Shields for Families reported that Mother was cooperative and demonstrated an interest in complying with her plans. Mother was continuing her substance abuse counseling, attended the children's medical appointments, was consistent with visitation, and had started Mommy and Me classes.

At the August 28, 2009 review hearings for all three children, the children's counsel requested that a new social worker be appointed in the case because Castilla was not attending to their needs. Mother complained that she believed she would be able to reunify, but she was not receiving the necessary services. Mother's counsel complained that the social worker was not available to her, and the children had been traumatized by the actions of the worker. Further, the social worker had not mentioned the most recent

report that Mother had been detained. Counsel complained that the social worker had recommended that the children be released to the father at a TDM held without the Mother present. Counsel stated, “I hope the court understands that these children are being ripped from a good foster adopt home, but now it looks like they were going to be able to reunify with the Mother. I don’t know if that’s the fact that is happening, [the children] continue not to be serviced by the social worker.”

The court continued the matter to September 10, 2009.

On September 2, 2009, the court ordered that therapy was to continue with the children’s former therapist, Lisa Altemus.

7. *Continued Review Hearing: September 10, 2009*

On September 10, 2009, DCFS filed its service log relating to the July 22, 2009 detention in which it stated that Mother had requested the change in placement because the children were so far away from her that she was struggling with reunification and was concerned that she would fail to reunify. DCFS stated that the police officer was “introduced . . . to the children in a very gentle manner.” The children were doing well in their new placement and continued to have visits with Mother on Tuesdays and Thursdays, and were participating in Mommy and Me classes.

At the September 10, 2009 review hearing, the court noted that the children needed stability in their foster placements even where reunification was the goal. The social worker, Maria Castilla, told the court that she obtained a new placement for the children because FFA was interfering with the reunification process; in particular, visitation was supposed to be unmonitored, but FFA was always present at visitation and made unfounded allegations. The children renewed their request for a new social worker because Castilla was continually unavailable to FFA.

The court ordered an administrative review. The court stated that “it is problematic for [DCFS] to remove children from a professional agency where situations may have arisen where there are different interpretations of that situation and obviously can be involved when we are dealing with a professional agency. We don’t want to see

children moved for home to home and if the agency is able to provide the appropriate services, even if they have to be redirected and that way we can do it without removing the children.” DCFS offered that the reason the children were moved was to facilitate visitation, to which the court responded “I submit that is not a good reason. You bring Mother closer to where the [foster] home is and provide transportation funds. We don’t move children because we want stability and permanence.” The court further observed, “this is a rare circumstance. That is not the step that should be taken technically for a seven month old, and a three and four year old. These are critical times for a seven-month old and a three year old who just turned three in June. So we are talking about [] brain development and with the seven-month old that shouldn’t happen.” The court ordered the administrative review for October 9, 2009. It also ordered that therapy continue with Lisa Altemus.

8. *Administrative Review: October 9, 2009*

DCFS submitted a letter dated October 9, 2009 concerning its administrative review in which it stated that a comprehensive review of the social worker’s actions in the case had been undertaken. DCFS found that the tension originated between Mother and FFA because the Mother complained FFA did not understand Hispanic culture and restricted visitation to Mother and the maternal grandmother. Mother also believed that FFA was taking actions based upon Mother’s young age to thwart her reunification efforts; there were also allegations that Mother and the social worker felt were unfounded. DCFS stated that “the combined series of allegations against the minor mother and that of the assigned social worker, focused on the decision to remove the children from [FFA] which was considered to be in the best interest of the children.” In summary, DCFS apologized to the court for any inconvenience.

At the October 9, 2009 hearing, the regular hearing officer (Commissioner Marilyn H. Mackel) was not present, and the matter was presided over by Referee Albert Garcia. The court refused to grant a continuance to permit the regular hearing officer to hold the review. Mother stated she did not have any concern with the social worker’s actions, and

after the court stated it wanted the social worker in court, it adjourned without making any ruling.

9. *Eighteen Month Review: March 2010*

DCFS's report prepared for the March 9, 2010 review hearing stated that the children remained placed with the P.'s, and N. was placed with his father Alex. The report noted that Mother was "AWOL" from her own dependency placement. Valeria was not receiving Regional Center services but was receiving speech therapy. Linda was developing normally.

