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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.H. et al.,

Persons Coming Under the
Juvenile Court Law.

B288279

(Los Angeles County
Super. Ct. No. DK13892)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRENDA H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Pete R. Navarro, Commissioner. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Brenda H.'s (mother's) six-week-old infant, N.H., was removed from her care by the Los Angeles County Department of Children and Family Services (DCFS) in October 2015 when he was less than two months old due to allegations mother had a history of substance abuse and mental illness, and had exposed N.H. to her male companion's drug use and domestic violence. After approximately one year, the court terminated reunification services for mother, finding she had failed to comply with court-ordered services. Mother gave birth to another child, L.H., in November 2016; he was immediately removed from her care due to her failure to reunify with N.H. The court denied mother's request for reunification services with respect to L.H.

Mother petitioned the court three times to modify the court's previous orders to reinstate reunification services and liberalize her visitation with N.H. and L.H. After a hearing, the court denied mother's first request to change a court order pursuant to Welfare and Institutions Code section 388, subdivision (a).¹ The court denied mother hearings on her second and third section 388 petitions. Mother appeals only from the third section 388 petition, filed on December 21, 2017.

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

As the court did not abuse its discretion in denying mother a hearing on her third section 388 petition, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *The child N.H.*

The family came to the attention of DCFS on October 18, 2015 after a referral alleged mother was schizophrenic and not taking her medication, had a history of substance abuse, was spending time with drug users, and would leave home with N.H. and not return until late at night. In an interview with a DCFS social worker, mother reported she had overcome her addiction to methamphetamine and other drugs. Mother also stated that although she had not relapsed, she spent time every day with her male companion, Luis V.,² who used methamphetamine and other drugs in front of mother and N.H. Mother denied that Luis had ever physically abused her. According to a July 2014 police report, however, Luis had punched mother in the mouth, knocked her down, and kicked her in the back and legs because she was not able to massage him the way he wanted. Mother also reported that she heard voices on a daily basis telling her to hurt others. DCFS removed N.H. from mother's care that day and placed him in protective custody.

² Luis was originally N.H.'s purported father. Based on information provided by mother and Luis, however, the court found at a December 11, 2015 hearing that Luis could not be N.H.'s father, and dismissed him from the petition. DCFS never located N.H.'s father, who reportedly lived in Mexico. The court found on February 10, 2016 that DCFS completed its due diligence to locate N.H.'s father.

DCFS filed a petition pursuant to section 300 on October 21, 2015. At the detention hearing on that date, the court ordered N.H. detained from mother and granted her monitored visitation.

According to DCFS's December 2015 jurisdiction and disposition report, mother was diagnosed with schizophrenia in 2013 but was not taking medication or receiving any mental health treatment. The report indicated mother was participating in weekly, monitored visits with N.H.

At the combined jurisdiction and disposition hearing on February 10, 2016, the court sustained the petition, finding the allegations true pursuant to section 300, subdivision (b) that N.H. had suffered, or was at substantial risk of suffering, serious physical harm or illness as a result of mother's failure to protect N.H. Specifically, the court found the following allegations true: (1) mother had a diagnosis of schizophrenia with auditory command hallucinations that rendered her unable to provide care for N.H., had been hospitalized previously for her psychiatric condition, and failed to take her psychotropic medications as prescribed; (2) mother and Luis had a history of violent altercations and mother had been granted a restraining order, which she repeatedly violated by continuing her relationship with Luis; and (3) mother had an unresolved history of methamphetamine abuse rendering her unable to provide for the constant care and supervision of N.H. at his young age.

The court declared N.H. a dependent child and removed him from mother's custody. The court ordered mother to participate in a dual diagnosis program, parenting classes, a psychological assessment, a psychiatric evaluation, individual counseling, and to take all prescribed psychotropic medications.

The court also ordered continued monitored visits with N.H. to be liberalized at DCFS's discretion.

As of May 2016, mother was attending individual counseling services, parenting classes, and a domestic violence program. Mother submitted to random, on-demand drug testing and tested negative between October 2015 and April 2016. Mother was also visiting with N.H. regularly. Mother was not, however, following up with psychiatric or substance abuse services. She reported to the DCFS social worker and to service providers that she did not need a psychiatric evaluation or mental health services. Mother was also continuing her relationship with Luis.

