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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAYDEN M., a Person Coming
Under the Juvenile Court Law.

B279385
(c/w B278573)
(Los Angeles County
Super. Ct. No. DK00701)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.M. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles
County. Philip L. Soto, Judge. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal,
for Defendant and Appellant H.M.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendants and Appellants Am. E., Ad. E. and N.M.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Kim Nemoy and Tracey Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

H.M. (mother) appeals from the denial of her Welfare and Institutions Code section 388¹ petition seeking the return of Jayden M. (Jayden, born Dec. 2013) to her custody. If the denial is reversed, mother seeks a reversal of the order terminating her parental rights. Three of Jayden’s siblings—Am. E (born Jan. 2003), Ad. E (born Mar. 2006), and N.M. (born Jan. 2010) (collectively minor sisters)²—appeal from the denial of their section 388 petition seeking the return of Jayden to mother’s custody.³

We find no error and affirm.

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

² Jayden’s oldest sister is T.E. She was born in 1996 and is not a subject of this appeal. Neither are Jayden’s younger twin brothers, Luis M. and Jose M. (born Apr. 2015).

³ These appeals have been consolidated.

FACTS

Dependency Case Regarding T.E. and the Minor Sisters

Starting in 2010, the Department received three abuse and neglect referrals regarding the family. In August 2013, the Department detained the minor sisters and T.E. and placed them in foster care.

Dependency Petition Regarding Jayden

On January 3, 2014, the Los Angeles County Department of Children and Family Services (Department) filed a petition under section 300, subdivisions (b) and (j) on behalf of Jayden. It alleged: mother was a user of methamphetamine, and she had a positive toxicology screen when Jayden was born in December 2013; there was an open dependency case for mother's other children because she improperly disciplined Am. E. by striking her thigh with a play rake; and mother, her male companion named Alvaro E. (Alvaro),⁴ the minor sisters and T.E. had a history of engaging in violent altercations. In addition, the petition alleged that Jayden's father, Jose G. (father), had a history of illicit drug use and was a recent user of methamphetamine. Based on these allegations, the petition alleged Jayden was at risk of harm.

Detention Report; Detention

Jayden was born premature and had problems with feeding and bloating in his stomach. Doctors decided he should be hospitalized for a few weeks for monitoring. In an interview with a social worker, mother stated that she started smoking methamphetamine in January 2013, and had last used it on November 5, 2013, and November 9, 2013.

⁴ Alvaro is the biological father of T.E. and the minor sisters.

On January 3, 2014, the juvenile court ordered Jayden detained. He was placed in foster care. The Department was ordered to provide the family with reunification services.

Jurisdiction; Disposition

On March 14, 2014, the juvenile court declared Jayden a dependent under section 300, subdivisions (b) and (j), removed him from parental custody, and granted monitored visits for both parents. Mother was ordered to participate in parenting classes, a domestic violence support group for victims, a drug and alcohol program with aftercare, and weekly random drug and alcohol testing.

Jayden's Skull Fracture; Change of Foster Home; His Developmental Delays

At the end of April 2014, Jayden was seen at the Los Angeles County USC Medical Center (Medical Center). He was diagnosed with failure to thrive and admitted for further evaluation. Four days later, one of Jayden's doctors informed the social worker that Jayden had a large skull fracture that was in the process of healing. As a result, he had been transferred to Children's Hospital Los Angeles (Children's Hospital) and went through surgery to drain subdural fluid.

Mother informed the social worker that on two occasions, she was asked by Jayden's foster mother (Ms. E.) to babysit Jayden and other foster children in her charge. On those occasions, Ms. E. stayed out until 3:00 a.m. And when she returned, she appeared to be intoxicated. Mother did not report the incidents sooner because Ms. E. said the social worker would not believe mother. Also, Ms. E. said she would make sure Jayden was placed for adoption. The social worker told mother she had placed Jayden at risk by not informing the social worker

sooner. After a subsequent investigation, Jayden was removed from Ms. E.'s custody.

Jayden was prescribed a helmet for Plagiocephaly.⁵

In June 2014, Jayden was referred for an assessment of his developmental delays. In the comments section, the ensuing report stated: "Jayden scored well below average on the Developmental Assessment of Young Children (DAYC) in the domains of Physical Development[] and Adaptive Behavior[,] and below average in the domains of Cognition, Communication, and Social Emotional."

