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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ISIAH A., a Person Coming
Under the Juvenile Court Law.

B288268

(Los Angeles County
Super. Ct. No. DK13331A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LORENA A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Steff Padilla, Juvenile Court Referee. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Deputy County Counsel for Plaintiff and Respondent.

Lorena A. appeals the denial of her Welfare and Institutions Code¹ section 388 petition seeking a modification of dependency court orders, and the termination of her parental rights over her son, Isiah A. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Three-year-old Isiah came to the attention of the Department of Children and Family Services in August 2015 when he was discovered unrestrained in the back seat of a car in which police found a loaded handgun, marijuana, and open cans of alcohol. A few weeks later, DCFS received a referral alleging that Lorena, who was using methamphetamine with her violent boyfriend, had left Isiah with relatives and her whereabouts were unknown.

DCFS detained Isiah and filed a dependency petition alleging that Isiah came within the jurisdiction of the juvenile court under section 300, subdivision (b) (general neglect). Prior to the adjudication of the petition, Lorena was referred to two substance abuse programs but failed to appear for intake appointments. She went to an inpatient program but left the same day she arrived. She tested positive for methamphetamine in September 2015 and then failed to appear for her next ten scheduled drug tests. Lorena did not enroll in services or programs, and she denied needing substance abuse treatment. DCFS advised the juvenile court that Lorena was “greatly in need of a substance abuse program, weekly testing, individual counseling to address past childhood trauma, and a parenting course. The mother appears to be very attached to the child;

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

however, she needs to gain insight into how her decisions and personal choices have affected Isiah and his well-being.”

While Isiah was observed to be an empathetic and loving child, he demonstrated significant behavioral problems indicative of trauma. He was observed to be anxious and unsure of his environment. He smeared his feces on the walls in his bedroom. Isiah’s toileting issues led to his removal from his first placement. Isiah’s second foster parent found Isiah to be nice, affectionate, and happy, but with excessive fears of the dark and the police.

Lorena and Isiah were very loving and bonded. She telephoned him daily. Lorena visited Isiah for the first time after his detention in October 2015. They were affectionate and hugged often, and Isiah was pleased that she had prepared soup for him. After the visit, however, he cried for nearly four hours and became so anxious that he bit his tongue until it bled. After he spoke with his mother, Isiah did not eat well, and he cried. He developed difficulty sleeping and cried during his sleep.

Mental health services were recommended to help Isiah recover from the trauma of being exposed to domestic violence, verbal domestic disputes, drug use, possible criminal activity, and the loss of people who were significant to him. He was assessed to need a home environment where he felt safe and secure, and a caregiver with whom he could develop a strong bond. Specifically, it was recommended that Isiah be in an environment that provided him with greater predictability in his life and that avoided sudden changes to his daily routines. Isiah subsequently began therapy.

On March 9, 2016, the juvenile court sustained the allegations of the petition. The court declared Isiah a dependent child of the court, and ordered reunification services and

monitored visitation for Lorena. The court ordered Lorena to complete a full substance abuse program with weekly random or on-demand testing, as well as an aftercare program, and to undergo a 12-step recovery program.

In mid-March 2016 Isiah was removed from his second foster placement. His third caregiver requested his removal from her home in April 2016, stating that she could not care for him due to his excessive crying and failure to follow directions. These problems decreased over time in Isiah's placement with his next foster parent, although he continued to have tantrums, excessive activity levels, poor attention span, impulsivity, and difficulty following directions. Isiah required special education in school.

During 2016 Lorena continued to use methamphetamine, gave birth to a daughter who tested positive at birth for amphetamine and barbiturates,² and failed to participate in programs and drug testing. It also appeared that she continued to experience domestic violence.

In July 2016 Lorena admitted that she needed residential treatment for her substance abuse issues, but when a bed opened in a residential treatment facility in August 2016 Lorena failed to appear for the interview and did not communicate with DCFS for several weeks. Her visitation with the children became sporadic, and she regularly canceled or did not appear for visits.

