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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.D. et al., Persons Coming Under the Juvenile Court Law.	B296221
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JESUS R. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. Nos. DK02584A, 18CCJP04771A)

APPEALS from an order of the Superior Court of Los Angeles County, Brett Bianco, Judge. Affirmed.

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

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant S.D.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Father and mother separately appeal from the order of the juvenile court summarily denying father's petition for modification of the earlier order bypassing reunification services. We conclude father failed to make a prima facie case to justify holding a hearing on the petition. Accordingly, we affirm the order.

BACKGROUND

I. The dependency from 2014 to 2017

Father has been abusing methamphetamine since he was 15 years old. He has a long list of arrests for theft, burglary, and drug-related offenses.

In March 2014, the juvenile court declared infant girl J.D. a dependent based on mother's methamphetamine abuse while caring for the child. (Welf. & Inst. Code, § 300, subd. (b).)[1] The court removed the baby from mother's custody (§ 361, subd. (c)), and placed her with father, who was then non-offending. Soon thereafter, however, the Department of Children and Family Services (DCFS) filed a subsequent petition (§ 342) naming father because he missed three on-demand drug tests and then

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[1] All further statutory references are to the Welfare and Institutions Code.

produced positive results of extremely high levels of methamphetamine. The court sustained the subsequent petition and removed J.D. from father's custody. (§ 361, subd. (c).) Father received reunification services involving drug testing and a substance abuse program if test results were dirty. Father was allowed monitored visitation with J.D. every other weekend.

During the reunification period, mother gave birth to another daughter, D.D., who was immediately detained from parental custody. That child's dependency was dismissed after the baby died of complications from her premature birth and methamphetamine exposure in utero.

Two and a half years after J.D. was detained from her parents, in September 2016, the juvenile court terminated reunification services because of father's "minimal compliance" and mother's moderate compliance with their case plans. The court set the hearing to select a permanent plan for J.D. (§ 366.26.)

Before holding the selection and implementation hearing, the juvenile court granted mother's section 388 petition for modification and awarded her six additional months of reunification. Father was incarcerated.

In August 2017, mother stated that father had *begun visiting* J.D. once a month and was "interested in *resuming contact*." (Italics added.) Notwithstanding, father maintained no contact with DCFS and submitted to no drug tests.

In October 2017, the juvenile court returned J.D. to her mother's custody on the condition that they reside with the maternal grandmother. Mother was pregnant with B.D.

II. The dependency from 2017 to the present

B.D. was born in late 2017. In July 2018, DCFS detained both girls. DCFS had learned that the parents and children had been residing together in a motel room for several months. One night as mother and the children were sleeping, father knocked down the hotel room door to force his way in. He assaulted mother and cut off her hair. She had bruises on her face and arms and a bald spot on the top of her head. Father claimed mother instigated the fight. The paternal grandmother was concerned that the parents were abusing drugs again. They fought constantly and she found razor blades in among the children's toys. Father was arrested.

The juvenile court sustained a subsequent petition (§ 342) finding these allegations to be true and in October 2018 denied the parents reunification services under the bypass provision of section 361.5, subdivision (b). The court set the hearing for February 26, 2019 to select a permanent plan.

On February 26, 2019, the same day as the scheduled hearing under section 366.26, father filed his petition for modification (§ 388).[2] He sought reunification services that had been denied him the previous October. As changed circumstances, father alleged that he was enrolled in an inpatient drug treatment program where he was participating in anger management, domestic violence, and parenting classes. He asserted the change in order would be in the children's best interest because he claimed to "have a strong bond with her."

[2] It appears father filed two petitions. As they are almost identical, we will refer to the petitions in the singular.

Father attached to his petition a letter dated February 25, 2019 from the Clare Foundation, a certified alcohol and drug recovery program, verifying that six weeks earlier, on January 12, 2019, father enrolled and had since participated in groups, classes, random drug testing and "all requirements of the program."

For the February 26, 2019 section 366.26 hearing, DCFS reported that after father's December 11, 2018 release from jail, he visited the girls twice. Father was reportedly "very easy going during visits as he fe[d] the girls and tend[ed] to their needs." The girls were happy and well-bonded with their prospective adoptive parent. The juvenile court summarily denied father's petition, finding he failed to make a prima facie showing of changed circumstances or new evidence. At best, the court found the petition showed that circumstances were changing.

Thereafter, the juvenile court terminated parental rights to J.D. and B.D. (§ 366.26.) Mother and father separately appealed.

DISCUSSION

Mother joins in father's sole contention on appeal that the denial of his section 388 petition without conducting an evidentiary hearing was an abuse of the juvenile court's discretion.

Section 388 affords parents the right to petition the juvenile court to modify any of its orders. To obtain the requested modification, a parent must demonstrate (1) a change of circumstance or new evidence, such that (2) the proposed change of order is in the child's best interests. (*Ibid.*; *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.) The juvenile court must hold an evidentiary hearing on a section 388 petition only if

the petitioner makes a prima facie showing of both elements. (Cal. Rules of Court, rule 5.570(a), (d), (e); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) We review a juvenile court's decision to summarily deny a section 388 petition for abuse of discretion. (*In re G.B.*, at p. 1158.)

"A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests." (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.)

Effectively, father contends that he demonstrated a change of circumstances. He admits that "[p]rior to the October 30, 2018[ ] denial of services, father had not meaningfully participated or progressed in the reunification plan to any significant degree" and that "as of April 2018 there was evidence that he was using drugs." Nonetheless, he argues that "[h]ad the court granted a hearing on the petition[ ], father could have detailed his past struggles with drugs and how participation in the Clare Foundation program has changed his perspective on the need to remain clean."

Father's argument is that at a hearing on his petition, he would have provided the prima facie showing he was obligated to make to obtain the hearing in the first place. Yet, even if found to be true at the hearing (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157), the evidence father submitted with his section 388 petition does not contain prima facie evidence of changed

circumstances. Father has a lengthy history of methamphetamine abuse dating back to his teens. The Clare Foundation letter indicated that father had been participating for only *six weeks*. The letter said nothing about the quality or frequency of father's participation, or about his progress in six weeks.

When a parent shows he is in the early stages of recovering from drug or alcohol addiction, juvenile courts typically find his circumstances to be " 'changing,' not changed." (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223; see *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423–424 [given the father's many relapses, seven months of sobriety is not changed circumstances]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 49 [nine months of sobriety is not changed circumstances].) "It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9.) In these cases, the parents' months of sobriety were not enough to constitute changed circumstances. Here, father had only been participating for six weeks and there is no evidence that he produced clean tests in that time. Given father's decades-long drug abuse, six weeks of a drug treatment program, while laudable, is not a sufficiently changed circumstance to trigger an evidentiary hearing on his section 388 petition. The juvenile court did not abuse its discretion in denying the petition summarily.

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.