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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re T.J., a Person Coming Under
the Juvenile Court Law.

B294012

(Los Angeles County
Super. Ct. No. DK13823A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

Amir Pichvai for Plaintiff and Respondent.

T.J., a dependent child who absconded from the juvenile court's jurisdiction for much of the proceedings below, appeals from the denial of a petition his attorney filed to modify various prior court orders, including an order prohibiting any contact between him and his mother, C.J. (Mother). We are asked to decide whether the juvenile court abused its discretion by denying the petition without holding a hearing, which is justified when a petition presents no prima facie case for relief.

I. BACKGROUND

The juvenile court initially ordered T.J. (then 14 years old) detained from Mother in October 2015. He and his younger brother A.J. then repeatedly ran away from their foster care placements, prompting the juvenile court to issue several protective custody warrants for both minors, including one that issued in February 2017.¹ The juvenile court ordered there be no contact between Mother and T.J. (as well as his siblings) and made a finding that Mother and T.J.'s adult sister "had apparently been involved in [T.J. and A.J.] being secreted from foster care."

¹ In January 2017, the Los Angeles Department of Children and Family Services (the Department) learned T.J. and his brother were living at a family friend's home in Michigan, which was also the address the Department was using when providing notices to Mother regarding the juvenile court proceedings. According to the Department, T.J. and A.J. had been "enticed by [M]other and/or her associates to run away" and "appear[ed] to be intimidated by their mother such that they comply with her directives and influence, including . . . to run away from [Department] placement[s]."

In March 2017, the Department filed an amended dependency petition alleging Mother had physically abused T.J.'s siblings and this abuse put T.J.'s physical health and safety at substantial risk. The juvenile court held a March 16, 2017, detention hearing on this petition and ordered T.J. to remain detained in shelter care pending the next court hearing.

T.J. was present in court with counsel for a scheduled jurisdiction hearing on March 24, 2017, but Mother was not. The court continued the hearing to a date in May 2017, and at that hearing, Mother was present and T.J. was represented by counsel. The juvenile court found T.J. was a child described by Welfare and Institutions Code² section 300—sustaining dependency petition counts alleging, among other things, that T.J. was at risk of suffering serious physical harm from Mother's abuse of his siblings as well as Mother's "repeated violation of court orders," her willful abduction of T.J., and her refusal to disclose his whereabouts or return him to a social worker. The court declared T.J. and his brother dependents of the court and ordered them suitably placed with no reunification services for Mother.³

² Undesignated statutory references that follow are to the Welfare and Institutions Code.

³ The court's no reunification services order was made pursuant to section 361.5, subdivision (b)(15). That provision states a court need not provide reunification services to a parent when it finds by clear and convincing evidence the parent has "willfully abducted the child or child's sibling or half sibling from his or her placement and refused to disclose the child's or child's sibling's or half sibling's whereabouts, refused to return physical custody of the child or child's sibling or half sibling to his or her

At a later status hearing in July 2017, the court ordered the Department to initiate an Interstate Compact on the Placement of Children (ICPC) evaluation of the family friends in Michigan as possible foster parents for T.J. and his brother.⁴ Just two months later, however, the juvenile court issued a protective custody warrant for T.J. because he had once again run away from his Department-determined placement (in a group home).

In April 2018, roughly eight months after this latest instance of T.J. running away, the Department asked the juvenile court to order Mother to disclose T.J.'s whereabouts or immediately return him to Department personnel. The Department's request was based on recent sightings of T.J. in the company of Mother and his adult sister at Mother's criminal child abuse trial. A detective from the Los Angeles County Sheriff's Department who was serving as the lead investigator in Mother's criminal case stated he had seen T.J. "every time" Mother had been present in court and on "many occasions" had seen T.J. with his adult sister outside the courtroom.

The court granted the Department's request and ordered Mother and the adult sister to return with T.J. When they failed to comply, the court opted not to set a contempt hearing, but did

placement, or refused to return physical custody of the child or child's sibling or half sibling to the social worker."

