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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

B289800

(Los Angeles County  
Super. Ct. No. CK59209)

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

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

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

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Mother A.B.'s four children, ranging in age from five to 16, were detained following a domestic violence incident between mother and father L.M. The family has an extensive history with the Los Angeles County Department of Children and Family Services (Department), with two prior dependencies in 2005 and 2013, based on domestic violence between the parents, physical abuse by father, inappropriate discipline by mother, and the parents' substance abuse.

The juvenile court denied reunification services to both parents, and set a Welfare and Institutions Code section 366.26<sup>1</sup> hearing to select a permanent plan for the children. Meanwhile, the children were placed with their maternal grandfather G.B., where they thrived. Mother filed a section 388 petition alleging a change in circumstances, based on her completion of four domestic violence counseling sessions, and completion of a program to address her alcoholism. Mother's petition was summarily denied. Finding no abuse of discretion, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On January 19, 2017, the Department received a referral from the Los Angeles Police Department, following a domestic violence incident between mother and father. Mother told responding officers that father had pushed her and "stomped" on her face. She had a cut on her tongue and an injury to her toe. Father denied abusing mother and reported that she tripped and fell. Father was arrested. Mother asked for him to be released, and refused a temporary restraining order. The two youngest children were sleeping at the time of the incident but reported that the parents "argue a lot." The two older children were not at home, as

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code.

they were living with maternal grandfather. Responding officers noted that the house was “very dirty” and “unkept.” The police report noted that mother was under the influence of alcohol.

When father was interviewed by a Department investigator at the police station, he maintained that mother had accidentally tripped and fallen, and that mother had been drinking. Father was at mother’s home to visit with his children. He denied living with mother since 2015, and denied that any restraining order prevented him from seeing mother or the children.

Mother told the Department investigator that on the night of the incident, she allowed father into her home because it was raining, and he had nowhere else to go. She denied that father had pushed her or hit her. She claimed she tripped and fell. Mother denied calling police to report the incident, and stated that maternal grandmother had called. When asked why she told police father hit her, she responded “whatever it says on the police report is what happened.” She did not want to further discuss what happened between her and father.

The family has an extensive history with the Department, with numerous referrals and two sustained petitions. The Department received a referral in May 2005 (before the youngest two children were born) that father hit mother in front of the children. Mother did not call police, and did not wish to file charges. Instead, mother contacted her father to intervene. When maternal grandfather arrived, father was under the influence of a substance, and the house was “filthy” and “appeared to be the home of a crack head.” In July 2005, the juvenile court sustained allegations concerning mother’s inappropriate physical discipline of the children, the parents’ substance abuse, and their “violent altercations in the presence of the children.” The children were placed with maternal grandfather. He was eventually granted a

guardianship over the children. Mother later petitioned the court to regain custody of the children, and they were ordered returned to her care in 2008.

The family received another referral in August 2011. The reporting party stated that mother and father had a physical altercation in front of the children, and that father hit his oldest child “in the face.” Mother was seven months pregnant at the time. Allegations of physical abuse of the oldest child were “substantiated,” but the Department determined that “the referral should not be promoted to a case because the situation has been stabilized” and the physical abuse “appears to be an isolated incident.” According to the Department, father did not live with the family, and was barred from having contact with mother by a restraining order.

The family received another referral in October 2013. The reporting party stated that mother and father drink to excess “and become increasingly more violent when under the influence . . . .” While drunk, both parents hit their then 11-year-old daughter. Mother punched her in the stomach, bit her shoulder, and yanked out a clump of her hair; father repeatedly slapped her. The referral was substantiated, and the children were detained. The juvenile court sustained allegations based on the parents’ physical abuse and inappropriate discipline, domestic violence, and substance abuse. Father did not receive reunification services. Mother was ordered to complete a drug program, weekly drug testing, and a parenting class. She reunified with the children in August 2014. In November 2015, jurisdiction was terminated with a family law order awarding mother custody.

Following mother’s reunification with the children, the Department continued to receive referrals regarding mother’s inappropriate physical discipline of the children, mother’s abuse of

alcohol, and domestic violence between mother and father. Moreover, police call logs reflected several reports of domestic violence incidents occurring at the family home. The referrals were closed as unfounded or inconclusive.

The family had open family reunification/family maintenance cases from April 2005 until September 2008, and again from October 2013 until November 2015.

Father had an extensive criminal history, with convictions for misdemeanor battery, inflicting corporal injury on a spouse (for which he received a two-year prison sentence in 2012), and willful cruelty to a child. He also had numerous arrests for domestic violence.

On February 28, 2017, the Department filed a dependency petition, based on the January 2017 domestic violence incident between mother and father. The children were detained.