At the March 9, 2010 review hearing, it was disclosed the social worker was on medical leave. The children's counsel informed the court Mother had been AWOL from her placement and had been having unmonitored visitation. The court stated that DCFS's submitted report was unsatisfactory, and ordered it to prepare a new report. Castilla was ordered to be present at the next hearing. Mother informed the court she had rented a one-bedroom apartment. Her fiancé helped her with the rent, although she claimed he was not living with her. However, Mother's drug tests were positive. The court continued the matter pending the social worker's appearance in court.

10. *Review Hearing: May 20, 2010*

Before the continued May 20, 2010 review hearing, FFA submitted a letter in which it detailed the children's history in their foster placements. Valeria had been seeing Lisa Altemus for individual therapy since March 2009. When Altemus first started counseling Valeria, she displayed severe tantrums, outbursts of rage and anger, had nightmares, held her bowels, refused to eat, and had periods of depression. After therapy was commenced, Valeria began to improve: she was enrolled in preschool, made friends, and started developing healthy attachments. Valeria had been making great strides until she was suddenly moved to a new home; that move contributed to the number of disruptive placements she has experienced. Further, Valeria's speech and language delays had not been addressed in a timely manner. She recommended that if the children

could not be returned to Mother, that Mother continue to have contact with them because they had formed a bond with her.

DCFS's review report for the May 20, 2010 hearing stated that Valeria and Linda continued placement with the P.s and that N. resided with Alex. Valeria and Linda shared a bedroom. Valeria interacted well with the other foster children in the home, continued to receive individual therapy, and visited with Mother, to whom she was bonded. Linda was adjusting to her placement and enjoyed her visits with Mother. In February 2010, Mother tested positive two times for marijuana and was a no-show once. On May 5, 2010 at a TDM, Mother requested to be reunified with her children.

DCFS believed the issues which brought Mother before the dependency court remained unresolved. After a relapse in February 2010, Mother again enrolled in drug treatment. Mother appeared to understand and accept her drug addiction and the importance of remaining sober to provide a good environment for her children. Mother had completed her program at Shields Revelations Program. Mother continued to participate in drug testing and counseling, and attended parenting classes.

At the continued May 21, 2010 hearing, the court received into evidence the social worker's notes. Mother requested that the children either be returned to her, or that she receive further reunification services. She complained about the lack of contact with the social worker. Initially, Castilla was in court on call, but had left before the matter was called for hearing. After commenting on Mother's lack of contact with her social worker, the court ordered "no later than four weeks to set up a plan for the children to begin overnight visits with [Mother]," and set the matter for a section 326.22 hearing on November 15, 2010. The court terminated jurisdiction over N., with Mother to have visitation supervised by Alex or approved monitor, with unmonitored visits after six clean, random drug tests by Mother.

DCFS's progress report for the August 30, 2010 hearing stated that Veronica and Linda remained placed with the P.'s.

At a June 15, 2010 TDM, Mother requested overnight visits with her children; she had overnight visits with them in June, July and August 2010. On July 10, 2010, the social worker visited Mother's home. The children were present to participate in a family preservation meeting. Mother was referred to individual counseling, and a Teaching and Demonstration worker was assigned to Mother to assist her in applying appropriate discipline and to teach her how to prepare healthy food for the children. Mother had three positive tests for marijuana in July and August, 2010. In August 2010, Mother enrolled in another drug treatment program but left after someone stole some money from her.

About a week later, Mother enrolled in another program. On August 16, 2010, the social worker went to the drug treatment program and discovered that Mother had been signed up by Alex, and was not permitted to leave the location. The social worker observed about 20 men participating in a group session. Mother stated she was sleeping in the same room with the participants and they were all male. Mother was nervous. The social worker signed Mother out of the program.

