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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ISAAC H., a Person Coming  
Under the Juvenile Court Law.

B278324  
(Los Angeles County  
Super. Ct. No. DK07111)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

GLADYS E.,

Defendant and Appellant,

M.S. et al.,

Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, Joshua D. Wayser, Judge. Affirmed.

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

M.S. and L.S., in pro. per., for Respondents M.S. and L.S.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

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Gladys E. (mother), the mother of four-year-old Isaac H., appeals from a juvenile court order denying her Welfare and Institutions Code section 388 modification petition, contending the court abused its discretion by denying the petition without a hearing and erred in finding she failed to show her relationship with the child outweighed the benefits adoption would bring. We affirm.

### **BACKGROUND**

On August 25, 2014, law enforcement responded to an incident at a liquor store where mother was intoxicated, behaving erratically, and had engaged in a physical altercation with another customer while accompanied by Isaac H., then 18 months old. The child was wearing an extremely soiled diaper and sitting in a stroller that was also soiled. Mother had no basic necessities to care for the child. She was too intoxicated to speak coherently and she was taken to the hospital. Law enforcement took the child into protective custody and a children's social worker observed him to have a bruise on his forehead, a dry rash on his left ear, a healing abrasion on his nose, and dried feces on his buttocks.

The Department of Children and Family Services (DCFS) detained Isaac H. and sent him to the foster home of Mr. and Mrs. S. DCFS thereafter filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> alleging mother had a substance abuse problem involving both alcohol and marijuana, and had mental and emotional problems, all of which rendered her incapable of adequately and regularly caring for Isaac H. DCFS also alleged mother placed Isaac H. in a detrimental and endangering situation by engaging in a violent altercation at the liquor store in his presence.

On March 30, 2015, the juvenile court sustained the petition on the ground that mother's history of substance abuse and her conduct in the presence of the child endangered the child's physical health and safety. The court ordered DCFS to provide mother with family reunification services including individual counseling and a parenting class. Mother was also required to comply with random drug and alcohol testing and to take her psychotropic medication as directed. She was given monitored visits with Isaac H.

During mother's visits with the child, she frequently appeared distant, disengaged, and monotone. Isaac H. called mother by her first name and had a relationship with her during visits, but he did not appear to have a strong bond with her, nor did she occupy a parental role in his life. Mother made inappropriate statements to Isaac H. such as "you're a liar" and "you suck" when he did not give her a hug at the end of a visit. She also exhibited a lack of control over Isaac H. and was unable

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

to manage his behavior when he threw temper tantrums, requiring the monitors to intervene. Mother also continued to struggle with substance abuse. During a visit with Isaac H. on September 21, 2015, the monitor terminated the visit due to suspicion of mother being under the influence because she was drowsy and disengaged, had red eyes, and the scent of marijuana was present. Mother's drug test the following day was positive for cannabinoids. Mother failed to consistently comply with the visitation schedule, sometimes missing several consecutive visits, and when she did attend, would arrive an hour late on average.

Meanwhile, Isaac H. was well adjusted and stable in his new home and developed a strong bond with Mr. and Mrs. S. He has become attached to them and looks to them to comfort him and meet his needs. They have been observed to be loving, attentive, and capable caregivers. They have expressed that they love Isaac H. and want to adopt him.

On April 18, 2016, the juvenile court found that returning Isaac H. to the custody of mother would create a substantial risk of detriment to his physical and emotional well-being. The court terminated family reunification services and found Isaac H. to be adoptable.

After termination, mother continued to attend monitored visits with Isaac H. On May 18, 2016, about a month after termination, mother barely interacted with Isaac H. during one monitored visit. Mother also continued to display difficulty controlling Isaac H. when he got angry. At another visit later that month, mother failed to change Isaac H.'s soiled diaper and his diaper was so soiled that feces was being squeezed up the back and the daycare staff had to clean him up.

Three months after termination, on July 13, 2016, mother filed a section 388 petition requesting that the juvenile court return Isaac H. to her custody or reinstate family reunification services. The petition alleged that since the termination of services, mother had completed a parenting class, received individual counseling, graduated from high school, enrolled in college, and obtained an internship. The court denied the petition on August 9, 2016, without a hearing, finding that mother's evidence showed only evolving circumstances, not changed circumstances.

