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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.S., et al., Persons Coming
Under the Juvenile Court Law.

B286112
(Los Angeles County
Super. Ct. No. CK73185)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRENDA S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County, Rudolph Diaz, Judge. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Brenda S. (mother) appeals from the dependency court's September 2017 order denying her petition under Welfare and Institutions Code section 388.¹ Mother's petition sought an order placing her three children, including her daughter A.S., with her at maternal great grandparents' home.² She contends on appeal the court abused its discretion when it denied the petition without a hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

A.S. was born in May 2007, the daughter of mother and Tony M. (father). In an earlier dependency proceeding initiated in May 2008, the court declared A.S. a dependent child based on allegations of domestic violence between

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² The court also summarily denied mother's request to have A.S.'s half brothers, Je.S. and Jo.S., placed with mother. Mother does not argue the court's decision with respect to Je.S. and Jo.S. was in error.

mother and father and mother's failure to provide adequate nourishment, care, and supervision. That case ended in late February 2009 with an order granting father full legal and physical custody of A.S. and granting mother monitored visits. The Los Angeles County Department of Children and Family Services (Department) initiated the current case in October 2012 after receiving information about possible physical and sexual abuse by father.

The factual and procedural history of A.S.'s current dependency case spans more than five years. In our summary, we focus on the details most relevant to the decision on appeal, providing additional context as needed. We divide the case summary into three time frames: (1) from the October 2012 case initiation to the end of the court's adjudication hearing in September 2014, (2) from September 2014 until August 2016, when the Department recommended terminating mother's reunification services, and (3) from August 2016 until the March 2018 order terminating mother's parental rights.³

³ Pursuant to Evidence Code sections 452, subdivision (d)(1), and 459, subdivision (a), we previously took judicial notice of the minute order dated March 14, 2018.

A. *October 2012 to September 2014 – initial investigation and jurisdictional hearing*

Overview

During the first phase of this case, mother rarely visited A.S., and her participation in individual therapy was inconsistent. She gave social workers non-credible information about her health and her housing situation, and she expressed fear about reunifying with A.S. because she would need to interact with father.

Initial investigation

In October 2012, when A.S. was five years old, the Department detained her from father's custody, based on concerns she was being sexually abused. A.S. had been living with father and his girlfriend in a trailer with no electricity or running water. Father contacted police after A.S. was allegedly raped by a 15-year-old boy, but a DNA sample of semen found on A.S.'s hand matched father's DNA. At the detention hearing, the court ordered the Department to offer reunification services to both parents pending further orders in the case. The Department contacted mother during its initial investigation, and mother disclosed that she suspected physical and sexual abuse based on father's treatment of mother before and during her pregnancy with A.S. Father had sexually abused mother and held her against her will for several months by locking

her inside an abandoned auto parts shop. Mother denied contacting the police or pressing charges.

In March 2013, the Department filed a first amended petition, adding an allegation that mother had failed to establish a parent-child relationship because she had minimal contact with A.S. in the past three or four years, and only three or four visits since October 2012.

Visitation

Mother visited A.S. once a month from February to April 2013, and then only once between April and October, on July 22, 2013. Shortly after the Department arranged for twice weekly visits starting in August 2013, mother missed a scheduled visit, and A.S. reportedly told the social worker she was bored and wanted the visits to be at McDonalds, rather than the Department offices. She said “I want to go. I don’t think she (mother) loves me. She never calls or visits me.”

After visiting A.S. on two consecutive days in October 2013, mother did not visit again in October or November. Between November 2013 and March 2014, the record mentions only two visits. In March 2014, the Department met with mother and had mother sign an agreement for weekly visitation on Saturdays.

There is no evidence in the record about mother’s visits during the first half of 2014. A review report from September 2014 summarized the dates of mother’s visitation

for June through August 2014, stating mother had six one-hour visits on specified Saturdays, and missed two other visitation dates. Both A.S. and her half-brother Je.S. appeared affectionate towards mother, but mother seemed disinterested in continuing the visits past one hour and appeared relieved when the visits concluded. Mother did tell the social worker that she would like to increase the visits to two hours.