Status Review Report

Prior to the reporting period, mother and father were living in a self-built shack behind an apartment complex. Eventually, they rented a one-room apartment. Father worked as a manager for the owner of the apartment complex where they were renting, and mother assisted. In addition, father was working full-time at a factory where sofas were being made. Mother and father were consistently visiting with Jayden; those visits were monitored.

On May 15, 2014, Jayden was placed in an F-Rate certified home⁶ with Ms. B. At the time of his placement, he "was unable to lift his head due to his head being large and heavy." Ms. B. was "on top of" Jayden's medical needs. In August 2014, doctors performed surgery on Jayden's right kidney. They had planned to remove an obstruction, but the plan changed when the doctors

⁵ "Plagiocephaly" is "a deformity of the skull in which one side is more developed in the front, and the other side is more developed in the rear." (<<http://www.dictionary.com/browse/plagiocephaly>>[as of July 25, 2017].)

⁶ F-Rate certified home refers to a home in which the caregiver is qualified to work with medically fragile children.

determined the tissue was dead and the kidney had to be removed. The doctors hoped to save Jayden's second kidney, but there was a possibility it would have to be removed, and he would have to be on dialysis for life. Subsequently, Jayden gained weight, which brought his weight up to normal limits. Ms. B. was optimistic about Jayden's condition because his stomach was no longer bloated.

At eight months old, Jayden was able to turn and hold up his head. He continued to be seen by his pediatrician and urologist.

Mother failed to drug test on May 30, 2014, in the last week of June 2014, and several times in August 2014. During August 2014, mother's cell phone was disconnected. The Department informed the juvenile court that mother had failed to complete a parenting class, and she had only recently enrolled in a drug program. As for father, the Department concluded that even though he had been participating in a parenting class, his "cognitive understanding of basic parenting instruction" was low. In addition, father missed two drug tests, failed to enroll in a drug treatment program, had only partial motivation to attend services, and had prioritized his job over meeting with the social worker. The Department considered father noncompliant with the case plan.

Per the Department's report: "[Jayden] is medically fragile and requires ongoing medical attention. Unfortunately, mother is illiterate and father's reading level is limited[,] which will make things very difficult for Jayden to receive proper and timely medical attention and services. Furthermore, the parents do not have viable family support required in raising a medically fragile child." The social worker who authored the report determined

that Jayden was “at **high risk** of future harm or neglect if returned to the parent’s home and care.”

The Department “assessed mother’s compliance [with the case plan] to be sporadic” and hard to verify.

Initial Six-Month Review Hearings

On September 12, 2014, the juvenile court considered the Department’s status review report. The juvenile court ordered the Department to provide mother with referrals for a literacy program; provide mother and father with referrals for any medical training they need to care for Jayden; and prepare and submit a supplemental report on or before the date of the next hearing.

A contested hearing under section 366.21, subdivision (e) was set for October 21, 2014. On that date, the matter was trailed to a future date. The juvenile court ordered the Department to advise mother and father of all Jayden’s medical appointments in advance; provide mother and father with any special medical training needed to care for Jayden; provide mother with a referral for a Spanish speaking literacy program; and submit a supplemental report addressing mother’s and father’s progress, and any change in recommendation.

Fall 2014 Interim Review Reports

California Children’s Services approved Jayden’s request for a helmet.

The Department noted that mother was provided with a referral to the Los Angeles Public Library for a literacy program. About three weeks later, the social worker asked mother if she had started a literacy program, and she said no. She had not called to inquire because she lost the referral.

In a November 2014 interim review report, the Department stated: “Unfortunately, the mother does not appear to be motivated [to learn] to read and write so that she can be able to attend and request services for [Jayden]. To date, [mother] has not enrolled in a literacy program[,] and when [the social worker] advised her to get involved and attend [Jayden’s] medical appointments, [mother] indicated that she has her programs to attend[.]” The author noted that mother’s programs did not start until 6:00 p.m., and that she “does not seem to understand that her son is medically fragile and will [need] to continue to meet on a regular basis with doctors at LAC + USC Medical Center and Children’s Hospital Los Angeles. Furthermore, [father’s] reading level is limited and he may not be able to assist mother in following up with all of Jayden’s medical needs.” The Department recommended that the juvenile court terminate reunification services and set a permanent plan hearing under section 366.26.

The Department advised the juvenile court that Jayden received his helmet in mid-November 2014. Ms. B. received instructions on how to clean the helmet on a daily-basis. Jayden was wearing the helmet all day and night except for when he was taking a bath. Ms. B. was taking Jayden to get the helmet readjusted on a weekly basis at Cranial Kidz in Reseda.

