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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re MARIO M. et al., Persons Coming
Under the Juvenile Court Law.

B272196

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK00351)

Plaintiff and Respondent,

v.

PRISCILLA M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Terry Truong, Commissioner. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Priscilla M. (mother) appeals an order of the juvenile court denying her Welfare and Institutions Code¹ section 388 petition seeking return of her three children to her care or, in the alternative, unmonitored visitation. We conclude the juvenile court did not err in denying the petition, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Detention

Mario M. (born in May 2006) and Joshua M. (born in July 2007) are the children of mother and Ricardo U. (Ricardo). L.M. (born in July 2013) is the child of mother and Kevin T. (Kevin).

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on July 30, 2013, when L. tested positive for methamphetamines and amphetamines at birth. Shortly after her birth, L. was lethargic, had difficulty breathing and eating, and could not move her right arm. She subsequently was diagnosed with Erb's palsy.²

¹ All subsequent statutory references are to the Welfare and Institutions Code.

² Erb's palsy "is an injury that occurs when the nerves in a baby's upper arm are damaged. . . . Erb's palsy is frequently caused by shoulder dystocia [obstructed labor] during a difficult birth. Infants with this condition usually can't move the affected shoulder or upper arm, but they may be able to wiggle their fingers." (<<http://www.birthinjuryguide.org/erbs-palsy/>> [as of March 21, 2017].)

Mother reported that she first used methamphetamines when she was 13 years old and had used drugs occasionally during her pregnancy, most recently on July 28, 2013. L.'s father, Kevin, also used methamphetamines, had been arrested in January 2013 for robbery, and currently was incarcerated.

Ricardo said mother had dropped the boys off with him in February 2012, and they had been living with him and his girlfriend ever since. He and his mother were the primary caregivers. He said mother visited about every two months, but the boys did not want to go with her when she visited.

On August 8, 2013, the court ordered the boys detained from mother and released to Ricardo. L. was ordered detained from both parents.

On August 11, 2013, Ricardo was arrested for assaulting his girlfriend. He arranged for the boys to stay with their paternal grandmother, D., who said she would like to keep them long-term. On September 6, 2013, the court ordered that the boys would remain released to Ricardo pursuant to his plan to have grandmother D. care for them. Subsequently, L. was placed with her paternal grandmother, Liliana.

II.

Jurisdiction/Disposition

In August 2013, Mario (age 7) told the children's social worker (CSW) that he could not remember the last time he saw mother. He said that when he lived with her, she hit him with a belt and with her hand. Joshua (age 6) said he did not have a mommy. He denied ever being hit by mother.

Mother admitted that she used drugs regularly, including weekly when she was pregnant with L. She said she had attended an inpatient drug program in 2010 after being

incarcerated for a year. She then got involved in an abusive relationship and began using drugs again. She brought the boys to Ricardo when she became homeless.

In November 2013, DCFS advised the court that both fathers remained incarcerated, and the three children were living with their paternal grandmothers.

On November 8, 2013, the court sustained the following allegations of the amended petition:

(b-1, j-1) At birth, L. suffered drug withdrawal and tested positive for methamphetamines and amphetamines. Further, mother has an extensive drug history. Mother's substance abuse endangered L.'s health and placed Mario and Joshua at risk of harm.

(b-4) Ricardo and his girlfriend have an unresolved history of engaging in physical altercations in the children's presence, including on August 11, 2013. Such conduct places Mario and Joshua at risk of harm.

The court ordered mother to complete a full drug/alcohol program with weekly on-demand drug testing and to participate in a parenting class and individual counseling. Mother was granted monitored visitation with the children. Ricardo was granted family reunification services; Kevin was denied such services pursuant to section 361.5, subdivision (a).

III.

Six Month Review (June 2014)

In October 2013, mother was arrested for grand theft auto and vehicle theft. As of May 2014, mother and both fathers remained incarcerated, and the children were living with their paternal grandmothers.

Prior to mother's arrest, mother failed to drug test, and she visited the children infrequently. DCFS therefore recommended that her family reunification services be terminated.

On June 11, 2014, the court found DCFS had not provided reasonable services to mother, and that mother and Ricardo were in partial compliance with the case plan. The court ordered DCFS to continue to provide family reunification services to mother and father and to bring the children to visit mother in jail.

IV.

Twelve Month Review (December 2014)

The 12-month status review report, dated December 10, 2014, stated that mother remained incarcerated. She recently had attended 10 Alcoholics Anonymous meetings and had two negative drug tests. She had completed parenting classes, but neither individual counseling nor a substance abuse program was offered at her place of incarceration.