At the August 30, 2010 hearing, the children's counsel stated that Castilla continued to fail to return phone calls. Counsel requested an administrative review, and that overnight visits be stopped while Mother was testing positive for drugs. Counsel stated that Mother was not complying with her plan, and reunification services should be terminated. The court ordered another administrative review. The court ordered that visits take place at DCFS's office; no discretion to liberalize was given to DCFS. The court, stating it would not call it an "administrative review," ordered production of the case worker's log, ordered the supervising social worker to review the logs, and the Assistant Regional Administrator (ARA) and supervisor to provide notes. The court ordered that if the supervisor found neglect, the social worker was to be immediately removed.

11. Administrative Review, Contested Review: November 15, 2010

DCFS's report for the November 15, 2010 hearing stated that the children remained with the same foster family, the P.'s. Mother was attending a substance abuse

program, and had demonstrated great effort to stay sober. Mother was also receiving individual counseling. Mother, however, continued to be a “no-show” for some drug tests, missing five tests from August through October 2010. DCFS’s review of the case had been completed; the ARA did not find any reason to remove the social worker. The children were doing well in the placements and were enjoying school. After visits with Mother, they returned to their routine with no problem. Mother had 13 excused absences at Shields Revelations Program, 13 unexcused absences, and had attended only seven sessions. The children enjoyed weekly visitation with Mother, and had bonded with them.

At the November 15, 2010 hearing, Mother asked for additional reunification services. She relied on the fact the social worker had pulled her from a program, but had failed to put her in another program. The court noted that Mother had several positive tests prior to October 2010, and since October had missed three tests. The court stated that “if there had been a history of negative testing, I would be more inclined to be sympathetic to your position, but it makes it very difficult when last month we had three no shows and that’s recently the history.” The children’s counsel requested that the H.’s be considered for placement.

The court ordered DCFS to investigate the maternal aunt and the H.’s for placement. It noted that Mother had not continued to participate in a drug program and had tested positive (no shows) as recently as October 2010. Further, to provide additional reunification would be a second extension of the six-months which was not contemplated by the dependency statutes. The court terminated Mother’s reunification services and set the matter for permanency planning on March 14, 2011.

12. Selection and Implementation: March 14, 2011

DCFS’ report prepared for the March 14, 2011 hearing stated that the children remained placed with the P.’s. DCFS recommended placement of the children in their former foster-adopt home with the H.’s. DCFS did not recommend Alejandra, the children’s maternal aunt, because she had unresolved issues: she was in the process of

completing high school, and was the mother of three children, ages five, four, and one. Her five-year-old son was in Mexico with an ex-boyfriend who had been deported and who had a criminal past. The aunt's four-year-old daughter was not in school. A visit between the aunt and the children revealed that the aunt had difficulty setting boundaries, and let the children eat whatever they wanted. The aunt had recently obtained employment as a cashier that would require her to work in the evenings, and she stated she would arrange for a babysitter. On the other hand, the H.'s had an approved home study, where the children's needs had been met. The children visited the H.'s on March 2, 2011, and the children referred to them as "Mommy" and "Daddy." The children's therapist believed the children had been in the system for three years and needed a permanent home with a sense of family, which the H.'s could provide. The therapist, in a lengthy report, opined that the children should be adopted by the H.'s based upon the children's bond with the H.'s and the H.'s ability to provide a home and tend to the children's needs.

On March 14, 2011, the children filed a motion to remove Castilla as their social worker pursuant to section 16513.5 on the grounds that Castilla had failed to ensure progress with the case and had at times not acted in the children's best interests by failing to inform them of problems with FFA, failing to hold a TDM before their removal in July 2009, and was attempting to further delay permanence by seeking a continuance of the permanency planning hearing. The H.'s submitted a declaration in support in which they stated that the children had done well in their home and they were devoted to meeting their needs. Without prompting from the H.'s, the children called them "Mom" and "Dad." However, "in reaction to new social worker Maria Castilla's influence [Mother] started to change her mind [about adoption] and began to feel threatened by our connection with the children." The H.'s nonetheless encouraged Mother to bond with the children, but noticed that after visits with Mother, the children would have tantrums when the H.'s would get them ready for their weekly visits with Mother. Castilla failed to return numerous phone calls the H.'s made to her, and never visited the children in the

H.'s home. The children's attorney also submitted a declaration in which she stated that Castilla had liberalized the children's visits to overnight despite the last order that visits be monitored at DCFS's office.