Mother and father did not attend Jayden’s first two appointments at Cranial Kidz. On November 21, 2014, a social worker showed up to mother and father’s visit with Jayden and reminded them that, per the juvenile court’s order, they were supposed to attend Jayden’s medical appointments. When the social worker asked why they had not been attending, father said he was working and wanted to know how mother was supposed to

get to Cranial Kidz by herself. The social work pointed out that mother had been provided with a monthly bus pass so she could visit her children, attend programs, and go to medical appointments with Jayden. Mother indicated that she had not been going with Jayden because Cranial Kidz was too far away and she did not know how to get there. The social worker explained that mother could call the bus line and ask how to get from one specific place to another. At the next Cranial Kidz appointment, mother and father were present.

In late November 2014, Jayden had a fever and Ms. B. took him to the emergency room. He was diagnosed with a urinary tract infection related to kidney problems. Antibiotics were prescribed, and Ms. B. had to schedule a follow-up appointment with Jayden's urologist.

Ms. B. reported that she had to instruct mother to assist with the care of the wound on Jayden's stomach from his kidney surgery, that mother showed no initiative when caring for Jayden, and that when Ms. B. removed the gauze and the wound started to bleed, mother turned away and stared at a wall.

Prior to Jayden's 12-month physical examination with his primary care physician on December 8, 2014, at Medical Center, mother called Ms. B. to say she was not feeling well and therefore would not attend. The doctor informed Ms. B. that it appeared Jayden was exposed to alcohol in utero because he had facial features associated with Fetal Alcohol Syndrome.

A December 2014 interim review report concluded that Jayden would be at very high risk of medical neglect if he reunified with mother and father. Though Jayden had constant urology and Cranial Kidz appointments, mother and father had attended only one of his doctor appointments, and they were

unable to express concerns or ask for assistance. In addition, mother appeared dependent on father for transportation, so it was unclear if she could act on her own in an emergency. The author noted that mother was unemployed and pregnant with twins.

Last Minute Information for the Juvenile Court

In advance of a February 19, 2015, contested six-month review hearing, the Department advised the juvenile court that mother did not know how to control or provide structure for her children. The Department noted that mother's visits with her four daughters were supervised by Ms. R. During those visits, N.M. would run around the play area and mother would not intervene. N.M. would stop only after being admonished by Ms. R. Also, Ms. R. reported that mother would spend most of the time during visits interacting with only T.E. and Am. E.; Ad. E. and N.M. noticed and sought attention from Ms. R.

At a sibling visit on January 19, 2015, mother brought an adult daughter as well as the adult daughter's husband and child. The minor sisters and T.E. spent time talking to the adult daughter and did not spend any time with Jayden.

During one of mother's visits with Jayden, the social worker observed that he would turn to Ms. B. when he was hungry. Ms. B. had to direct mother on how to prepare his milk. Mother showed no initiative in caring and providing for Jayden; the social worker had to ask mother to change his diaper.

T.E. did not want to return to mother's custody. As a result, the plan was for T.E. to stay in extended foster care until she was able to get into a transitional housing program.

Mother reported that she was a week away from completing her six-month substance abuse program, and that she

had recently started attending Narcotics Anonymous. According to mother, she wanted to enroll in a literacy program but it conflicted with her substance abuse program.

At a February 16, 2015, visit with all of her children, mother showed up two hours late. Mother interacted with all of her children. Ad. E. asked the social worker how mother could take care of them all when she was getting ready to have two babies. According to the social worker, Ad. E. began to cry and stated she thinks it is bad mother is having so many children.

Mother and father started attending Jayden's medical appointments, but they still did not seem to understand the severity of his condition. Also, mother remained reliant on father for transportation, and told the social worker he might lose his job if he kept asking for days off from his job.

Contested Six-Month Review

On February 19, 2015, the juvenile court considered the Department's various reports and ordered Jayden to remain suitably placed.

Termination of Reunification Services for T.E.

In February 2015, T.E. was 18 and a half years of age. The juvenile court terminated reunification services for T.E. but retained jurisdiction and declared her a nonminor dependent.⁷

⁷ "In 2008, in order to improve outcomes for children who aged out of foster care, Congress passed the Fostering Connections to Success and Increasing Adoptions Act of 2008. [Citation.] Among other things, the 2008 act provided federal funding to reimburse states for part of the cost of providing maintenance payments to eligible youths who remained in foster care after their 18th birthdays, so long as those youths had not yet reached their 21st birthdays and were either enrolled in school, employed at least 80 hours a month, or participating in

Status Review Report

For a hearing scheduled for September 3, 2015, the Department reported that mother had given birth to the twins in April 2015 and was meeting their medical and emotional needs.