Mother's services

By July 2013, mother had completed a domestic violence program, was close to completing parent education, and had started participating in individual counseling. A letter from mother's therapist to the Department stated that mother was always very late or did not show up for appointments at all. The therapist observed mother would lie about even trivial matters when anyone questioned her behavior. In the letter, the therapist stated she could not imagine mother could get A.S. to school, and opined that there was not a secure attachment between mother and A.S. Mother stopped participating in counseling in March 2014, but was on the waiting list to begin counseling through a different provider.

Mother's lack of candor and fears surrounding reunification

The Department was concerned that mother had not been forthcoming about her living situation. She was living with a boyfriend who frequently came home very drunk, and mother would leave her three-year-old son, Je.S., in the boyfriend's care. When mother's boyfriend was hospitalized and mother was acting erratically, the Department began investigating whether Je.S. was at risk of harm. Mother also gave the Department conflicting explanations about the cause of a head injury she had suffered, which required hospitalization.

When the Department confronted mother about inconsistencies regarding her health and her living situation, she began to cry and stated the reason she has not been visiting A.S. is that she is scared to reunify with her because she does not know A.S. well and is terrified that if she reunifies with A.S., she will have to interact with father.⁴

⁴ During the same time frame, mother's visits with Je.S. were also only intermittent. Mother also explained that the most important thing to her is Je.S., but she was not visiting him so he could get used to the idea of being in foster care.

Father's aggressive attitude

Father frequently violated the Department's expectations during visits with A.S., impermissibly discussing case issues with her and acting in a manner that was at times disrespectful and at times threatening towards the caregivers and social workers.

After an incident in March 2014, where father allegedly blocked the social worker's car with his van and physically and verbally threatened her, the Department obtained a restraining order against father, and the court ordered his visits with A.S. to take place at a police station.

In June 2014, the Department sought Wraparound⁵ services five days a week for A.S. to salvage the child's current placement. A.S. was in her fourth foster placement, after her second caregiver asked to have A.S. removed because the caregiver was afraid of father's threatening behavior. Father had requested the current caregiver, but even she was considering whether she could continue caring

⁵ According to information on the Department's Child Welfare Mental Health Services Division website, "Wraparound" is "an integrated, multi-agency, community-based planning process grounded in a philosophy of unconditional commitment to support families to safely and competently care for their children." (Los Angeles County Department of Children and Family Services, *Wraparound Overview*, <<http://www.lacdcfs.org/katieA/wraparound/index.html>> [as of May 18, 2018].)

for A.S. in the face of father's verbal threats. The Department's request for services documented the nature of father's threats and stated the Department was "extremely concerned regarding the father's escalating behaviors and threats, as well as, the negative impact to the child, A.S.'s, regarding exposure to the father's intimidating behaviors to the adults around her, including the fear that father engenders in the caregivers and social workers."

A.S.'s mental health

A.S. began Wraparound services in July 2014. She was diagnosed with chronic post-traumatic stress disorder, anxiety disorder, and attention deficit hyperactivity disorder, and has continued receiving therapy during the remainder of the case.

By September 2014, A.S.'s placement had changed again, and she was living with a paternal cousin. The court approved the administration of Zoloft, a psychotropic medication.

Adjudication hearing

Even though the trial court initially scheduled the adjudication hearing to begin June 18, 2013, it did not begin until July 15, 2013, and did not conclude until September 3,

2014.⁶ Ultimately, the court found A.S. to be a dependent under section 300, subdivisions (b) and (d).

In the interim, the Department filed a separate petition concerning 3-year-old Je.S. in November 2013, alleging domestic violence and mother's failure to protect Je.S. The court found those petition allegations to be true as well.