⁴ At the time, the family friends had expressed a willingness to be foster parents for T.J. and A.J. By the fall of 2017, however, they reconsidered and said they were no longer interested in being foster parents because they were unwilling to comply with a court order prohibiting contact between the minors and Mother.

again order Mother and the sister to have no contact with T.J. and did direct Mother to cooperate with the Department in locating T.J.

Then, in September 2018, T.J.'s attorney filed a section 388 petition that asked the juvenile court to recall the protective custody warrant and return T.J. to Mother's custody, or barring that, rescind the order prohibiting contact with Mother, permit unmonitored contact, and "re-order the ICPC with [the family friends] in Michigan." By this time, T.J. had refused to submit to the juvenile court's jurisdiction for just over a year.

T.J.'s petition asserted the following as changed circumstances: "1. Mother's criminal case has concluded and [M]other is given probation [and] the no contact order between [M]other and [T.J.'s minor siblings] has been lifted. 2. [A.J.] has been stable in his placement. Mother and [the adult sister] have not attempted to sabotage the placement. 3. [T.J.] is current[ly living] at [the family friends' home] in Newberry, Michigan[,] and is enrolled in school. . . . 4. Mother has not attempted to kidnap [T.J.]." The petition further stated that "[s]ince he went . . . awol in Fall, 2017, [T.J.] had not maintained much contact with . . . [M]other" and "wishe[d] very much to return to . . . [M]other." No documentary evidence accompanied the petition.

The juvenile court summarily denied T.J.'s section 388 petition. On the portion of the Judicial Council form order the court completed to state its reasons for the denial, the court checked boxes to indicate (1) the petition did not state sufficient new evidence or a change of circumstances and (2) the proposed change of orders would not promote the best interest of the child.

II. DISCUSSION

T.J. contends the juvenile court should have held a hearing on his section 388 petition because it made a “strong showing” of changed circumstances such that the proposed change in orders would be in his best interest. We see it differently. His petition made not even a prima facie showing that there were any changed circumstances warranting reconsideration of court orders T.J. had ignored for over a year.

Section 388, in pertinent part, provides: “[T]he child himself or herself . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . .” (§ 388, subd. (a)(1).) “[T]he petitioner must show *changed*, not changing, circumstances.” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) “The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order.” (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

A moving party is entitled to an evidentiary hearing on a section 388 petition if he or she makes a prima facie showing of both a change in circumstance or new evidence and that the proposed change is in the child’s best interests. (Cal. Rules of Court, rule 5.570(d)(1) [section 388 petition may be denied without a hearing if it “fails to state a change of circumstance or new evidence . . . or fails to show that the requested modification would promote the best interest of the child”]; see also *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478 [“To obtain an evidentiary hearing on a section 388 petition, a parent must make a prima facie showing that circumstances have changed since the prior court order, and that the proposed change will be

in the best interests of the child”].) “A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause.” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.)

T.J.’s petition did not warrant an evidentiary hearing because, even taking its conclusory allegations as true, it did not demonstrate changed circumstances. Indeed, the key circumstance—T.J.’s absence from the jurisdiction for over a year despite the protective custody warrant that had issued—was still very much the same. The juvenile court was well within its jurisdiction to decline to change its prior orders when asked to do so by a minor who had flouted those orders and, indeed, refused to submit to the jurisdiction of the court.⁵

⁵ As late as the spring of 2018 (just a few months before T.J. filed his petition), for instance, Mother was repeatedly seen in direct personal contact with T.J. at her trial—in violation of the juvenile court’s no contact order—and even the section 388 petition itself conceded there had been contact between Mother and T.J. in the interim (when it stated “[T.J.] had not maintained *much* contact with his mother” (*italics added*)). In addition, the section 388 petition acknowledged T.J. knew he was wanted on a protective custody warrant but nevertheless was living in Michigan.

DISPOSITION

The juvenile court's order is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.