Mother and father were living with the twins in a one-bedroom apartment with two bunk beds and two cribs. On weekends, the minor sisters and T.E. went to the apartment for unmonitored visits and slept in the bunk beds. Mother and father planned for him to reside in a garage if the girls returned to mother's custody. Father was supporting the family financially, and aided with feeding the twins and changing their diapers.

Jayden continued to reside with Ms. B., and she was meeting all of his medical and emotional needs. On August 12, 2015, Jayden was seen at Children's Hospital for a follow up visit with his urologist. He was scheduled for surgery on his remaining kidney. Though mother attended the appointment and was told about the surgery, she did not ask any questions. Moreover, she did not appear to fully understand the reason for the procedure. She was at the hospital during the surgery.

Mother completed a domestic violence program, a substance abuse program, and a parenting program. Her drug tests were negative except for once after she gave birth by cesarean section and tested positive for Codeine and morphine.

'an activity designed to promote or remove barriers to employment.' [Citation.] [¶] In 2010, in order to take advantage of expanded federal foster care funding, California passed Assembly Bill 12. As relevant here, Assembly Bill 12 permits a juvenile court to continue to exercise dependency jurisdiction and provide foster care benefits to eligible nonminors until the age of 21." (*In re A.A.* (2016) 243 Cal.App.4th 765, 772–773.)

She was not attending a court-ordered aftercare program. Father completed a parenting program but did not receive a certificate of completion because his reading level was that of a fourth grader, and he would not have been able to pass the written exam. He had consistently tested negative for drugs.

Mother missed several visits with Jayden, and she missed a couple of appointments at Cranial Kidz because father was not able to take time off from work. Also, she missed Jayden's follow up appointments at Medical Center on April 14, 2015, and July 14, 2015. She told the social worker she did not have a ride and was too far along in her pregnancy to take the bus.

Since the twins' birth, Ms. B. would bring Jayden to mother's home for weekly visits. This allowed him to visit with T.E. and the minor sisters. Ms. B. reported that mother was attentive to Jayden's needs. The home was clean, and mother always had food prepared for the girls.

September 3, 2015, Hearing

The juvenile court retained T.E. in her placement as a nonminor dependent, permitted Am. E., Ad. E., and N.M. to return to mother's custody, and ordered Jayden to remain suitably placed. The Department was ordered to provide mother and father referrals for medical training for Jayden.

Jayden's permanency review hearing was continued.

Last Minute Information for Juvenile Court

The social worker advised the parents in advance of Jayden's medical appointments, and gave them referrals for medical training. Mother attended Jayden's appointment at Children's Hospital.

During two visits with Jayden in September 2015, mother cared for the twins while father interacted with Jayden.

Subsequently, mother and father missed five visits. According to Ms. B., father called the day before those visits and said he was canceling them because of work. He never asked to reschedule any of the visits. Neither mother nor father contacted the Department to indicate they were having difficulty attending visits. Father told the social worker he had been unable to visit Jayden because he was working and staying in Fontana, and mother was unable to travel on the bus with the twins.

For a scheduled visit at 6:00 p.m. on October 14, 2015, Ms. B. waited for mother and father for 30 minutes. Mother called and asked Ms. B. to wait until 7:00 p.m. According to mother, they could not make it on time because father had been called to drug test. Ms. B. did not wait. When the social worker checked, there was no record that father drug tested on that day.

Mother had consistent negative drug tests. Father, on the other hand, tested positive for marijuana three times. Also, he spent most of his time away from the family home.

Jayden required ongoing care for his one kidney, which was not fully functioning. The social worker noted that it “is crucial that Jayden’s caretaker continue to maintain all future needed appointments to avoid Jayden losing his other kidney.” Also, the social worker informed the juvenile court that Jayden was developmentally delayed, and Regional Center was providing him with physical and child development therapy. Meanwhile, mother “ha[d] her hands full with caring for her newborn twins and three young school age daughters.”

The Department recommended that the juvenile court terminate reunification services.

Permanency Review Hearing

On October 27, 2015, the juvenile court held a hearing at which it terminated reunification services and gave notice to mother and father that it was going to set a hearing pursuant to section 366.26.

The minute order stated, inter alia, “The [juvenile court] finds the mother [is] in partial compliance with the case plan.”