B. September 2014 to August 2016 – active reunification efforts

Overview

After the adjudication hearing ended, mother's situation slowly improved. Her third child was born, and she gradually increased visitation with A.S. and Je.S. She was assigned a social worker from Casey Family Services in August 2015 and began searching for stable housing. By July 2016, mother was ready to sign a lease and the Department was ready to place A.S. with her in the new home. But one month later, mother had terminated her lease and the Department had recommended terminating mother's reunification services.

⁶ During that time, two of father's attorneys were relieved as his counsel, and father unsuccessfully brought two motions for mistrial and to disqualify Judge Diaz.

Detailed summary of events

By September 2014, mother had completed parenting and domestic violence courses. She was visiting A.S. once a week on Saturdays. She was 33 weeks pregnant with her third child. A.S. was in the second phase of a seven-phase therapy program called Trauma Focused Cognitive Behavior Therapy.

Mother's third child, Jo.S., was born in October 2014. The Department detained the infant from mother's custody, citing concerns about mother's prior actions and decisions and her description of the infant's father as a "one night stand." Mother submitted to the petition allegations. Mother sought to have Jo.S. placed with her grandparents (maternal great grandparents), but the Department discovered several child abuse referrals involving maternal great grandmother abusing mother, including at least one that was substantiated for physical abuse and another substantiated for caretaker incapacity. Based on this information the Department decided against placing Jo.S. with maternal relatives.

Mother continued monitored visits with A.S. and Jo.S. once a week on Saturdays. The visits were initially one hour long, increasing to two hours in late November 2014. Despite having completed the parenting program, mother appeared unable to apply any of the tools learned and did not have quality interactions with the children during visits.

The Department assessed father's home as a possible placement option for A.S. in November 2014. The home was a trailer parked in front of a residence father previously owned, and the social worker determined that it would not be safe for A.S. to be placed with father. In December 2014, A.S.'s caregiver reported that she had to repeatedly redirect father and sometimes end monitored telephone calls with A.S. because he was repeatedly asking A.S. about statements made in court and A.S.'s stated desire not to return to his home. A.S. reported being scared about returning to father, asking if she could return to the caregiver after one week. A.S.'s therapist recommended continuing individual therapy and deferring conjoint therapy with her father.

At the end of the disposition hearing on December 16, 2014, the court ordered that A.S. and Je.S. remain removed from parental custody. Mother and father received reunification services and monitored visits for a minimum of twice a week for two hours. Mother's monitored Saturday visits with A.S. and Je.S. continued, with additional visitation when possible based on A.S.'s schedule.

By March 2015, mother had completed classes on parenting and domestic violence, but the Department remained concerned about her unresolved history of entering relationships with different partners. The Department recommended a domestic violence support group and potentially more liberal visitation.

In April 2015, A.S.'s placement changed again, from her paternal cousin to a D-rate foster home.⁷ The paternal cousin had reported A.S. was unhappy, constantly crying, and taking her frustrations out on the cousin's 3-year-old adoptive child. A.S. remained in therapy, and reported she did not want to reunify with father, as she recognized he would falsely disparage mother. Father missed a number of visits in May because he was arrested and incarcerated for misdemeanor domestic violence.

Mother was employed and maintaining consistent visitation on Fridays. The Department referred mother to Casey Family Services for assistance in finding stable housing.

At the six-month review hearing on June 16, 2015, the court ordered mother's visits to be liberalized to three hours and unmonitored.

In August 2015, the Department reported mother was having unmonitored visits with A.S. and Je.S. from 3 to 6 p.m. on Saturdays, but the children's caregivers were

⁷ According to information on the Department's Child Welfare Mental Health Services Division website, the term "D-rate" refers to a "special funding category for foster care providers who have received special training to provide care for children with special needs due to a mental health diagnosis." (Los Angeles County Department of Children and Family Services, *D-Rate Program* <http://www.lacdcfs.org/katieA/D_RATE/index.html> [as of May 18, 2018].)

concerned that mother never contacted the children outside of visits, not even calling to say good morning or good night.