DCFS's report prepared for the March 14, 2011 hearing requested a continuance of the permanency planning hearing for 90 days based on a need to conduct additional evaluations of the potential placements of the children. At the hearing, the children moved to have Castilla removed as their social worker; DCFS told the court it intended to remove her the following day. The children's counsel argued that the children be placed in the foster-adoption home of the H.'s. The children's counsel requested another administrative review, and argued that DCFS never gave a reason for the removal beyond the convenience of Mother's visitations. Further, Mother was expecting another child and there was no information concerning her living situation. The court ordered another administrative review.

DCFS's report prepared for the March 18, 2011 hearing stated that the children had from February to July 2009 been placed with the H.'s in a foster-adopt home. There, the children's physical, psychological and emotion needs had been met. According to their therapist, they were bonding with the H.'s appropriately. The children recently reconnected with the H.'s and had two overnight weekend visits. The children refer to the H.'s as "mommy" and "daddy" and told the social worker they wanted to live with the H.'s and that they missed them.

DCFS's review of the history of the proceedings indicated that the social workers interviewed Mother on March 17, 2011. Mother admitted beginning to use marijuana at age 14, and that her use was daily in the company of her friends. Mother had completed Shields for Families substance abuse treatment; she had participated in, but did not complete, other programs, including Pavilion Healthcare. Mother admitted several relapses, including the most recent one in November 2010 when family reunification services were terminated. Mother had enrolled in the Shiloh Christian Ministries inpatient program on March 4, 2011, but was hospitalized with pregnancy complications.

Mother was expecting her fourth child and intended to marry the father, Yahare P. Yahare's house had three bedrooms and two baths, and was clean and orderly. However, Yahare admitted to recreational use of marijuana, and tested positive for marijuana on March 4, 2011.

DCFS conceded the lack of progress in the case, and summarized: "the return of the children to [Mother] cannot be ruled out as a potential placement plan for the children. DCFS acknowledges that this direction is unusual at this juncture. . . . DCFS is willing and prepared to file a [section] 388 petition on Mother's behalf, and quickly move towards a permanent resolution of this matter."

13. Continued Selection and Implementation; Mother's Section 388 Petition: March 18, 2011

On March 18, 2011, the date of the continued hearing, Mother filed a section 388 petition seeking additional reunification services, and alleging that she had enrolled in a new residential drug program and had tested negative on March 2, 2011, and referred to the extraordinary circumstances and case/family history" detailed in her section 366.26 report filed on March 18, 2011. She had been visiting the children regularly and maintained a relationship with them.

At the March 18, 2011 hearing, Mother requested that the H.'s and Lisa Altemus be excluded from the hearing. The court asked them to step outside the courtroom. The court summarily denied Mother's section 388 petition, finding there was no indication additional reunification services would be in the best interests of the children, and stated that "the [section 366.26] report attached [to the section 388 petition] indicates that the circumstances similar to that which brought this matter to the court continue." DCFS informed the court that a new social worker had been appointed to Mother's case; as a result, the court found the motion to remove the social worker moot. The court ordered a bonding study regarding the H.'s, and ordered DCFS to move forward with an appropriate transition of the children into the H.'s home, and ordered overnight visits with the H.'s to continue.

DISCUSSION

Mother argues that the dependency court abused its discretion by summarily denying her section 388 petition without a hearing. Mother contends she showed changed circumstances because her situation is unique because she was fourteen when her children were removed and she had her own history of juvenile dependency, but her petition shows she was making credible progress towards addressing her long-standing marijuana habit. Further, the modification sought would benefit the children because she had visited the children consistently and was bonded with them and she had sufficient funds to provide for their basic needs. The children counter that the requirements of section 388 must be applied evenhandedly, regardless of age, and Mother failed to present sufficient evidence to establish the children's best interests would be served in this case where the children's interests in permanence have not been the primary considerations. DCFS has not filed a brief on appeal.