Jurisdiction Over the Twins

In January 2016, N.M. reported that father inappropriately touched her.

The following month, the Department filed a dependency petition on behalf of the twins pursuant to section 300, subdivisions (b) and (j). The juvenile court found a prima facie basis for detention.

Father was ordered to attend sex abuse counseling, a parenting class and individual counseling.

Section 366.26 Report

The Department reported that after the twins were removed from father’s care, he indicated he would no longer provide mother with financial assistance.

Jayden had been with Ms. B. for 21 months. She had provided him with a permanent and loving home, and she had met his medical needs. The social worker observed that Jayden had a strong bond with Ms. B. He continued to receive weekly physical, play, and speech therapy.

On November 16, 2015, father visited Jayden but mother did not; on November 28, 2015, Ms. B. took Jayden to mother’s home to celebrate a sibling’s baptism; on December 14, 2015, father visited alone; in December 2015 on Jayden’s second birthday, neither mother nor father called or visited; on

December 24, and 31, 2015, Ms. B. transported Jayden for holiday visits, but neither mother nor father showed up; and on January 19, 2016, mother told Ms. B. she would not visit due to a lack of transportation.

Jayden started receiving speech therapy two hours a week.

Status Review Report

As of April 26, 2016, the Department reported that mother and father were not consistent with their visits with Jayden. The visits had been only once or twice a month since the prior November.

Jayden continued to do well in Ms. B.'s home. They were affectionate toward each other. Due to his history as well as his nephroureteral stent, his left kidney was under constant medical observation.

Last Minute Information for Juvenile Court

Jayden and his various siblings had visits on February 26, 2016, April 2, 2016, April 30, 2016, June 18, 2016, and July 2, 2016. According to Ms. B., it was difficult to contact mother because she did not have a working phone or any means of communication for six weeks. Mother was not making an effort to contact Ms. B. or the social worker to set up visits.

In July 2016, the social worker, mother and Ms. B. conferred and agreed to weekly visits on Saturdays for four hours. They decided to meet at Children's Hospital, which had a playground and cafeteria. Either Ms. B. or T.E. would monitor the visits, and mother agreed to confirm visits with Ms. B. beforehand.

The next visit, Ms. B. left after waiting 40 minutes for mother and the siblings to show up. The next week, the social worker attempted to contact mother to confirm the visit, but her

phone was disconnected. All parties arrived on time for the visit. Mother spent most of the visitation time with Jayden while the siblings played with their electronics. They interacted with Jayden sporadically, and Ms. B. did not observe a bond between them. N.M. made a new friend at the visitation site who she played with on the playground, and T.E. held one of the twins. When the visit was over, Jayden had no issues leaving with Ms. B.

Second Section 366.26 Report

The Department noted that Jayden had additional visits with mother and his siblings on July 9, 2016, and July 16, 2016. Mother had an individual visit with Jayden at the juvenile court on July 7, 2016.

In its assessment/evaluation, the Department stated: “The child Jayden has been residing in the home of Ms. B. for over 2 years and has a strong bond and relationship with her. The child knows caregiver as his mother and has been observed to be happy and comfortable in the home [of] Ms. B. It is [in] the best interest of the child that he remains in the place he knows as home where he can be stable and receive the care that he needs.”

The various service provider reports attached to the section 366.26 report stated that Jayden was receiving physical therapy three times a month and in-home speech therapy two times a week.

In a January 2016 medical assessment and plan, a doctor from Medical Center wrote that Jayden had a “[h]istory of bilateral ureteropelvic junction obstructions with massive dilated right renal pelvis and markedly dilated left renal pelvis. He is followed by [Children’s Hospital] Urology. [Jayden] had surgery (right kidney removal) in August 2014 and in October 2014 had

left open pyeloplasty with nephroureteral stent placement. [Jayden] [had] worsening left hydronephrosis per renal ultrasound done on [June 24, 2015].”

The Minor Sisters’ Section 388 Petition

On July 19, 2016, the minor sisters filed a section 388 petition requesting that they be allowed to participate in the section 366.26 hearing, and that the juvenile court return Jayden to mother's custody.

Mother's Section 388 Petition

On September 9, 2016, mother filed a section 388 petition and requested the return of Jayden to her custody or, alternatively, an order granting her increased visitation and renewed family reunification services.

Interim Review Report

The Department updated the juvenile court regarding family visits. On July 30, 2016, T.E. did not show up. The siblings spent approximately 20 minutes out of the four-hour visit playing with Jayden. Either Am. E. or Ad. E. fell asleep on a chair for about an hour because she was not feeling well. The other one of those two played electronic games, and N.M. played by herself or with another child. Mother played with and cared for all the children.