On August 7, 2015, a Casey Family Services social worker was assigned to work with mother. Mother wanted all three children present during visits, and the Casey social worker arranged for Jo.S. to be present for an unmonitored family visit in September.

In September 2015, A.S. was hospitalized for suicidal ideation. She continued on psychotropic medications.

By December 2015,⁸ mother was doing well with her reunification services, was having occasional overnight visits, and was working with the Casey social worker to locate permanent housing. Father's conduct at visitation had improved.

The Department's March 2016 report noted that mother had started conjoint counseling with A.S. The Department stated mother was having overnight unmonitored visits with A.S. and Je.S., but gave no details about the visits, their quality or frequency. Mother was employed and was working with two organizations, Casey Family Services and Families Coming Home Together to identify suitable housing. The Department recommended continuing reunification services for mother, but not for father, who was possibly encouraging A.S. to falsely accuse her caregiver of abuse.

⁸ We note that although the court originally scheduled the 12-month review hearing for June 2015, it was ultimately continued to August 2016.

The Department's June 2016 report provided a detailed picture of mother's progress towards reunification as well as potential obstacles. Mother was having difficulty finding housing assistance because the children were not yet in her care. She continued in individual therapy and participated in family sessions with A.S. According to the Department, there was a substantial probability A.S. would be returned to mother within six months. During visits with her youngest son Jo.S., mother complained to Jo.S.'s caregiver about difficulties with A.S., and the caregiver reported witnessing A.S. being manipulative towards mother. The Department recommended that A.S.'s visits with father remain monitored, as he had a pattern of periodic arrests for criminal behavior or violation of probation, and was most recently incarcerated in February 2016.

On June 14, 2016, mother participated in a team meeting that included A.S.'s mental health support team, her caregiver, and Department and Casey social workers to discuss A.S.'s behavior, visitation, and the prospect of reunification. A.S. participated in the first part of the meeting and expressed her willingness and desire to return to her mother's care. She seemed happy at the prospect. After A.S. left the meeting, her caregiver expressed concern that mother does not contact A.S. except during visits, in contrast to father who contacts A.S. by phone every day. The caregiver believed that A.S. wants a more meaningful relationship with mother, and many of A.S.'s behavioral issues would be reduced if she were able to return to mother.

The Department's social worker pointed out that mother finds visitation with all three of her children daunting, and returning all three children to mother at once would be overwhelming, particularly because mother does not have a physical home and relies on public assistance. Her sporadic overnight visits with the children have taken place at maternal grandmother's home, but relatives were complaining that the landlord has threatened to raise the rent. Mother was dismayed to learn that A.S. would be returned to her first and that she could not have all three children at once, and insisted she would not need to work with A.S. alone for very long before she could also reunify with Je.S. and Jo.S. Mother continues to fear coming into contact with father, although it has not happened and mother has not obtained a restraining order against him.

On June 23, 2016, mother was accepted into a housing program administered by Tot's Housing Solutions, Inc. The program informed mother she and her children would have a move in date of June 29, 2016. Mother had not signed the lease or moved in before July 5, 2016, but by July 13, 2016, the Department was able to assess the home. The Department informed mother that because she was working, she needed to have day care in place before any of her children could be placed with her. The reverend running the housing program advised that day care was available and it would take about one week to make the arrangements.

By July 22, 2016, a new social worker with Casey Family Services contacted the Department to report that

mother had terminated her lease and was homeless again. Mother reported she did not like the neighborhood and there was a recent shooting involving the reverend's son. The Casey social worker stated she had concerns about mother's commitment to reunification. Mother was feeling overwhelmed with her visits with A.S. and Je.S., and her work hours had been reduced due to chronic tardiness. A.S.'s wraparound facilitator also expressed concern because the child was having continued confusion about who she would be returning to.