According to an August 11, 2016 status report prepared by DCFS, N.H. was healthy, content, and happy in his foster care placement and was demonstrating age-appropriate skills. N.H. was also attached to his caregivers. Mother was visiting N.H. regularly and was affectionate and attentive with him; in addition, N.H. appeared to be comfortable in mother's presence. Mother had completed parenting and domestic violence classes, but was not showing up for drug testing appointments and stopped attending individual counseling. She reiterated that she was not mentally ill and did not need mental health services. Mother told her DCFS social worker that the only reason N.H. was removed from her care was because "she needed time to work on herself, not because he was unsafe or placed in any kind of danger." DCFS social workers noted that mother appeared not to understand the court's expectations of her and that mother exhibited "disorganized speech accompanied by silliness and laughter for no reason." Mother also reported that she had not

seen Luis in a few months because he was frequently in jail and was “messed up.”

A September 21, 2016 interim report prepared by DCFS indicates that mother resumed drug testing, and tested positive for codeine and morphine on August 8, 2016. Mother stated the positive result was due to taking her mother’s medication. The report also indicated that mother missed two intake appointments for a substance abuse program. A DCFS social worker therefore assisted mother in contacting the program and scheduled another appointment. Mother attended the third appointment, but minimized her substance abuse to the intake worker. The intake worker therefore determined that mother could not be accepted into their program. The intake worker stated that it was obvious that mother had mental health issues and needed treatment, and reported that mother acknowledged being six months pregnant.

At a contested reunification review hearing on September 28, 2016, mother and N.H.’s counsel asked the court to give mother more time to comply with the case plan. DCFS opposed providing mother with more services. The court found that mother’s progress had been minimal, and that she had not demonstrated the “capacity and ability to complete the objectives of the treatment plan,” or to provide for N.H.’s needs. The court terminated reunification services with mother and set the permanency plan as adoption or legal guardianship with N.H.’s foster parents.

II. *The child L.H.*

In November 2016, mother gave birth to L.H. Luis was determined to be the father. On November 6, 2016, DCFS

received a referral alleging general child neglect. DCFS responded to the hospital and interviewed mother. Mother reported that she and Luis had known each other since elementary school and had an on and off relationship over the years. According to mother, Luis saw that mother was getting sad when N.H. was removed from her custody, and suggested they have a baby together. Luis's criminal record included domestic violence arrests in July 2014, January 2015, May 2015, November 2015, and February 2016. Mother reported that Luis was a drug addict and had told her that he liked using drugs and "did not have a reason to stop." Mother admitted that Luis had become violent when under the influence, but stated that he was never violent during her pregnancy. Luis was incarcerated at the time of L.H.'s birth.

Mother told the DCFS social worker that N.H. was removed from her care because she had the flu and N.H. had also gotten sick. She insisted there was no more to the story. Mother also stated that N.H. was only living with caretakers temporarily and that he would be returning to her care. Mother told the DCFS social worker that she had been hospitalized three times for mental health issues in 2013 and 2014, but did not need drug treatment or mental health services. The DCFS social worker determined that L.H. was at a very high risk for future abuse and neglect due to mother's continued contact with Luis despite his domestic violence history, denial of her need for mental health and substance abuse services, and failure to reunify with N.H. Mother's cousin and his wife came forward that day expressing an interest in caring for L.H. DCFS visited the cousin's home that day, and placed L.H. in his and his wife's care. The court

detained L.H. from mother and father and ordered monitored visits for each parent.

Mother was interviewed regarding the allegations on December 19, 2016. She admitted to a history of domestic violence with Luis and reported she had obtained four restraining orders against him. In a 2016 incident, Luis threw mother on the ground, pushed her, and punched her in the face and neck because she refused to allow him to sell her food stamps for drugs. Mother reported that she had schizophrenia, bipolar disorder, depression, and posttraumatic stress disorder. She admitted to having auditory hallucinations and anger outbursts. Mother described one incident when she was 19 years old in which she became physically abusive toward her mother after smoking marijuana and was subsequently hospitalized. Mother stated she used to abuse drugs, but has not used since becoming a mother. With respect to Luis, mother stated he did not have a job and continued to abuse drugs.