On August 6, 2016, all parties arrived for the visit on time. N.M. played with someone else on the playground, and Am. E. and Ad. E. played with electronics. The girls interacted minimally with Jayden. Mother played with Jayden and alternated with T.E. in caring for the twins.

The visits on August 13 and August 20, 2016, followed the same pattern.

On August 27, 2016, the visit took place at a McDonald's restaurant. Because all the children were hungry, the caregiver bought them hamburgers. The siblings interacted with Jayden more than usual, most likely because the play area was smaller and there was less time to visit after eating.

Mother cancelled the September 3, 2016, visit because the twins were sick. On September 10, 2016, Am. E. and Ad. E. spent most of their time eating and playing on electronic games. Mother spent most of her time with Jayden except when the twins needed her. Though Jayden was playful with his siblings and recognized them, he did not have a bond with them. He looked to Ms. B. to provide for his needs, asking her for snacks and help. He recognized her as his mother, and he would often take her hand to pull her into playing with him.

Though mother spent time with Jayden during most of the visits, she never asked Ms. B. or the social worker about his well-being. Nor did mother ask about his doctor's appointments, his current health condition, or his interests, and she did not know about the services he received from doctors and therapists.

The Department recommended a permanent plan of adoption by Ms. B. and continued visits with the siblings.

Hearing on the Section 388 Petitions

On September 29, 2016, the juvenile court held a hearing on the section 388 petitions filed by mother and the minor sisters.

The parties stipulated that if called, mother would testify as follows: She and the siblings visited Jayden on a weekly basis, for four hours. Mother believed Jayden was developmentally delayed; for instance, he was not yet potty-trained and still drank from a bottle. Though mother knew Jayden had a kidney

problem that required surgery, she was never told the nature of the kidney problem. The kidney problem was now resolved.

Thirteen-year-old Am. E. testified in chambers. She said the family had been visiting Jayden for about a year. The visits occurred once a week at McDonald's and lasted three hours. On visitation days, the family waited for Jayden on the playground. When Ms. B. arrived with Jayden, he would run to his family, say hi and kiss them. He would immediately engage in play with his siblings. He looked happy and excited to be with his siblings. Also, Jayden would run to mother and hug her. Sometimes when they were sitting together, Jayden would hug and kiss her. He would smile when he was with mother. She would pick him up, ask him questions, and bring him things like cookies to eat.

According to Am. E., Jayden referred to Ms. B. as "mom" and sometimes referred to mother as "ma." He liked to run around, and he liked coloring books. He did not know the siblings' names. To communicate, he would point at things he wanted, like a juice bottle. When visits ended, the siblings would give Jayden hugs, and he would frown as though sad. Sometimes he wanted to continue playing. But he did not cry, and he would go to Ms. B.

After hearing the evidence and argument, the juvenile court expressed its view that this case was unusual because mother had rehabilitated herself and successfully regained custody of her other children. Also, the juvenile court believed the bond between Jayden and mother and his siblings had been downplayed by the Department. Nonetheless, the juvenile court stated that it could not automatically assume Jayden's best interests would be served by returning him to mother's custody, or by providing further reunification services.

The juvenile court noted that mother did not have any training in the special services Jayden required. Ms. B., on the other hand, had acted as his parent for three quarters of his life. She had taken him to every medical appointment and done everything necessary so that he would thrive in her care. In the juvenile court's view, Jayden identified Ms. B. as his mother. Moreover, there was no evidence that Jayden would be better off with mother than with Ms. B. In particular, the juvenile court concluded there was no evidence mother would ensure Jayden went to his medical appointments, or that she would follow medical instructions. The juvenile court commented: "Maybe if [Jayden] didn't have special needs, mother would be able to take care of him the way she's taking care of everybody else. That's not necessarily true. It could be one more child is the stressor that she needs to go over the edge and start using drugs again. That could be the possibility too. But I don't know that. [¶] All I know is this: Jayden, [is] a special needs child, . . . [and] there's nothing that I can do about that. I don't have a magic wand to make this condition go away." The juvenile court denied the section 388 petitions.

Both the minor sisters and mother appealed.

Status Review Report

Mother and the siblings continued to visit Jayden on Saturdays for four hours. Due to his past kidney problems, Jayden was continuing to follow up with his urologist.