On August 15, 2016, DCFS filed a 366.26 WIC report recommending that the court retain Isaac H. as a dependent of the court and terminate the parental rights of mother, thereby freeing Isaac H. for adoption by Mr. and Mrs. S.

The next week, on August 24, 2016, mother filed a second section 388 petition, arguing that the juvenile court should return Isaac H. to her or reinstate family reunification services because she had learned how to be a better parent through continued parenting classes. She also stated that she had benefitted from a drug and alcohol program and psychiatric care, that she continued to visit Isaac H., and that she was enrolled at a local community college. Mother supported the petition with letters from her psychiatrist, therapist, rehabilitation specialist, a progress report from her substance abuse and anger management classes, a certificate of completion from a parenting class, a transcript from her high school, and letters from her job placement and community college.

The court denied the petition on September 2, 2016, without a hearing, finding that mother offered no new evidence, no change of circumstances, and further finding that returning

Isaac H. to mother or granting further family reunification services would not be in the child's best interest, consistent with the recommendations set forth in DCFS's report on August 15, 2016.

Mother appealed.

### **DISCUSSION**

Mother argues that the juvenile court abused its discretion in denying her section 388 petition and in finding she failed to show her beneficial relationship with Isaac H. precluded terminating her parental rights.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern . . . . Then, the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability." (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subdivision (c)(1) provides that if the court finds by clear and convincing evidence that "it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the Legislature"].) The statutory preference in favor of adoption will prevail unless the parent opposing termination can demonstrate that an enumerated statutory exception applies, for example that a compelling reason exists for determining that termination of parental rights would be detrimental to the child because the "parents have maintained regular visitation and contact with the child and the child would

benefit from continuing the relationship.” (§ 366.26, subd.

(c)(1)(B)(i).)<sup>2</sup>

The “benefit” prong of this exception requires that the parent prove his or her relationship with the child ““promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) The juvenile court “balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

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<sup>2</sup> Section 366.26 provides in pertinent part that the juvenile court shall terminate parental rights and order a child placed for adoption unless it “finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

Even frequent and loving contact between a child and a parent may not suffice, without more, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “parental relationship is necessary for the exception to apply, not merely a friendly or familiar one,” because it “would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

We review the juvenile court’s factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court’s discretionary decision—whether the relationship constitutes a compelling reason for determining that termination of parental rights would be detrimental to the child—under the abuse of discretion standard. (*Ibid.*)

A parent may petition the juvenile court for modification of a prior dependency order. (§ 388, subds. (a), (c).) To obtain the modification, the petitioner must show by a preponderance of the evidence that there has been a change of circumstances sufficient to warrant the changed order, and also that the new order would be in the child’s best interests. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532-535.) We review the juvenile court’s denial of a section 388 petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) “We must uphold the juvenile court’s denial of [a] section 388 petition unless we can determine from the record that its decisions “exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its



decision for that of the trial court.”” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Here, mother argues that her completion of the juvenile court-ordered case plan, including substance abuse treatment, parenting education, individual counseling, and psychiatric care, proved changed circumstances.

However, no evidence suggests mother attended to Isaac H.’s physical care, nourishment, or medical needs, or participated in such day-to-day and hour-to-hour interactions as Isaac H. enjoyed with Mr. and Mrs. S. After Isaac H. was removed from her custody, mother continued to struggle with substance abuse issues and was inconsistent in her visits with Isaac H., missing multiple consecutive visits at a time and showing up under the influence to one visit. Mother waited for 17 months before beginning to follow the juvenile court’s case plan. Although mother’s section 388 petition demonstrates progress, mother failed to establish the parent-child relationship exception applied to her relationship with Isaac H. and after two years, the court found it is not in the best interest of the child to return him to mother or to reinstate reunification services.

The question before us is whether the juvenile court exceeded the bounds of reason when it concluded that Isaac H.’s relationship with mother did not promote the child’s well-being to such a degree as to outweigh the well-being he would gain in a permanent home with new, adoptive parents. We conclude that a relationship nourished only during monitored and inconsistent weekly visits does not compare to the daily parental relationship created between Isaac H. and his adoptive foster parents, nor does it outweigh the benefit of stability he would continue to receive in his new home. The case of Isaac H. has long cried out

for consistency and permanency. As adoption is the preferred permanent plan for children in California, the court was within its discretion to select adoption as the permanent plan here and terminate mother's parental rights. Its order is therefore affirmed.

**DISPOSITION**

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.