At the jurisdiction hearing on January 4, 2017, the court sustained the petition, finding the allegations true pursuant to section 300, subdivision (b) that L.H. had suffered, or was at substantial risk of suffering, serious physical harm or illness as a result of mother's failure to protect L.H. Specifically, the court found the allegations true that mother's psychiatric illness and symptoms, and her failure to comply with treatment and prior court orders, placed L.H. at risk of harm; and that mother's unresolved history of substance abuse placed L.H. at risk of harm. The court also found allegations true pursuant to section 300, subdivision (j) that L.H. was at substantial risk of abuse or neglect due to mother's failure to protect N.H. Specifically, the court found true allegations that mother's mental illness and

failure to comply with court orders regarding N.H. put L.H. at risk of harm; and that mother's failure to protect N.H. with regard to her unresolved history of substance abuse put L.H. at risk of harm.

On January 19, 2017, DCFS placed N.H. in the home of L.H.'s caretakers, who expressed interest in adopting both boys.

A contested disposition hearing convened on January 27, 2017 with respect to L.H. The court accepted into evidence a letter from Tri-City Mental Health Services indicating mother began services with them on December 22, 2016. The letter also indicated that mother had been diagnosed with schizophrenia, was receiving individual therapy, participating in a weekly dual recovery anonymous group, and was scheduled to have her initial appointment with a psychiatrist on January 30, 2017. The court also accepted into evidence a letter from Project Sister indicating mother had been attending weekly individual therapy sessions since August 23, 2016, and a letter from the National Council on Alcoholism and Drug Dependence (NCADD) indicating mother enrolled in their program in November 22, 2016 and was participating in education groups, individual interviews, and 12-step meetings.

Mother and counsel for L.H. asked the court to order family reunification services for mother. Counsel for DCFS asked the court to deny mother reunification services as she had an open case with another child (N.H.) in which services had been terminated, and counsel did not believe mother would follow through with any future services. The court removed L.H. from mother's custody and denied family reunification services pursuant to section 361.5, subdivision (b)(10), which provides that reunification services need not be provided to a parent when

the court ordered termination of reunification services for a sibling and the parent “has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.” The court acknowledged that mother had recently re-engaged in some services, but ultimately found these efforts insufficient to establish she had made reasonable efforts to treat the problems that led to N.H.’s removal. The court set the permanency plan for L.H. as adoption or legal guardianship with the maternal cousins.

III. *Mother’s section 388 petitions*

A. *Mother’s first section 388 petition*

On April 25, 2017, mother filed a section 388 petition asking the court to change its orders terminating reunification services with respect to N.H. and denying reunification services with respect to L.H. The petition alleged mother had been participating in all of her programs and was actively visiting with her children. Mother asked that the court reinstate reunification services and liberalize her visitation.

A letter from Tri-City dated April 20, 2017 indicated mother had been attending her individual therapy sessions. A letter from NCADD dated April 11, 2017 indicated mother was participating in her groups and meetings, and was submitting to random drug testing. Project Sister submitted a letter on March 15, 2017 indicating mother continued to attend individual therapy. And, on March 20, 2017, mother’s psychiatrist at Tri-City submitted a letter indicating mother had begun receiving monthly injections of a long-acting psychiatric medication on

February 24, 2016. The court granted a hearing on mother's section 388 petition, and set the hearing for July 13, 2017.

In the meantime, DCFS submitted a status review report on May 26, 2017. According to the report, N.H. and L.H.'s caretakers were providing the children with a stable and supportive home environment. The caretakers—who were the designated monitors of mother's visits—reported that mother continued to visit with the children, but did not engage in play with them. She was often on the phone, and did not speak age-appropriately to N.H. when he would act out. During one visit in January, mother became aggressive and did not want to let L.H. go, causing the caretakers to call the police. Mother also admitted to DCFS that she had been seeing Luis and usually resumed a relationship with him when he was not incarcerated. The report included a letter from NCADD, dated May 23, 2017, indicating mother had completed a six-month substance abuse counseling program.

DCFS submitted a report on July 13, 2017 responding to mother's section 388 petition. According to the report, mother was making progress with respect to drug and psychiatric treatment, as she completed a substance abuse program, consistently produced negative drug tests, and was actively participating in psychiatric treatment and individual therapy. Mother's psychiatrist, however, reported that mother acts "odd[ly]," exhibits symptoms of psychosis, and has no insight into her illness. The psychiatrist also stated that while mother has good judgment in some respects, she is very impulsive. Overall, the psychiatrist stated that he would not be in favor of returning the children to mother's care right away.