Last Minute Information for Juvenile Court

On November 21, 2016, the Department reported that Ms. B. wanted to adopt Jayden. She was willing to enter into a postadoption contract to ensure continued contact with the biological family.

Contested Section 366.26 Hearing

On November 23, 2016, the juvenile court received various Department reports in evidence and heard testimony from mother and Ms. B.

Mother testified that she and sometimes her other children visited Jayden every Saturday for four hours at a time. She testified she had been visiting weekly for three years. At the beginning of visits, Jayden would hug and kiss her, and he would hug his siblings. He appeared happy and active with the family. They would draw and eat together. On occasions when T.E. rather than Ms. B. monitored the visits, Jayden did not cry when Ms. B. dropped him off. At the end of visits, Jayden would throw a tantrum. Jayden referred to mother as “ma” and Ms. B. as “mama.” In mother’s opinion, it would be detrimental to Jayden if her parental rights were terminated.

Ms. B. testified that she had cared for Jayden since May 2014. The most recent visit was the only time T.E. monitored alone. Jayden never cried or threw a tantrum when visits ended.

Upon considering the evidence and arguments of counsel, the juvenile court terminated mother’s parental rights.

Mother appealed.

DISCUSSION

I. The Section 388 Petitions.

The deciding issue below was whether granting the section 388 petitions was in Jayden’s best interests. As we discuss, the juvenile court properly decided this issue against mother and the minor sisters.

A. Applicable Law; Standard of Review.

A parent or other person having an interest in a dependent child may petition the juvenile court to change, modify, or set

aside any previous order. (§ 388.) The petitioning party must demonstrate there is a change of circumstances or new evidence, and the requested relief is in the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) A juvenile court's ruling on a section 388 petition is reviewed for an abuse of discretion. (*Ibid.*) The test for whether a juvenile court abused its discretion is whether it exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, a reviewing court cannot substitute its own decision for that of the juvenile court. (*In re J.C.* (2014) 226 Cal.App.4th 503, 525–526.)

Courts cannot simply compare the parent's home to the caretaker's home; the best interests test involves an examination of multiple factors along a continuum. Accordingly, case law suggests the following factors may be useful when a juvenile court determines a child's best interests: the seriousness of the problem giving rise to the dependency, and the reasons for continuance of that problem; the strength of the relative bonds that child has with the parent and the caretaker; and "the degree to which the problem [giving rise to the case] may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531–533.)

The factors to be considered vary depending upon context and the stage of the proceedings. "The focus of California's dependency system during the reunification period is to 'preserve the family whenever possible.' [Citation.]" (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420.) But once reunification services are terminated and a case is set for a section 366.26 hearing, the focus shifts to the needs of the child for permanency and stability. (*In re J.C., supra*, 226 Cal.App.4th at p. 526.) If custody is sustained over a significant period, a

child's need for continuity and stability “assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) There “is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A [juvenile] court hearing a motion for change of placement at this stage of the proceedings must recognize this shift in focus of determining the ultimate question before it, that is, the best interests of the child.” (*Ibid.*)

B. *Custody.*

Each side can point to facts supporting its position.

For mother, she had rehabilitated such that her issues with substance abuse had been resolved. In addition, mother reunified with the minor sisters, Jayden's medical condition and developmental delays had improved, and mother had been consistent with visits after July 2016. Mother completed six hours of training for working with medically fragile children. Even though there is a strong bond between Jayden and Ms. B., there is evidence that Jayden does in fact have a bond with mother and the minor sisters.

Regarding Jayden, mother notes that his physical therapy was reduced from four to three times a month, and adds, “[W]hile Jayden was still being followed by a neurosurgeon and a urologist, he was no longer wearing a cranial reshaping helmet, [and] there had been no further neurological issues[.]” She cites to a June 2016 progress report indicating that Jayden made excellent progress with his gross motor skills, and he was very active.

