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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A.R., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.J.,

Defendant and Appellant.

B257851

(Los Angeles County
Super. Ct. No. CK92097)

APPEAL from an order of the Superior Court of Los Angeles County,
Carlos E. Vazquez, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

G.J., mother of Anthony (born in 2007), appeals an order summarily denying her Welfare and Institutions Code section 388 petition for modification of a prior order terminating reunification services.¹ She contends the juvenile court abused its discretion in summarily denying her section 388 petition. Mother suffers from schizophrenia and struggles with paranoid episodes and outbursts. During the reunification period, the primary concerns of respondent Department of Children and Family Services (DCFS), insofar as mother's ability to care for Anthony, were that she continually decided not to take her prescribed medication and instead self-medicated with marijuana.

On May 22, 2014, less than four months after the termination of mother's reunification services, she filed a section 388 petition seeking reinstatement of services with the aim of reunifying with Anthony. The juvenile court summarily denied mother's petition without an evidentiary hearing. After evaluating the earlier status review reports and the showing made in the section 388 petition, we conclude that mother did not make an adequate showing of changed circumstances to merit an evidentiary hearing on her section 388 petition. We affirm the juvenile court's order summarily denying the section 388 petition.

FACTUAL AND PROCEDURAL BACKGROUND

1. Initial detention and transfer.

San Bernardino County's Child and Family Services (CFS) filed a juvenile dependency petition on Anthony's behalf on April 18, 2012, because CFS concluded that mother's mental illness and substance abuse history impaired her ability to properly care for Anthony. The San Bernardino juvenile court sustained CFS's section 300 petition on August 2, 2012, declaring Anthony a dependent minor of the court. The court placed Anthony with Gloria R. (paternal aunt) and granted reunification services to mother. The matter subsequently was transferred to Los Angeles County, where paternal aunt resided.

¹ The denial of a section 388 petition is appealable under Welfare and Institutions Code section 395. (Welf. & Inst. Code, § 395; *In re M.C.* (2011) 199 Cal.App.4th 784, 801.) All subsequent statutory references are to the Welfare and Institutions Code.

The Los Angeles County juvenile court accepted jurisdiction over Anthony on August 21, 2012, and held a progress hearing on October 5, 2012. DCFS reported that mother refused to take her prescribed medication and was in denial about her mental illness diagnosis.

2. Six-month status review.

DCFS's six-month status review report, dated February 7, 2013, stated that mother was incarcerated in San Bernardino County. Before her arrest, mother was in partial compliance with previous court orders: She had completed parenting classes, was receiving psychological therapy at Tri-City Mental Health Services (Tri-City), was submitting to some drug tests, and was consistent with visitation, which DCFS reported as usually proceeding without incident.² Mother denied having hallucinations and refused to take her medication. She also tested positive for marijuana twice, tested positive for alcohol once, and had three no shows, which she was aware counted as positive tests.

DCFS's report also stated that mother struggled with acknowledging her mental illness and had experienced paranoid episodes. The report noted that mother had a history of four psychiatric hospitalizations. DCFS concluded that mother's mental health was unstable due to her refusal to take her prescribed medication. DCFS recommended that the juvenile court terminate family reunification services because mother's unstable mental health put Anthony at risk for abuse given his young age.

The juvenile court continued the matter for a contested hearing at mother's request. DCFS submitted a supplemental report on March 13, 2013, in which its recommendations remained the same.

At the March 20, 2013 review hearing, the juvenile court continued mother's family reunification services, finding she had made significant progress and had demonstrated the capacity to complete her treatment plan.

² Mother assisted Anthony with homework, brought him healthy snacks, and was very attentive and affectionate toward him during the visits.

3. Twelve-month status review.

The 12-month status review report, dated June 28, 2013, stated that Anthony remained in the paternal aunt's care. Mother was receiving comprehensive mental health and anger management services at Tri-City. During this reunification period, mother had unmonitored and overnight visitation. From January 2013 to May 2013, mother tested positive for marijuana three times, had two no shows, and five negative tests. Mother had begun taking her prescribed medication, but then discontinued its use in late May 2013 because she did not like its side effects.

In early June 2013, mother said she wanted to discontinue unmonitored visits because she believed someone was telling Anthony to misbehave while he was in mother's care. After a phone conversation with mother on June 12, 2013, DCFS decided to reinstate monitored visitation until mother resumed taking her medication.