With respect to visitation, the report reflects that mother would not demonstrate patience or nurturing behavior with the children, was usually on her phone during visits, and would get easily irritated and annoyed with N.H. In addition, mother had become increasingly tired during visits, leading her to end some of the visits early. DCFS acknowledged that mother had been actively participating in programs and services since receiving psychiatric treatment, but also expressed concerns about mother's psychosis and impulsivity, lack of mother/child bonding during visits, and mother's continued relationship with Luis given his domestic violence history. Ultimately, DCFS stated that it would not be in the best interest of the children to reunify with mother.

At the hearing on July 13, 2017, the court heard testimony from mother and accepted the DCFS report and exhibits into evidence.³ The court denied the section 388 petition, finding that the best interests of the children would not be promoted by reinstating reunification services.

B. *Mother's second section 388 petition*

Mother filed a second section 388 petition on September 22, 2017, stating she had been participating in all aspects of her case plan and was committed to her children and her own rehabilitation. Mother asked the court to grant her reunification services and liberalize her visitation.

³ The transcript of this hearing is not in the record. We therefore have no information about the nature of mother's testimony.

That day, DCFS submitted a section 366.26 selection and implementation report with respect to L.H. According to the report, the children had a positive and healthy attachment to their caretakers, who had been very involved in making sure their needs were met. In addition, mother had not been consistent with her visits with the children and, during a visit on September 5, 2017, mother smacked N.H. on the hand for not listening. Mother admitted to smacking N.H. and told a DCFS social worker that she has a hard time controlling her temper. A prior section 366.26 report submitted by DCFS with respect to N.H., dated January 27, 2017, stated that mother would refuse to change N.H.'s diapers during visits. According to the section 366.26 report with respect to L.H., mother continued to refuse to change the children's diapers because she did not like the smell.

The court denied the section 388 petition, finding it had litigated the "identical issues" on July 13. The court stated the petition did not contain any supporting information or documentation of changed circumstances and failed to demonstrate how reinstating reunification services would be in the best interest of the children. In addition, at the request of the caretakers, DCFS was ordered to monitor mother's visits.

C. Mother's third section 388 petition

A section 366.26 hearing, also known as a selection and implementation hearing, convened on December 21, 2017. That day, mother filed a third section 388 petition, which is the subject of this appeal. Mother stated in the petition that she was actively participating in all of her programs and visiting with her children. Mother alleged that "[g]iving the children a chance to reunify with their biological mother before permanently severing

that relationship” was in the children’s best interest. Attached to the petition were two December 19, 2017 letters from Tri-City stating mother was receiving mental health and medication support services, a January 23, 2017 letter from NCADD indicating mother was compliant with her program, a January 9, 2017 certificate of completion for a parenting course, and an April 4, 2016 certificate of completion for a domestic violence awareness program.

At the hearing, the court asked mother’s counsel for an offer of proof as to what she intended to demonstrate at a hearing on the section 388 petition. Mother’s counsel stated that she wanted to show the court that mother had been sober for several months, had been enrolled in mental health services since December 2016, was receiving psychiatric medication, completed a parenting class in January 2017, and completed a domestic violence support program in April 2016. Counsel for DCFS argued that these were the same issues presented in mother’s July 13, 2017 hearing on her first section 388 petition. The court stated that if mother presented the same issues in her third section 388 petition as in her first, “the court’s indicated would be to deny the motion.” The court stated it would have to review the file before determining whether to grant a hearing, and continued the matter—and the contested section 366.26 hearing—to January 31, 2018.

At the January 31 hearing, the court denied the petition, finding that mother failed to demonstrate a change of circumstances since the July 13, 2017 hearing on her first

section 388 petition. The court continued the section 366.26 hearing to the following day in order to allow Luis to be present.⁴

IV. *Section 366.26 hearing*

The section 366.26 hearing convened on February 1, 2018. DCFS submitted a report indicating mother had not attended individual counseling sessions since November of 2017. According to the DCFS social worker who monitored mother's visits with the children, mother would not change the boys' diapers unless instructed to do so.

Mother testified at the hearing that she had resolved her drug problem and was clean and sober. She stated she was seeing her psychiatrist monthly and taking her medication regularly. When asked to describe N.H. and L.H.'s demeanor during visits mother replied, "[t]hey kind of don't understand that I'm their mother." Mother further testified that she did not believe the boys would suffer harm if they were not permitted to see her.

The court found it would be detrimental to the children to return them to their parents, terminated mother and Luis's parental rights, and terminated the parental rights of N.H.'s father. In issuing its decision, the court noted that mother's testimony revealed a lack of a parental bond between mother and the children as they did not perceive her as their parent.