On August 2, 2016, mother came to the Department offices asking for transportation funds, insisting she had no money. The Department was concerned that after two years of preparation, mother still lacked the ability to care for her children and did not seem to fully acknowledge A.S.'s mental health concerns. The Department recommended to the court in its August 16, 2016 report that the court terminate reunification services to mother for A.S., as well as for Je.S. and Jo.S.

C. *August 2016 to March 2018 – permanency planning and mother's efforts to change court orders*

Overview

After mother's setbacks and father's continuing challenges, the Department began to shift towards permanency planning for all three children and identifying a

possible adoptive placement for A.S. Mother continued in her efforts to have the children placed with her.

Detailed summary of events

In September 2016, mother was employed and receiving general relief. Mother continued seeking the children's placement, proposing that she could live with a friend or with maternal great grandmother. The Department did not consider either option viable, but mother did not recognize obstacles posed by the fact that her friend had five daughters and a two-bedroom home, and maternal great grandmother was previously suspected of abusing mother. Mother's decision to leave a housing program after less than two weeks had unraveled two years of work with Casey Family Services to address her homelessness and reunify with her children. She remained unable to take the necessary steps to apply for public assistance.

A.S.'s paternal aunt in Maryland came forward as a potential placement option. She told the Department she was aware of the child's mental health concerns and was willing to care for A.S.

The Department sought a court order terminating father's visits based on father's continued aggressive and disrespectful behavior. The Department recommended that the court terminate reunification services for mother and father, terminate father's visits, and order an assessment of

paternal aunt's home under the Interstate Compact for the Placement of Children (ICPC).⁹

In December 2016, mother informed the Department she had identified an apartment, but needed funding for first and last month's rent. The social worker informed her she would need proof of income and her lease agreement to make the request, but mother did not provide the information.

At a hearing on December 15, 2016, the court ordered a holiday visit for mother, conditioned on the Department's inspection of the home, and ordered father's visits to be in a therapeutic setting only, with the Department providing the case history to the therapist. It directed the Department to begin the ICPC process for A.S.'s paternal aunt in Maryland, and scheduled a hearing under section 366.26 for May 2017.

Ahead of the holiday visit, mother sought to have the visit at the home of another relative, because mother's roommate was going to have guests. The change was not possible, but mother was able to have the visit at a hotel. A.S. described the visit as okay, explaining that she had been disrespectful to her mother and mother said they were having a "shitty" visit. Je.S. confirmed mother's statement and said mother pulled A.S.'s hair and ear. He did not want

⁹ The ICPC is an agreement among the states that governs "sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption." (Fam. Code, § 7901, art. 3, subd. (b).)

any more visits with mother. The Department initiated an ICPC with Maryland on January 31, 2017.

On February 1, 2017, the court terminated reunification services for both parents. It again ordered that father's visits would only be in a therapeutic setting and ordered that the therapist be given all the case reports on file.

The Department's May 2017 section 366.26 report described mother's visits, stating that mother was often one or two hours late for the full day Sunday visits, and visits were inconsistent with mother attempting to cancel if A.S.'s brothers were not available to visit. A.S. did not feel a close relationship with mother, and would only talk to mother outside of visits if she called mother. At times, mother would tell A.S., "I'm busy, I'll call you back," but would not always return the call.

In contrast, father had been consistent with his therapeutic visits and would call A.S. every other day to talk with her for 15 minutes. While he was recently incarcerated, he had prepared A.S. for the possibility that the visits would not take place while he was in custody.

An ICPC was underway for A.S.'s placement with a paternal aunt in Maryland. The aunt had not yet completed all the documents for the home study, and had canceled some of the home visits, but the agency was giving her additional time.

On May 2, 2017, mother met with the social worker to discuss her family goals. Mother planned to move in with

maternal great grandparents in San Bernardino and was interested in finding work. She had stopped participating in individual therapy, but planned to re-enroll once she moved.