Mother visited with L. on June 4, 2014. On July 23, the CSW transported Mario and Joshua to the jail where mother was incarcerated; Mario threw up in the car on the way and told the CSW that he was very nervous about visiting mother. Once at the jail, a supervisor refused to allow the children to visit. On the drive home, Mario again threw up in the car and told the CSW he was very scared. The CSW brought the boys to the jail a second

time on August 19, and they were able to have a two-hour visit with mother. The CSW tried to facilitate another visit on September 10, but a guard refused to allow the visit to take place. Mother had visits with Joshua and L. on October 8 and November 20, 2014.

As of the 12-month review, Mario was receiving intensive services to help him manage his behavioral issues. He was reported to be “‘demonstrating progress with following grandmother’s directions, not setting fires, or leaving home without permission. He [was] also arguing less and fighting less with Joshua. He [was] able to practice coping skills, such as attentive listening and drawing. He . . . demonstrated less anxiety since visits to prison stopped.’” Joshua was also receiving regular therapy. Mario and Joshua said they loved their mother and father, but wanted to stay with their paternal grandmother “forever.”

L. was reported to be thriving in the home of her grandmother, to whom she was closely bonded. She continued to have difficulty moving her right arm.

On December 10, 2014, the court found that mother had consistently and regularly contacted and visited with the children and had made significant progress towards resolving the problems that led to the children’s removal from the home. The court therefore extended mother’s family reunification services for an additional three months.

V.

Eighteen Month Hearing; Termination of Mother's Reunification Services

Joshua and L. visited mother at the camp where she was incarcerated on January 29 and March 19, 2015; Mario refused both visits, saying he did not want to see mother. Grandmother reported that Mario began exhibiting symptoms of anxiety the night before each visit. All three children visited mother on April 23, 2015.

Mother had clean drug tests on December 4, 2014, January 15, 2015, February 12, 2015, and March 12, 2015. She completed a parenting class in March and continued to regularly attend Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings.

In March 2015, grandmother told the CSW that she was very concerned about Joshua and Mario because she overheard Joshua telling Mario that if he were taken away from grandmother, he would kill himself. Mario subsequently told grandmother that if he were placed outside of grandmother's home, he would run away. Grandmother said every time the doorbell rang, the children were fearful that a social worker was coming to "take them away." Grandmother said she was willing to do anything to keep the children with her.

In March and April 2015 status review reports, DCFS advised that Mario's behavior deteriorated after weekly phone calls with mother and he remained fearful of being returned to her care. Grandmother D. continued to provide consistent care of the boys, taking Joshua to weekly therapy appointments and both boys to after-school tutoring. Both boys said they wanted to have visits with mother, but to continue living with their grandmother. L. was thriving in the care of her grandmother

and, through weekly therapy, was gaining some use of her right arm. Both grandmothers said they wanted to continue to have the children in their care. DCFS recommended that mother's reunification services be terminated and a section 366.26 hearing set.

On March 6, 2015, the court ordered additional services for Mario and Joshua, and ordered that both boys be evaluated for special education services. On April 27, 2015, the court terminated mother's family reunification services and set a section 366.26 hearing.

Mother timely filed a notice of intent to file a writ petition challenging the termination of her family reunification services. Mother filed her own writ petition on June 2, 2015, after which her attorney obtained a 15-day extension to file a petition. Counsel then filed a letter stating that he was unable to file a petition on mother's behalf (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570), and the petition was denied.

VI.

Mother's First Section 388 Petition; Granting of Legal Guardianship as to Mario and Joshua

On September 24, 2015, mother filed a section 388 petition, seeking reinstatement of her family reunification services and unmonitored visits with the children. In support, she stated that she had been released from prison on June 3, 2015, had enrolled in an outpatient drug program on June 4, and had been regularly visiting the children since her release.

On October 6, 2015, the juvenile court denied mother's section 388 petition without a hearing, finding that the petition did not state new evidence or a change of circumstance. Thereafter, on October 20, 2015, the court granted grandmother

D. legal guardianship of Mario and Joshua, and terminated court jurisdiction as to the boys.

On December 3, 2015, mother filed a notice of appeal of the court's orders denying her section 388 petition and ordering legal guardianship of Mario and Joshua. DCFS filed a motion to dismiss the appeal, which we granted on June 17, 2016.

VII.

Mother's Second Section 388 Petition; Termination of Parental Rights to L.

In August 2015, DCFS reported that L. continued to receive occupational therapy three times per week through the Regional Center. Her grandmother reported that L. had begun to have severe tantrums, during which she would bite herself or others, hit, throw herself on the floor, and pull hair. Grandmother said she would like to adopt L.