DCFS's report also stated that Anthony wanted to live with his mother and visit his paternal aunt on weekends. DCFS concluded that it was in Anthony's best interest to remain placed with the paternal aunt because mother continued to deny her mental health issues, had discontinued taking her medication, and continued to self-medicate with marijuana. DCFS acknowledged mother's compliance with most court orders and case plan goals, and therefore recommended that mother receive six more months of family reunification services.

At the status review hearing on June 28, 2013, the juvenile court found that mother had demonstrated progress with case plan goals. It ordered that all prior orders remain in full force and effect and continued reunification services.

4. Eighteen-month status review.

The November 15, 2013 status review report stated that mother continued to receive services through Tri-City. Mother declined to take her prescribed psychotropic medication because she was now pregnant, with a due date of May 11, 2014. The criminal court had ordered mother to participate in anger management classes following her January 2013 arrest, and mother reported she had completed classes at Tri-City. Mother's therapist reported that mother was having frequent discord with her live-in

boyfriend due to her paranoia. Mother continued submitting to drug tests, but had three no shows, three positive tests for marijuana use, and two negative tests between June 2013 and September 2013. Mother occasionally missed visits with Anthony, but overall remained consistent with her visitation. Anthony again reported that he wanted to return to mother's home.

Based on the above information, DCFS requested that reunification services be terminated. DCFS concluded that returning Anthony to mother would place him at high risk for abuse. DCFS recommended that it would be in Anthony's best interest to set a section 366.26 hearing to determine a permanent placement for Anthony.

At mother's request, the juvenile court continued the matter for a contested hearing. DCFS submitted a supplemental report for the hearing on January 13, 2014, and its recommendations remained the same. The matter was continued to February 3, 2014.

On February 3, 2014, the juvenile court terminated mother's reunification services, finding that reasonable services had been provided, and mother had failed to comply fully with the case plan. The court set a section 366.26 hearing for June 17, 2014.³

5. The section 388 petition at issue.

On May 22, 2014, less than four months after termination of reunification services, mother filed a section 388 petition. She requested resumption of reunification services and liberalized visits, with the goal of having Anthony returned to her custody given her changed circumstances. She asserted she continued to comply with court-ordered activities, was now medication compliant, and was enrolled in a substance abuse rehabilitation program. Mother also asserted that reunification would be in Anthony's best interests because she had a strong bond with her son.

³ Mother filed notice of intent to file a writ petition on February 10, 2014, to challenge termination of reunification services and the setting of the section 366.26 hearing. On May 1, 2014, this court found mother's petition to be insufficiently presented and dismissed the matter as a non-operative writ.

On May 30, 2014, the juvenile court summarily denied mother's section 388 petition without an evidentiary hearing. The juvenile court found the "request does not state new evidence or a change of circumstances," and the best interests of the minor would not be promoted by the proposed change of order.

On July 21, 2014, mother appealed the juvenile court's May 30, 2014 order summarily denying her section 388 modification petition.

CONTENTIONS

Mother contends the juvenile court abused its discretion in denying her section 388 petition without an evidentiary hearing because (1) she made a proper showing of changed circumstances, and (2) the requested modification would be in Anthony's best interests.

DISCUSSION

1. *Mother failed to make the necessary showing of changed circumstances to justify holding an evidentiary hearing on the section 388 petition.*

- a. *General principles.*

"A party may petition the court under section 388 to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that (1) there is a change of circumstances or new evidence, and (2) the proposed change is in the child's best interests." (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 257.)

To obtain a full hearing, a parent must make a prima facie showing of both of these elements. (*In re Jackson W., supra*, 184 Cal.App.4th at p. 257.) "The petition must be liberally construed in favor of its sufficiency." (*Ibid.*) The prima facie requirement "is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*Id.* at p. 258.) "[A] hearing must be held only if it appears the best interests of the child may be promoted by the proposed change of order." (*Id.* at p. 259-260.)

We review the juvenile court's order summarily denying a section 388 modification petition for an abuse of discretion. The appellate court will not disturb the

juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

b. Mother's showing on her petition under section 388 with respect to changed circumstances.

Mother's petition asserted the following new information for the court to consider: "[She] visits her child regularly and consistently. She continues to participate in mental health services, including individual psychotherapy and mental health rehabilitation treatment. She continues to attend regular psychiatric appointments and reports to her psychiatrist that she is compliant with the recommendations. She is in a substance abuse rehabilitation program, attends twelve step meetings, and participated in a twenty-six week anger management program."