Mother filed a petition under section 388 on May 26, 2017, seeking to reinstate reunification services and have all three children placed with her at maternal great grandparents' home in San Bernardino. The court denied the petition summarily, noting that while housing was one factor, mother had a lack of progress in individual therapy. The court also continued the hearing under section 366.26.

In early June 2017, the Department social worker and the Casey social worker visited the home in San Bernardino and met with the maternal great grandparents, who had an extensive child welfare history, including substantiated allegations of abusing mother. The maternal great grandparents discussed how their views on parenting had changed. Both felt they had more effective discipline strategies that they would use rather than yelling or using physical discipline. The home was a one-bedroom apartment, but mother explained that her grandparents would sleep in the living room and she obtained a bunk bed and a playpen for the children.

In July 2017, mother had a panic attack at the train station near the end of a visit with the children. A.S. was present, along with maternal great grandmother and mother's other children. Mother left in an ambulance, while maternal great grandmother and the children waited for one of the children's caregivers to pick them up.

A.S. had a one-week visit to her paternal aunt and uncle in Delaware at the end of July 2017. The paternal aunt told the social worker that the only remaining item for the home study was for her husband to complete parenting classes. He could only take one class a week, but would be able to complete the classes within the next few months.¹⁰

In its August 2017 report, the Department summarized the quality of A.S.'s visitation with both parents. Mother was often late or inconsistent with her Sunday visits, but A.S. seemed happy to see her mother and brothers for the visits. Father was consistent in his visits until a recent arrest, but he was not always appropriate and nurturing towards A.S.

Mother filed a second section 388 petition on September 5, 2017, again seeking placement of all three children. She attached two letters confirming mother and her three children had been having overnight visits at maternal great grandparents' apartment, and their names were added to the lease. She also attached a letter from the Long Beach Trauma Recovery Center and a letter to show she had part time work. On September 21, 2017, the court denied mother's petition without a hearing.

On October 12, 2017, mother filed a notice of appeal challenging the denial of her section 388 petition. After mother filed her appeal, the court terminated the parental rights of mother and father at a hearing on March 14, 2018.

¹⁰ We find no additional information in the record about A.S.'s visit.

DISCUSSION

Mother contends the lower court abused its discretion in denying without a hearing her petition under section 388 to change the court's placement order and place A.S. with her. We find no abuse of discretion.

We review the dependency court's decision to deny a section 388 petition without a hearing for abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1158.) The court abuses its discretion when a decision is arbitrary, capricious, patently absurd, or exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319 (*Stephanie M.*).

To prevail on a section 388 petition, the moving party must establish by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Section 388, “viewed in the context of the dependency scheme as a whole, provides the parent due process while accommodating the child's right to stability and permanency. [Citation.] After reunification services have been terminated, it is presumed that continued out-of-home care is in the child's best interests. [Citation.] Section 388 allows a parent to rebut that presumption by demonstrating changed circumstances that would warrant modification of a prior court order.” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

Although a section 388 petition should be liberally construed in favor of granting a hearing to consider the parent's request, a hearing is only required if the moving party makes a prima facie showing of changed circumstances *and* that the proposed change would promote the best interests of the child. (See *In re Edward H.* (1996) 43 Cal.App.4th 584, 592–593.) “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.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The juvenile court may consider the entire factual and procedural history of the case in deciding whether to grant a hearing on a petition under section 388. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188–189.) The asserted change in circumstances “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.) In assessing the best interests of the child, “a primary consideration . . . is the goal of assuring stability and continuity.” (*Stephanie M.*, *supra*, at p. 317.)