Mother filed a second section 388 petition on February 5, 2016, seeking return of the children to her custody, reinstatement of family reunification services, and/or unmonitored visits. She stated: "The children are better off having a[n] unimpeded relationship with me because: Mario and Joshua have lived with me most of their lives and I have a strong bond with each of my children; I was diligent in complying with my case plan despite incarceration and have been able to turn my life around; I am now able to provide a safe and nurturing environment for each of my children; and the law strives to keep children together with their biological parents." In support, mother attached a letter from her out-patient treatment program, stating that mother was expected to complete her program on March 22, 2016. Mother was reported to be making progress and showing commitment to her recovery.

On February 25, 2016, the court set a hearing on mother's section 388 petition and continued the section 366.26 hearing.

In April 2016 reports, DCFS reported that during visits, mother talked to the boys and sometimes played ball with them, but the boys "do not ask to engage with mother, nor verbalize any desire to reside with her." Mother played on her cell phone with L., but "[did] not take initiative to feed or change [L.]'s diaper." L. did not appear excited to see mother or sad when mother left. DCFS therefore recommended denying the section 388 petition: "The children have established a foundation in residing with their grandmothers and each have a strong bond with their grandmothers. Removal of the children from their grandmothers would be detrimental to their overall functioning. The children have been living in a stable, supportive and nurturing home environment under the primary care of their grandmothers. The children are not accustomed to their mother, thus an abrupt change in parental figure would interfere in the positive upbringing of these children."

At the April 19, 2016 hearing, mother testified that she last used drugs on the day of her arrest, October 22, 2013. She enrolled in a drug rehabilitation program immediately after being released from prison. Through the program, mother learned that she would struggle with addiction throughout her life and needed to regularly attend AA/NA meetings to stay sober. Mother said she tried to attend at least four AA/NA meetings a week and spoke to her sponsor daily. Mother drug-tested in prison and since her release. Mother said she learned through AA/NA that she had used drugs as a way to numb pain, and that there were other ways to deal with pain. Mother had attended individual therapy and parenting classes.

Mother said she tried to see her sons every weekend; if she had to work on the weekends, she called them. She said the boys “tell me all the time that they love me no matter what.” She said Joshua had told her he wanted to return to her custody. She did not know whether the boys wanted unmonitored visits with her. Mother said she thought her sons should be placed with her because “[e]very child should be able to be with their parents.”

Mother said she visited L. every Thursday. Visits were supposed to be four hours, but were often shorter because of L.’s therapy appointments. Mother said she had some difficulty interacting with L. because “as long as her grandmother or her family that she lives with is around, like, her automatic reaction is to run to them for every little – like everything. She goes to them.”

On cross-examination, mother admitted that she had given Mario a cell phone and set up a Facebook page for him so he could stay in touch with his maternal grandmother. She said she was aware that L. had problems with her hand, but she did not know what the condition was called. Mother said she was still in touch with L.’s father and wore his engagement ring. She had no complaints about the quality of the care her children were receiving.

The children’s attorney acknowledged that mother’s circumstances had changed and commended mother for her sobriety. However, counsel urged that reunifying with mother was not in the children’s best interests. She noted that L. had been exposed to methamphetamines in utero, had been diagnosed with Erb’s palsy, and had special needs. L. required weekly play therapy, speech therapy, and physical therapy. L. had never lived with mother, and mother did not know what L.’s diagnosis

was. The boys had a relationship with their mother, but were very happy with their grandmother and wanted to continue living with her. Both boys had received services and were now doing very well. Thus, although they loved mother and wanted to have visits with her, it was not in their best interests to return to her custody. The children's attorney also opposed unmonitored visitation, noting mother's poor judgment in giving Mario a cell phone, setting up a Facebook account for him, and remaining involved with L.'s father.

On April 19, 2016, the court denied mother's section 388 petition and terminated parental rights as to L. The court acknowledged that mother had made efforts and complied with the case plan, but found it was not in any of the children's best interests to reunify or have unmonitored visits with mother.

Mother timely appealed from the April 19, 2016 orders.

DISCUSSION

Mother's sole contention on appeal is that the juvenile court abused its discretion by denying her February 2016 section 388 petition. For the reason that follow, we disagree and affirm.

I.

Governing Legal Standards

Under section 388, a parent may petition to modify a prior order "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1); see Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where "it appears that the best interests of the child . . . may be promoted" by the new order. (§ 388, subd. (d).) The burden of proof at any such hearing is on the moving party to show by a preponderance of the evidence both that (1) there are changed circumstances or new evidence, and (2) a change in court order would be in the best interest of

the child. (§ 388, subd. (b); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.)