Section 388 provides for modification of prior dependency court orders when the moving party can demonstrate new evidence or a change of circumstances and modification of the previous order is in the child's best interest. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.) "The parent seeking modification must 'make a prima facie showing to trigger the right to proceed by way of a full hearing.'" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) The required prima facie showing has two elements: The parent must demonstrate (1) a genuine, significant and substantial change of circumstances or new evidence and (2) revoking the previous order would be in the best interests of the child. (*Ibid.*) That is, "the petition must allege a change of circumstance or new evidence that requires changing the existing order." (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) "It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child." (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 529.)

“The petition [is] liberally construed in favor of its sufficiency.” (*In re Daijah T.*, *supra*, 83 Cal.App.4th at p. 672.) To be entitled to a hearing, the petitioner “need[] only . . . show ‘probable cause’; [the petitioner is] not required to establish a probability of prevailing on [the] petition.” (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.) Nonetheless, if the allegations fail to 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 Zachary G.* (1999) 77 Cal.App.4th 799, 806–807 [“the hearing is only to be held if it appears that the best interests of the child may be promoted by the proposed change of order”]; cf. *In re Edward H.* (1996) 43 Cal.App.4th 584, 593 [“‘prima facie’ showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited”].)

We review the dependency court’s summary denial of a section 388 petition for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460; *In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) The appellate court will not disturb the dependency court’s decision unless the dependency court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 205.)

Here, we find Mother has made a prima facie showing entitling her to an evidentiary hearing whether additional reunification services should be granted to her. As explained in *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345, when a minor is removed from a parent, the minor and parent are entitled to 12 months of child welfare services to facilitate family reunification. Reunification services may be extended to a maximum of 18 months. (§ 361.5, subd. (a)(3).) If at the 12-month review hearing, DCFS does not prove by clear and convincing evidence that it has provided reasonable services to the parent, family reunification services must be extended to the end of the 18-month period. (§§ 361.5, subd. (a)(3); 366.21, subd. (g)(1); *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.)

Whether adequate reunification services were provided and the reasonableness of DCFS's efforts are judged according to the circumstances of each case. DCFS "must make '[a] good faith effort to develop and implement a family reunification plan.'" (*Robin V. v. Superior Court, supra*, 33 Cal.App.4th at p. 1164.) "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult" (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Further, although the statutory scheme contemplates that the child's interests in permanency acquire greater prominence as the dependency progresses, the court has discretion to extend reunification services beyond the 18-month period if it finds the parent has not received adequate reunification services. (*In re David D.* (1994) 28 Cal.App.4th 941, 955–956.)

While the adequacy of Mother's reunification services is not directly at issue in this appeal, the social worker's lack of attention to this case had the result of denying Mother the ability to reunify. While it was Mother's responsibility to attend the programs and address her problems, it was the social worker's job to maintain adequate contact with the service providers and accurately to inform the dependency court and mother of the sufficiency of the enrolled programs to meet the case plan's requirements. (See *In re Riva M., supra*, 235 Cal.App.3d at p. 414; *Robin V. v. Superior Court, supra*, 33 Cal.App.4th at p. 1164–1165.) Thus, we cannot ignore the factual context in which Mother made an effort just prior to the selection and implementation hearing in providing clean tests and entering a drug treatment program. Indeed, DCFS informed the court at the March 18, 2011 hearing that Mother had just obtained a new social worker. Before her section 388 petition, Mother was enrolled by one of her boyfriends in an inappropriate program; had long periods of time where her drug tests were negative; and made numerous attempts to stay sober. Given the lack of reunification services provided in this case, Mother did in fact show changed circumstances.

Further, providing Mother with additional reunification services would be in the best interests of the children, with whom Mother had bonded due to her consistent visitation. The children's placement with the P.'s was not a prospective adoptive home; rather, they were placed with foster parents. Thus, at the time of Mother's petition, granting her additional reunification services would have benefitted the children as well. "While the Legislature was concerned with reducing delays in arriving at a permanent resolution of the child's placement, we do not believe the Legislature intended a speedy resolution of the case to override all other concerns including 'the preservation of the family whenever possible' especially given the lengths to which the Legislature went to try to assure adequate reunification services were provided to the family." (*In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1214.)

DISPOSITION

The order of the superior court is reversed and remanded, and the dependency court is directed to hold an evidentiary hearing on Mother's section 388 petition to determine if additional reunification services are warranted.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.