On the other hand, Jayden was born in December 2013, and never lived with mother. He was placed with Ms. B. in May 2014, so he had lived with her as his full-time caretaker for over two years at the time of the juvenile court's ruling on the section 388 petition. The record established that he was a medically fragile child with special needs being met by Ms. B. His right kidney was removed, and a nephroureteral stent was placed in his left kidney, which required that he continue to follow up with his urologist at Children's Hospital. There was a danger that he could lose his remaining kidney and end up on dialysis for the rest of his life if he did not continue in a doctor's care. Furthermore, there was substantial evidence that Jayden looked to Ms. B. as his mother. With respect to mother, there was substantial evidence that she did not fully understand Jayden's special needs; most alarming, she thought Jayden's kidney problem was resolved, and she did not seem to be aware that he has a nephroureteral stent. She often missed doctor appointments. Also, at least until July 2016, she often missed visits with Jayden and/or did not have regularly scheduled visits. On numerous occasions she failed to communicate with the social worker—whether it pertained to Jayden's condition, setting up visits, or following through with case plan referrals—signaling that mother did not understand the urgency and necessity of communication as it related to the dependency case. Significantly, mother never proceeded to unmonitored visits, so the juvenile court did not have proof as to how successful mother could be as Jayden's parent without supervision. Her case plan compliance was only partial. And her stipulated testimony failed to address the issue that concerned the juvenile court the most: How was mother going to ensure that Jayden's needs were met?

The facts give rise to two reasonable inferences. The first is that mother was ready and able to take care of Jayden because she had reunified with her other children and they remained in her care. The second is that mother did not have the ability to care for a medically fragile child like Jayden because of her lack of understanding of his medical condition, her partial case plan compliance, and a lack of ability or initiative that kept her from attending all of Jayden's medical appointments. We therefore cannot substitute our judgment for that of the juvenile court. Undergirding this determination is our conclusion that mother and the minor sisters did not rebut the presumption that keeping Jayden in his long term placement was in his best interests. Jayden's fundamental right to "have a placement that is stable [and] permanent" (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419) therefore must be recognized.

Mother argues the juvenile court should have considered that Jayden's best interests would be served by maintaining his existing family. But she has not cited any case law establishing this as a per se rule. Case law establishes the opposite; there is no one factor that is dispositive.

The minor sisters argue that the juvenile court should have permitted Jayden to return home so they can perpetuate their sibling relationship. They point to a variety of statutes to show that protecting sibling relationships is a policy of this state. (§ 366.29 [permitting adoptive parents to agree to postadoptive sibling contact]; § 16002, subds. (a) & (e) [expressing legislative intent that siblings who are removed from their parents' custody be placed in foster care together or, alternatively, that they have visitation; also expressing legislative intent that a permanent plan after termination of parental rights include ongoing contact

with siblings]; § 366.26, subd. (c)(1)(B)(v) [establishing a sibling relationship exception to the termination of parental rights].) Then they suggest that it will be damaging to Jayden to be the only one of his siblings who was not raised in the same household because he will feel like the odd man out, and he will be deprived of a deep connection with his siblings.

We agree that sibling relationships are important, but we cannot accede to the minor sisters' assignment of error. They contend the juvenile court gave far too much weight to the role played by Ms. B., and not enough weight to the effect the absence of all Jayden's siblings in his life would have on him, and to mother's progress in the case plan demonstrating she could attend to Jayden's needs. This contention rests upon the false premise that the juvenile court was required to accept that mother had made sufficient progress in the case plan, and that Jayden would be safe in her care. That is not so, as we have already indicated. Moreover, we note that Ms. B. indicated she would facilitate continued sibling contact.

C. Further Reunification Services.

Mother makes no specific argument regarding whether the juvenile court should have granted her further reunification services as alternative relief. Nonetheless, we have examined the issue.

Section 361.5, subdivision (a)(1)(B) provides that when a child was removed from his or her parents when he was under three years of age, then reunification services shall be provided for a period of six months from the date of the dispositional hearing, but not longer than 12 months from the date the child entered foster care. Subdivision (a)(3)(A) of that statute permits court-ordered services to be extended up to a maximum period of

18 months after the child was originally removed from the physical custody of his or her parents “if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period.” Section 366.21, subdivision (f) provides that a permanency hearing shall be held no later than 12 months after the date the child entered foster care.

Jayden was detained and placed in foster care in January 2014. Mother received reunification services from the date of Jayden’s detention until October 27, 2015, which was more than 18 months. At the October 27, 2015, permanency planning hearing, the juvenile court found that Jayden could not be returned to mother, and there was no substantial probability he would be returned within six months. Based on the juvenile court’s conclusions, an order granting further reunification services pursuant to section 388 would not have fit within the spirit of the statutory scheme. Rather, it would have resulted in a delay of permanency that would have been unfair to Jayden. In light of Jayden’s age, mother’s insufficient progress, and the length of the dependency case, further reunification services were not warranted.

II. Termination of Parental Rights.

Mother and the minor sisters ask us to reverse termination of parental rights if we reverse the orders denying their section 388 petitions. Because we are affirming those orders, the termination of parental rights issue is moot.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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