The two oldest children were interviewed in March 2017. They reported that they had lived with maternal grandfather for the last two years, and that it was a lot “more stable” than living with mother and father. They were both happy living with maternal grandfather. The oldest daughter was “afraid” for mother because of her relationship with father. Father would sometimes come over in the middle of the night; he had “busted out the windows” of the family home.

Maternal grandfather described mother as “obsessed” with father, and reported she “begs” him to come to her home. Mother and father drink and use drugs together.

At the April 21, 2017 jurisdictional hearing, mother signed a waiver of rights, and pled no contest to the petition. The jurisdictional hearing was continued a number of times so that father could be served with a temporary restraining order, and notice of hearing on the order. However, father’s whereabouts were

unknown. On May 12, 2017, the petition was sustained under section 300, subdivision (b).

At the June 2, 2017 dispositional hearing, the juvenile court removed the children from mother and father, ordered that they would not receive family reunification services, and set the case for a section 366.26 hearing to select a permanent plan.

The Department's October 2, 2017 section 366.26 report noted that the children were thriving in the care of maternal grandfather. He was not willing to commit to a plan of adoption, but agreed to care for the children as their legal guardian. All of the children reported that they wanted to live with maternal grandfather, and that he took good care of them.

Mother's face-to-face visitation with the children was "sporadic," but she maintained regular telephone contact. She twice showed up intoxicated for monitored visits with the children. Father had no contact with the children and made no arrangements to visit them.

The section 366.26 hearing was continued several times so that maternal grandfather's home could be assessed for guardianship.

The Department's March 21, 2018 status review report noted that the children continued to thrive in maternal grandfather's care. The children were doing well in school, and were happy living with maternal grandfather. All of the children wanted to continue living with maternal grandfather.

On April 18, 2018, mother filed a section 388 petition asking that the children be returned to her, and that she receive family reunification services. In support of her petition, mother wrote a letter representing father was in prison, she had received counseling and rehabilitation, and was taking medication for her diagnosis of "severe PTSD." She submitted a certificate of

completion for a residential treatment program in March 2018. She also submitted a letter confirming her enrollment in weekly domestic violence classes for victims. She enrolled in the program in November 2017, and attended a total of four sessions in March and April 2018. She also included a letter from an addiction psychiatrist, noting that mother suffers from severe PTSD, and that the inpatient treatment program she completed was for alcoholism.

On April 28, 2018, the juvenile court summarily denied the petition, finding it did not state new evidence or a change of circumstances, and the proposed change of order did not promote the best interests of the children. The court granted maternal grandfather legal guardianship over the two younger children, and ordered that the older children remain suitably placed with maternal grandfather in a planned permanent living arrangement, so they could receive continued services available to older teens. Mother filed a timely notice of appeal.

### **DISCUSSION**

Mother contends the juvenile court abused its discretion in summarily denying her section 388 petition, reasoning she made a sufficient prima facie showing to merit a hearing.

“Section 388 permits ‘[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court’ to petition ‘for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court’ on grounds of ‘change of circumstance or new evidence.’ (§ 388, subd. (a).)” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) A parent must “establish[] by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a ‘ “legitimate change of circumstances” ’ and that undoing the prior order would be in the

best interest of the child.” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959.)

A parent need only make a prima facie showing to trigger the right to a hearing on the petition. A prima facie showing is made when a parent demonstrates facts which will support a favorable decision if credited by the court. “Whether [the petitioner] made a prima facie showing entitling [the petitioner] to a hearing depends on the facts alleged in [the] petition, as well as the facts established as without dispute by the [dependency] court’s own file . . . .” (*In re B.C.* (2011) 192 Cal.App.4th 129, 141.) “[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] . . . .” [Citation.] [¶] The appellate court “will not disturb [a] decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” ’ ” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 205.)

We find no abuse of discretion here. Mother’s petition demonstrated that she completed a residential alcohol program, and had begun attending a domestic violence program. Mother’s evidence does not establish a prima facie case that her circumstances had changed, or that the proposed change in orders would be in the best interests of her children. The children have been removed from mother’s care in two previous dependency cases. Mother has *participated in reunification services for five and one half years*, only to again let substance abuse and domestic violence harm her children. Attending an inpatient program and four domestic violence sessions is not enough to show that mother had addressed her years’ long cycle of violence and alcoholism.



There was also no evidence that the requested orders would benefit the children. Mother's visitation had been sporadic, and remained monitored throughout this third period of dependency. Mother's petition did not show that granting reunification services would do anything other than further delay permanency for her children. (*In re Mary G.*, *supra*, 151 Cal.App.4th at pp. 205-206 [“ ‘A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child's best interests.’ ”].)

**DISPOSITION**

The order is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

DUNNING, J.\*

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