A ruling on a section 388 petition is “committed to the sound discretion of the juvenile court, and the trial court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) Thus, we may not reverse unless the juvenile court exceeded the bounds of reason, and we have no authority to substitute our decision for that of the lower court where two or more inferences can reasonably be deduced from the facts. (*Id.* at pp. 318–319; see also *In re D.B.*, *supra*, 217 Cal.App.4th at pp. 1088–1089.)

II.

The Juvenile Court Did Not Abuse Its Discretion by Denying Mother’s Section 388 Petition

The juvenile court found that mother demonstrated a change of circumstances—namely, that she had been released from prison, maintained her sobriety, and substantially complied with her case plan. The sole issue before us, therefore, is whether the juvenile court abused its discretion in concluding that returning the children to mother’s custody or granting mother unmonitored visits was not in the children’s best interests. For the reasons that follow, we conclude that the juvenile court’s conclusion was not an abuse of discretion.

A. Mario and Joshua

Mario and Joshua apparently lived with mother until February 2012, when they were five and six years old. Thereafter, the boys lived with Ricardo until his arrest in August 2013, and then with their paternal grandmother. By the time of

the section 388 hearing in April 2016, therefore, Mario and Joshua had been out of mother's custody for more than four years, and had been living with their grandmother for nearly three years. Both before and during her incarceration, mother had seen the boys only sporadically. Mario, who recalled mother hitting him with her hand and a belt when he lived with her, became extremely anxious before visits with mother; and Joshua had threatened to kill himself if he were removed from his grandmother's home. Both boys said they were willing to have visits with mother, but wanted to live "forever" with their grandmother, with whom they felt safe and happy and were reported to have a strong emotional bond.

"In any custody determination, a primary consideration in determining the child's best interests is the goal of assuring stability and continuity. [Citation.] 'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.' [Citations.]" (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In the present case, the boys' lengthy and stable placement with their grandmother, their strong attachment to her, and their anxiety about being returned to mother's custody more than support the juvenile court's conclusion that returning the boys to their mother's custody was not in their best interests.

Mother contends the juvenile court "prevent[ed] her from presenting evidence as to 'relative bonds between the dependent children to both parent and caretakers,'" but the record suggests otherwise. The court sustained a relevance objection to a question seeking mother's "feel[ing]" about the boys' best

interests, but permitted mother to testify about the frequency and quality of her visits and phone calls with her sons, the bond between herself and the boys, and the boys' desire to return to her care. Mother was also permitted to testify as to why she believed she would be a better placement for her sons. The juvenile court properly refused to allow mother to testify “[u]nless *she [mother] has personal knowledge*” that grandmother did not love the boys or hug and kiss them every day. (Italics added.)

The record similarly supports the denial of mother's request for unmonitored visitation. Mother asserts that “there was simply no evidence that unmonitored visits posed a threat to the boys,” but the relevant standard is the boys' best interests, *not* the absence of a threat. Mother also asserts that she “wanted very much to have the opportunity to spend quality alone time with [Mario and Joshua]”—but while this suggests that unmonitored visitation may have been in *mother's* best interests, nothing suggests that it was in the best interests of her sons.³

³ Mother also takes issue with the court's assertion that the children's attorney had said the boys were “not comfortable having . . . unmonitored visitation” with mother. While mother is correct that counsel did not address unmonitored visitation specifically, counsel had told the court that the boys “have both expressed to me in no uncertain terms that they are very happy with grandmother, want to stay with grandmother, *and want things to remain exactly as they are.*”

B. L.

L. was born drug exposed, had special needs, and required extensive therapy. Since L.'s birth, her grandmother consistently brought her to play therapy, speech therapy, and physical/occupational therapy; as a result, L. was making progress overcoming her physical challenges. Mother made no showing that she was willing or able to make the same commitment to L.'s therapy and, indeed, mother's testimony made clear that she was unfamiliar both with L.'s diagnosis and the therapy L. required.

Further, because L. had been removed from mother and placed with her grandmother at birth, she never knew mother as a parental figure. L. was extremely attached to her grandmother and, as mother acknowledged, went to grandmother "for every little – like everything." L. gave no indication of attachment to mother, appearing neither excited when mother came for visits nor sad when mother left. Accordingly, the record supported the trial court's finding that granting mother custody of or unmonitored visitation with L. was not in the child's best interests.

DISPOSITION

The April 19, 2016 orders are affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.