In support of her section 388 petition, mother submitted, inter alia, three letters from Tri-City, dated January 2, 2014, February 19, 2014, and April 3, 2014, and a letter from American Recovery Center, dated February 27, 2014.

The letters from Tri-City indicated mother had been receiving mental health services at Tri-City from November 2012 to the present, was participating in individual psychotherapy and mental health rehabilitation treatment, was being provided with case management and medication support services, and had acquired stable housing through Tri-City's shelter-plus-care program, which required mother to participate in mental health services to maintain housing. Further, mother was regularly attending psychiatric appointments and, as of April 3, 2014, "[the] psychiatrist has prescribed medication and client reports being compliant with doctor's recommendations." Finally, mother had made some steps toward the treatment goal of increasing socialization, such as by attending Alcoholics Anonymous and wellness meetings, and had improved management of symptoms with a decrease in anger outbursts.

A sign-in sheet confirmed mother's attendance at 18 group sessions at Tri-City during the month of February 2014. A letter from Tri-City also indicated that mother had

attended 25 anger management sessions between February and September of 2013 (which took place during the reunification period).

The February 27, 2014 letter from American Recovery Center indicated that mother had enrolled in an outpatient treatment that incorporated addiction education, social skills, anger management, relapse prevention, and cognitive behavior therapy, among other treatments, with an estimated completion date of May 27, 2014. Mother had tested negative for drug use *upon intake* on February 27, 2014, and was attending three 12-step meetings per week, as well as weekly individual sessions with her primary counselor. “Her progress is steady in treatment and is motivated for change. She appears genuine with her willingness.”

Mother also submitted a certificate dated August 23, 2012, that confirmed mother’s completion of an eight-session parenting class provided by Bilingual Family Counseling Service, Inc.; this parenting class was completed before the initial six-month status review.

c. No merit to mother’s contention that she established a change of circumstances through the evidence that she provided.

Liberal construed, mother’s petition demonstrates at most “changing,” not changed, circumstances. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) The juvenile court terminated mother’s family reunification services on February 3, 2014, and mother filed the section 388 petition less than four months later, on May 22, 2014. Review of the record discloses that the only *new* evidence that mother submitted was that she was now medication compliant and had enrolled in a drug recovery program, with a scheduled completion date of May 27, 2014.

Mother’s evidence of compliance with her medication regimen, consisting solely of her self-report to her clinician that she *was currently* compliant with her medication (as set forth in the April 3, 2014 Tri-City letter), does not show mother had resolved the issues that led to the juvenile court’s jurisdiction over Anthony. During the reunification period, mother had been inconsistent with her medication treatment. The April 3, 2014 letter from Tri-City did not state for how long mother had been taking her prescribed

medication. Even accepting mother's self-report to her clinician as true, mother's section 388 petition made a showing of *changing*, not changed, circumstances with respect to her medication compliance.

As for mother's drug recovery, the evidence she submitted merely showed that she was admitted to American Recovery Center's outpatient program on February 27, 2014, the program had a scheduled completion date of May 27, 2014, and she tested negative for drugs *upon intake*. Mother did not provide evidence of her progress in this outpatient program, such as reports of subsequent drug tests or a certification of completion. The mere fact that mother had enrolled in a new program after the termination of reunification services, and that she tested negative when she commenced that program, was insufficient to show a change of circumstances.

The other information mother submitted in support of her section 388 petition, such as that she had completed a parenting class in 2012, attended numerous anger management sessions during 2013, and had participated in mental health services since November 2012, did not constitute *new* evidence reflecting a change of circumstances subsequent to the February 3, 2014 termination of reunification services.

On this record, the juvenile court properly denied the section 388 petition because the "request does not state new evidence or a change of circumstances."

d. *It is unnecessary to address the second prong of the section 388 test.*

A parent seeking a modification under section 388 must show "*both* a change in circumstances or new evidence *and* the promotion of the child's best interests." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) (Italics in original.) Because mother failed to show changed circumstances that would justify the resumption of reunification services, it is unnecessary to address the second prong of the section 388 test, namely, whether the proposed modification would promote Anthony's best interests.

We are mindful that Anthony wants to return to his mother's care. Although mother and Anthony have a strong bond, and having a continued relationship with mother is important to Anthony, we do not address the second prong of section 388 because mother has not satisfied the first prong of the statute.

DISPOSITION

The May 30, 2014 order summarily denying mother's section 388 petition is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

JONES, J.*

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