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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re S.C., A Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.S.,

Defendant and Appellant.

B236098

(Los Angeles County
Super. Ct. No. CK21323)

APPEAL from an order of the Superior Court of Los Angeles County.
Marilyn Kading Martinez, Commissioner. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Tracey F. Dodds, Deputy County Counsel, for Respondent.

Father I.S. appeals from the trial court's summary denial of his petition under Welfare and Institutions Code section 388 concerning his son, S. We affirm.

FACTS AND PROCEEDINGS

S was born in January 2007 to mother T and appellant father I.S. Three days before S's birth, respondent Department of Children and Family Services detained mother's and father's five other children – A and C born in 1996, J born in 1998, Si born in 2000, and Sa born in 2002 – and placed them in foster care with Mr. and Mrs. T. Upon S's birth, respondent DCFS placed him with the same foster family as his five older siblings. (*I.S. et al v. Superior Court* (Sept. 30, 2008, B206951) [nonpub. opn.] [at p. 3].) In conjunction with DCFS's detention of the six children, DCFS filed a petition under Welfare and Institutions Code section 300 alleging mother committed domestic violence against father and physically abused the children.¹ The court sustained the petition, and ordered family reunification services and monitored visitation with the children by mother, and unmonitored visitation by father. The court also ordered mother and father to attend parenting and domestic violence classes and counseling.

Thus began more than four years of social workers' reports, case reviews, and hearings, the details of which are largely tangential to the appeal here. The present appeal involves only father's section 388 petition seeking S's placement at home with father and mother. In March 2008, a contested 12-month review hearing was held. The court found mother regularly visited her children and was in substantial compliance with her case plan, but the court also found mother minimized the gravity of her domestic violence against father and abuse of their children, which included hitting the children with a belt, and, in the case of the oldest child A, hitting him while he was handcuffed. The court additionally found father insufficiently understood the nature of mother's domestic violence and child abuse, and had not completed his case plan. The court thus

¹ All further undesignated section references are to the Welfare and Institution Code.

terminated family reunification services and scheduled a permanency planning hearing. In an unpublished decision, we denied mother and father's writ petition objecting to a permanency planning hearing, but ordered the court to continue the hearing to permit mother and father to continue to visit S. (*I.S. et al. v. Superior Court, supra*, B206951 at p. 1.)

In December 2008, the children's foster mother Mrs. T died. Her widower, Mr. T, agreed to continue to be a foster parent for A, the oldest of the six children, but asked DCFS to replace the other children because he could not care for them by himself. In February 2009, the court declared the children unadoptable. The court ordered that boys A and S be placed with Mr. T and ordered girls C, J, Si, and Sa be placed together in a foster home. In April 2010, the court appointed Mr. T as S's guardian. At the same time, the court authorized father to have unmonitored day visits with S, and granted DCFS discretion to liberalize father's visitation to overnights when he had appropriate housing. As of February 2011, father enjoyed unmonitored visitation with S, including overnights, but S, who liked to stay close to Mr. T, remained placed with Mr. T.

In July 2011, mother and father were living together and their four daughters – A, C, Si, and Sa – were in their custody under a family maintenance plan. At that point, the court terminated jurisdiction over A because he had become a ward of the court under Welfare and Institutions Code section 602 for acts of juvenile delinquency. The court also terminated its jurisdiction over S, who remained placed with Mr. T under his guardianship.

Five weeks later, father filed the section 388 petition that is at issue here, requesting S's placement at home with mother and father. The court summarily denied the petition without a hearing because father's proposal was not in S's best interests. S had lived his entire life with Mr. T, never with father or mother. The court noted in denying father's petition that "S[] is very stable with long-term caretaker who is [his] legal guardian. Court even terminated jurisdiction on 7/19/11 because of this stability. S[]'s attorney advised court that she recommends denial of [section] 388 request." Father appeals from the denial of his petition.

DISCUSSION

Section 388 permits a parent to petition the dependency court to change a previous order when the change would be in a child's best interests.² For a petition to succeed, the parent must present new evidence or circumstances that justify modifying a court's prior order. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806-807.) In deciding whether to grant a hearing on a section 388 petition, the juvenile court may summarily deny the petition without a hearing if the court finds that the "petition . . . fails to state a change of circumstances or new evidence that may require a change of order or termination of jurisdiction or, that the requested modification would promote the best interest of the child." (Cal. Rules of Court, rule 5.570(d).) On the other hand, if the petition states a prima facie case for relief, the court shall conduct a hearing. (§ 388, subd. (d).) Courts must construe a section 388 petition liberally in favor of granting a hearing. (Cal. Rules of Court, rule 5.570.) "If the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing. [Citation.] The court may deny the application *ex parte* only if the petition fails to state a change of circumstance or new evidence that even *might* require a change of order or termination of jurisdiction." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461, italics in original.) We review a dependency court's ruling denying a section 388 petition under the deferential abuse of discretion standard. (*In re A.A.* (2012) 203 Cal.App.4th 597, 612; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Father's petition alleged then-four-year-old S had been in family therapy for more than a year. According to the petition, S has had "very good quality" unmonitored

² Section 388, subdivision (a) provides: "Any . . . person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made"

overnight visits with his parents and siblings since February 2011. The petition further alleged that “The family has made significant progress, as they now present as a normal, intact family.” Placing S with mother and father would serve his best interests, the petition alleged, because S had a strong bond with his parents and siblings. According to the petition, S “will benefit from living as a member of his biological family who can provide him with the natural love and support he needs.” In support of his petition, father filed a letter from licensed marital and family therapist, Dr. Susan Swim. Dr. Swim wrote that S appeared attached to mother and father, and did not hesitate in interacting with them.

The court summarily denied the petition. In doing so, it did not abuse its discretion. The court’s familiarity with a family’s circumstances weighs in favor of the court’s decision. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) S had been involved in dependency proceedings since his birth. Mr. T was the only caretaker S had known. S’s placement with Mr. T was stable, healthy, and secure. “[A] primary consideration in determining the child’s best interest is the goal of assuring stability and continuity. When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role. That need often will dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child. Thus, one moving for a change of placement bears the burden of proof to show, by a preponderance of the evidence that there is new evidence or that there are changed circumstances that may mean a change of placement is in the best interest of the child.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 464.) By the test of *Angel B.*, the court ruled correctly.

In affirming the court’s ruling, we do not understand the court to have done, as father contends, a simple side-by-side comparison of Mr. T’s and father’s homes. A minor’s best interest regarding a proposed change in placement must take into account the importance of familial ties. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529-530.) A court must not assess a minor’s interests in a vacuum without allowing for those ties. We see nothing in the record, however, that suggests the court ignored S’s family ties in

denying father's petition. The court simply concluded that the value of those ties did not make it in S's best interests to remove him from the only caretaker he had ever known.

DISPOSITION

The court's order denying father's section 388 petition is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.