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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re H.D., a Person Coming
Under the Juvenile Court Law.

B278932
(Los Angeles County
Super. Ct. No. DK12611)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip Soto, Judge. Affirmed.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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

* * * * *

In this appeal from the denial of motions to change a court order under Welfare and Institutions Code section 388, both W.D. (mother) and her daughter H.D. acknowledge that their section 388 motions were unsupported.¹ They argue, however, that the juvenile court should have provided relief under a different statute—one never raised in the juvenile court. According to them, the juvenile court should have dismissed the dependency petition. Their argument lacks merit, and we affirm the juvenile court's order denying both mother's and H.D.'s section 388 motions.

FACTS AND PROCEDURE

1. Petition

As later sustained, the petition alleged: "On prior occasions in 2015, the 13 year old child [H.D.] was sexually abused by an unrelated 24 year old male The sexual abuse consisted of the unrelated male raping the child by placing the unrelated male's penis in the child's vagina. The unrelated male sodomized the child by penetrating the child's anus with the unrelated male's penis. The unrelated male digitally penetrated the child's vagina. The unrelated male caused the child to engage in oral sex. On 07/13/2015, the unrelated male was arrested for [l]ewd or [l]ascivious [a]cts with [a] [c]hild under 14. The child's

¹ Undesignated statutory citations are to the Welfare and Institutions Code.

mother . . . knew of the unrelated male's sexual abuse of the child and failed to protect the child. The mother allowed the unrelated male to have unlimited access to the child. Such sexual abuse of the child by [the] unrelated male, and the mother's failure to protect the child, endangers the child's physical health and safety, and places the child and the child's sibling, [A.D.] at risk of serious physical harm, damage, danger, sexual abuse and failure to protect."

2. The Juvenile Court Assumed Jurisdiction and Removed Mother from the Family Home

The juvenile court took jurisdiction over H.D. and her sister A.D in October 2015. The court concluded that mother and H.D. lied at the jurisdictional hearing. The court informed mother, "This court is all about trust. . . . If I can't trust you, I can't really say that returning you to the home will keep the children safe. I don't believe your testimony. I don't believe you were honest."

In her first appeal, mother did not contest the juvenile court's jurisdictional findings, including the finding that she knew H.D. was having sex with a 24-year-old man. The court removed mother from the family home, and mother challenged that dispositional order in her first appeal. The parties agreed that her appeal became moot, and it was dismissed as moot.

3. Mother Completes Her Reunification Plan and the Juvenile Court Terminates Jurisdiction

Mother participated actively in therapy and counseling. She took parenting classes and regularly visited her children. In May 2016, mother returned to the family home. After mother completed her case plan, on October 31, 2016, the juvenile court terminated jurisdiction.

4. Mother and H.D. File Section 388 Motions

On the same day the juvenile court terminated jurisdiction, the court denied mother's and H.D.'s section 388 motions. The motions had been filed five days earlier on October 26, 2016. H.D.'s motion stated that the allegations in the petition were not true and that the case should be dismissed. Mother requested the court terminate jurisdiction.

The court denied the section 388 motions because it was not in the interest of H.D., to continue jurisdiction. This appeal followed.

DISCUSSION

Mother and H.D. challenge the denial of their section 388 motions. Both admit that they did not establish a prima facie case necessary for a hearing on a section 388 motion. Such prima facie case requires a showing that a change in circumstance exists and that the proposed modified order would result in the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

Instead of focusing on section 388—the only section mentioned in the juvenile court, on appeal mother and H.D. argue that their motions should have been deemed motions to dismiss under section 390. Section 390 permits a juvenile court judge to dismiss a dependency petition or set it aside if it is in the interest of justice and in the welfare of the child. (*In re K.S.* (2016) 244 Cal.App.4th 327, 339.) Because neither mother nor H.D. raised this argument in the juvenile court, they have forfeited it on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re T.G.* (2015) 242 Cal.App.4th 976, 984.) Forfeiture includes not only the failure to object, but the failure to invoke a right. (*In re Sheena K.* (2007) 40 Cal.4th 875, 880, fn. 1.) Neither mother nor

H.D. identify any compelling reason to excuse their forfeiture; they simply ignore this well-established principle.

In any event, neither mother nor H.D. demonstrates that the dismissal of the petition would have been appropriate. Mother did not challenge jurisdiction in the first appeal. The court determined that mother and H.D. lied under oath at the jurisdictional hearing and that their dishonesty required mother to be removed from the family home. After mother complied with the case plan, the juvenile court terminated jurisdiction. The fact that mother had complied with her case plan and learned from her mistakes does not demonstrate that the dependency petition should have been dismissed. To the contrary it showed that jurisdiction was necessary for mother to receive treatment and to address the issues leading to the dependency.

Mother and H.D. argue that mother may suffer employment-related consequences from the sustained petition. Assuming that to be true, they cite no authority that potential consequences from a petition warrants its dismissal. Dismissal is appropriate only if “the interests of justice and the welfare of the minor require the dismissal” and “the parent or guardian of the minor is not in need of treatment or rehabilitation.” (*In re Carl H.* (2017) 7 Cal.App.5th 1019, 1038.) “ ‘Such dismissals are rare and usually occur only when the goal of protecting the child has been achieved without court intervention.’ ” (*Ibid.*) Here, the juvenile court intervention was necessary to ensure the children’s safety. The goal of protecting the children was not achieved without court intervention. In short, neither mother nor H.D. demonstrates any error on appeal.

DISPOSITION

The juvenile court's order denying both mother's and H.D.'s section 388 motions is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.