Mother's petition does not establish a prima facie case of changed circumstances or that placement with mother was in A.S.'s best interest. We reject mother's attempt to compare her petition to those at issue in *In re Aljamie D.* (2000) 84 Cal.App.4th 424 (*Aljamie D.*), and *In re Hashem H.* (1996) 45 Cal.App.4th 1791 (*Hashem H.*). In *Aljamie D.*, mother shared a much closer bond with the children, she was only requesting a 60-day visit, and the attempted

reunification did not threaten to delay or derail a prospective adoption. (*Aljamie D.*, *supra*, at pp. 427–428.) In *Hashem H.*, the mother had been successfully participating in therapy for 18 months, was having conjoint counseling with her son, and had a recommendation from her counselor that her son be returned to her custody. (*Hashem H.*, *supra*, at p. 1799.) In mother’s petition in this case, she asserted she had completed parenting education classes, domestic violence classes, and individual counseling, and that she had obtained permanent housing. The only circumstance that had truly changed since her prior section 388 petition was that she had letters describing her part time employment and stating she and her three children would be on the rental agreement to reside with maternal great grandparents. Mother’s petition does not make a *prima facie* case of changed circumstances in light mother’s long history of struggling to obtain housing and failing to maintain stable living situations, because it offered no details about maternal great grandparents’ commitment to continuing to provide housing for mother and her three children. We do not consider the court’s determination of no changed circumstances to rise to the level of an abuse of discretion.

Even assuming there was an adequate showing of changed circumstances, mother’s petition does not make a *prima facie* case that the requested change in placement would be in A.S.’s best interest. “At this point in the proceedings, on the eve of the selection and implementation hearing, [A.S.’s] interest in stability was the court’s foremost

concern, outweighing any interest mother may have in reunification.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251–252 [denial of petition without a hearing not an abuse of discretion where petition made conclusory assertions].)

After mother’s reunification services were terminated, A.S.’s interest in permanency and stability took precedence. While mother makes the conclusory assertion that she has a close bonded relationship with A.S., the factual and procedural history of this case demonstrates otherwise. A.S. was five years old when this case started in 2012, and she was 10 years old when mother filed her section 388 petition. During that time mother only started regularly attending one-hour monitored weekly visits in 2014. Mother’s weekly visits increased slowly, first to two hours, then three hours unmonitored. Six months later, mother was having occasional overnight visits, but continued to struggle to find housing. She also did not make any effort contact A.S. outside of scheduled visits to talk with her by phone. In the meantime, A.S. changed placements nine times, due in part to father’s aggressive behavior and in part to A.S.’s mental health needs.

Mother attempts to argue that consideration of the overall factual record required setting this matter for an evidentiary hearing, because A.S. has made some statements over time reflective of her strong feelings for, and desire to be with her mother. “[A] child’s wishes are not determinative of his or her best interests.” (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087.) But even giving

consideration to the occasions on which A.S. has expressed such sentiments, the overall record does not display “a clear and consistent preference for living with [her] mother.” (*Id.* at 1088.) Moreover, at critical times when A.S. expressed a desire to further her relationship with mother, mother herself failed to pursue the relationship, indicating ambivalence about visiting A.S. separately from her sons, or expressing that she did not want A.S. to be returned to live with her before her sons.

Mother’s petition did not establish a *prima facie* case that placement with mother would offer A.S. the stability she needed and deserved. Mother expressed fear about reunifying with A.S. because she might have to interact with father. There was no evidence mother was capable of caring for A.S., particularly in light of A.S.’s mental health issues. A.S. suffered from multiple disorders, including post-traumatic stress disorder, and she was placed on psychotropic medications. A.S.’s paternal aunt had started the process needed to adopt her, and the requested change in placement would cause more confusion and uncertainty for A.S. Ultimately, mother has not proffered or identified any evidence that she would offer at a hearing to demonstrate whether the strength of her relationship with A.S. is sufficient to overcome the presumption that permanency is in the best interest for a child that has been in foster care for nearly half her life.

In light of the factual and procedural history of this case, the court did not abuse its discretion in denying mother's petition without a hearing.

DISPOSITION

The order denying mother's petition under section 388 is affirmed.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.*

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