⁴ DCFS was unable to locate Luis, and the court found on July 7, 2017 that DCFS had completed its due diligence to locate him. Luis's counsel informed the court on January 31, 2018 that an inmate search by court staff indicated that Luis was in custody. The court therefore continued the hearing to the following day to allow father to be brought out for the hearing.

DISCUSSION

Mother appeals the court's denial of a hearing on her December 21, 2017 section 388 petition. She does not appeal the prior two denials of her section 388 petitions or any other orders of the court.

I. *Standard of review*

"Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) The appropriate test is whether the trial court has "exceeded the bounds of reason" in denying a section 388 petition, and a reviewing court may not disturb that decision unless it made "an arbitrary, capricious or patently absurd determination." (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

II. *Applicable law*

"A parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) Likewise, the welfare of a child "is a compelling state interest that a state has not only a right, but a duty, to protect." (*Id.* at p. 307.) In most cases, when a child has been removed due to abuse or neglect, the state should provide the parent with services to assist him or her in overcoming the problems that led to removal. (*Id.* at p. 308.) However, once a court has terminated reunification services for a parent whose

child has been removed from his or her care, the court must shift its focus to “the needs of the child for permanency and stability.” (*Id.* at p. 309.) From that point on, there is a “rebuttable presumption that continued foster care is in the best interest of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The parent then has the burden “to prove changed circumstances pursuant to section 388 to revive the reunification issue.” (*In re Marilyn H.*, at p. 309.) Section 388 “provides a means for the court to address a legitimate change of circumstances while protecting the child’s need for prompt resolution of his custody status.” (*Ibid.*)

Under section 388, subdivision (a), a parent “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.” The court shall grant such a hearing “[i]f it appears that the best interests of the child . . . may be promoted by the proposed change of order.” (§ 388, subd. (d).)

“The factors to be considered in evaluating the child’s best interests under section 388 are: (1) the seriousness of the problem that led to the dependency and the reason for any continuation of that problem; (2) the strength of the child’s bond with his or her new caretakers compared with the strength of the child’s bond with the parent, and (3) the degree to which the problem leading to the dependency may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224.)

“A petition for modification must be liberally construed in favor of its sufficiency.” (Cal. Rules of Court, rule 5.570(a).) “The

parent need only allege a prima facie case in order to trigger the right to proceed by way of a full hearing. [Citation.] If the petition discloses that a hearing would promote the best interests of the child, the court will order the hearing.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) “A ‘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.” (*Id.* at p. 593.)

III. *The court did not abuse its discretion in denying Mother a hearing on her December 21, 2017 section 388 petition*

On appeal, Mother alleges the court abused its discretion in denying her a hearing on her December 21, 2017 section 388 petition because she had made a prima facie showing that there was a change in her circumstances, and that it would be in the best interests of N.H. and Luis to have reunification services reinstated and visitation liberalized. Mother alleges the changed circumstances consisted of her receiving psychiatric treatment and therapy, participating in a substance abuse program, completing a parenting course, and completing a domestic violence awareness program. With respect to the best interests of the children, mother states that “the children would benefit from mother’s receiving more services and liberalized visits with the children because, given her efforts and consistent visitation, the children deserved a chance to reunite with their biological mother.”

In our view, the juvenile court did not abuse its discretion in denying a hearing on mother’s third section 388 petition, as mother failed to allege a prima facie case of new or changed circumstances warranting a modification of its order terminating

reunification services, or that such a modification would promote N.H. and L.H.'s best interests.

While mother engaged in a number of services to remedy the problems that led to N.H. and L.H.'s removal, the only new information she provided to the court in her December 21, 2017 petition were two December 19, 2017 letters from Tri-City indicating mother was continuing to receive mental health and medication support services. The remaining information—a January 23, 2017 letter from NCADD indicating mother was compliant with her program, a January 9, 2017 certificate of completion for a parenting course, and an April 4, 2016 certificate of completion for a domestic violence awareness program—pre-dated the court's denial of mother's April 25, 2017 petition. In other words, mother's third section 388 petition was substantially similar to the first. Liberally construing mother's petition in favor of its sufficiency, we cannot conclude that continuing to receive services in December which she was already receiving at the time of her first section 388 petition in April constitutes new circumstances or evidence such that the court would be required to change its initial order. (Cal. Rules of Court, rule 5.570(d)(1).)

With respect to N.H. and L.H.'s best interests, mother did not allege any specific facts in her third section 388 petition or in her briefing before this court to show how the children's interests would be promoted by granting her request. In her section 388 petition, mother merely issued the conclusory statement that "giving the children a chance to reunify with their biological mother before permanently severing that relationship" was in the children's best interest.

In her briefing, mother addresses the three-factor test to be considered in determining whether modifying an order would be

in the best interests of the children. (See *In re Ernesto*, *supra*, 230 Cal.App.4th at p. 224.) With respect to the first factor—the seriousness of the problem that led to dependency—mother states that her problems included substance abuse, mental health issues, and domestic violence and that “while the challenges mother faced were daunting, her efforts to address them were impressive.”

With respect to the second factor—the strength of N.H. and L.H.’s bond to their caretakers compared with the strength of their bond with mother—mother states that she was “disadvantaged by having limited contact with her children while struggling, after her services were terminated, to find services on her own.” While this may be true, the fact remains that N.H. and L.H. had not bonded with mother.⁵

The evidence before the court showed that mother initially visited with N.H. consistently and that she had been affectionate and attentive with him during visits. By the time of her December 21, 2017 section 388 petition, however, the evidence showed that mother would not change the children’s diapers unless instructed to do so by a DCFS social worker, was often on the telephone during visits instead of engaging the boys in play,

⁵ As stated above, mother acknowledged as such by testifying that the children did not appear to recognize her as their mother and that she did not believe N.H. and L.H. would suffer harm if they were not permitted to see her. This testimony, however, was elicited at the section 366.26 hearing after the court had already denied a hearing on mother’s third section 388 motion. We therefore do not consider these statements in our analysis and instead focus on the information before the court at the time of mother’s December 21, 2017 section 388 petition.

and did not demonstrate patience or nurturing behavior with the children. Reports also indicate that mother's visits with the children as of September 2017 had become inconsistent.

The children had, however, bonded with their caretakers. The record reflects that N.H. and L.H. were "content and happy," "comfortable, natural, and relaxed" with their caretakers and DCFS observed them to be "emotionally healthy." DCFS had observed one of the caretakers to be "emotionally attuned" to the children's needs. Overall, DCFS found that N.H. and L.H. appeared to be "bonded to the family."

In addition, it cannot be ignored that L.H. had never lived with mother, and had only lived with his caretakers. And, N.H. had only lived with mother for the first six weeks of his life. By December 21, 2017, N.H. had lived with his caretakers for 11 months, which is a substantial portion of a toddler's life. As our Supreme Court observed, "after a child has spent a substantial period in foster care and attempts at reunification have proved fruitless, the child's interest in stability outweighs the parent's interest in asserting the right to the custody and companionship of the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419-420.)

With respect to the third factor—the degree to which the problem is easily removed and the degree to which it actually has been—mother lists the programs and services in which she engaged to address her substance abuse, mental health issues, and domestic violence. Although the record shows that mother had been sober for many months and was engaging in mental health services, the evidence also demonstrates that mother had not sufficiently resolved the domestic violence issues that led to N.H. and L.H.'s removal. Mother reported, and police reports substantiate, that Luis had abused mother to the extent that she

obtained a total of four restraining orders. In one of the incidents, Luis punched mother in the mouth and kicked her in the back and legs because she was not massaging him the way he wanted. In another, Luis threw mother on the ground and punched her in the face and neck because she refused to let him sell her food stamps for drugs. Furthermore, Luis was a long-standing drug addict who expressly told mother he saw no reason to stop using drugs. Despite this history of violence and drug abuse, mother continued to maintain a relationship with Luis whenever he was not incarcerated.

DCFS and the court acknowledged mother's progress since reunification services were terminated with N.H., and we agree that mother should be commended for the efforts she has made to overcome the significant problems she faced that led to the removal of her children. Mother's progress, however, does not warrant a modification of the court's order terminating reunification services or liberalizing mother's visitation with N.H. and L.H. Nor has mother shown how her progress warrants disrupting the stable home life the children have with their caretakers such that it would be in their best interest for the court to reinstate efforts toward reunification. We therefore conclude that it was not arbitrary, capricious, patently absurd, or outside the bounds of reason for the court to find that mother had not met her burden to make a prima facie showing sufficient to trigger a full evidentiary hearing. Accordingly, we affirm the court's denial of a hearing on mother's December 21, 2017 section 388 petition.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.