When Lorena did visit, she was appropriate with the children and showed love and care for them. Isiah was strongly attached to Lorena, enjoyed his visits with her, and longed to return to her care. Because of this "strong attachment" and Lorena's stated willingness to comply with court-ordered

² Lorena's daughter is not a part of this appeal.

programs, in September 2016 DCFS requested further reunification services.

At the six-month review hearing on September 7, 2016, the court found that Lorena was not in compliance with the case plan, ordered continued family reunification services, and ordered Lorena to participate in a residential treatment program.

In November 2016 Lorena entered a residential treatment program. As of December 2016 she had attended all group sessions, 12-step program meetings, one-on-one sessions, and psychotherapy since her admission. In February 2017 Lorena completed the program and was described as showing “great resolve and motivation” in meeting her goals. She then entered a six-month residential program for women and children that would permit reunification with the children. She was placed on a waiting list for a transitional housing program for support after she completed her present program. Her drug tests were negative in February and early March. She was participating fully in her 12-step program, therapy, domestic violence program, and parenting education. In April 2017 Isiah was diagnosed with fetal spectrum disorder with confirmed serious levels of prenatal exposure to alcohol, and Lorena promptly enrolled in a fetal alcohol spectrum disorder parenting class. The social worker observed that Lorena appeared to be a different person than she had been six months earlier. She was very focused on her children and was open to all support and education available to her to make sure she met their needs.

Lorena progressed from monitored visitation to unmonitored visitation, and then to overnight visits with Isiah in her sober living facility. No problems were reported during the visits, and the social worker advised the court that it was “a joy”

to “witness the family re-establish their trust and love for each other due to the success of the weekly visitation and mother’s continued efforts to successfully reunify with her children by completing all of her court ordered programs.” DCFS recommended, and the court ordered, that Isiah be returned to her custody at the facility.

After Isiah was returned to her care on May 9, 2017, Lorena “diligently continue[d] working on her [court-]ordered programs and meeting Isiah’s needs.” She attended her own programs and Isiah’s treatment programs almost every day: outpatient drug treatment, weekly testing, the fetal alcohol spectrum disorder parenting program, parent-child therapy, and family preservation services. She was soon overwhelmed by the many programs and appointments, and by Isiah’s needs.³ Isiah was often upset and Lorena struggled with his uncontrollable behavior. The in-home outreach worker spent entire sessions helping Lorena calm Isiah down and had no time to assist her with other concerns. Lorena did not know how to organize documentation and manage appointments for the children, and she missed Isiah’s summer school registration.

Isiah woke up multiple times every night and cried and screamed for 20 minutes each time. His daytime behavior was out of control, with frequent tantrums, and he became physically aggressive toward Lorena and children in the facility. He bit, hit, scratched, and urinated on Lorena; her arms were bruised and scratched. At one point the manager of the sober living facility considered calling in a psychiatric team for assistance. While

³ Isiah had been determined to have brain damage and a serious lifelong disability, and he was likely to need assistance with daily living activities for the rest of his life.

Lorena was reported by all to be very patient and to treat her son with love and compassion, it appeared to the facility manager that his behavior was beyond her ability to manage.

Lorena was so busy attending to Isiah's needs that she stopped attending individual therapy. She failed to appear for drug tests. The social worker observed that Lorena's hair was messy and she had dark circles under her eyes from lack of sleep and stress. Lorena said that she knew Isiah's problems were not his fault, that she tried everything to keep him quiet, and that she was very nervous every night about his meltdowns. She did not want to stay in the facility, but had nowhere else to go, and she was still waiting for a space in transitional housing. The social worker encouraged Lorena to get support from her individual and joint therapists, and contacted the joint therapist and in-house counselor to express concern about whether Lorena could meet Isiah's needs and to inquire about further assistance for her.

On June 22, 2017, Lorena was arrested for child endangerment after being found intoxicated on the street with Isiah. Lorena said that she was overwhelmed by Isiah's behavior and had one beer. On June 30, 2017, Lorena tested positive for amphetamine and methamphetamine.

Isiah was detained and placed in the foster home where his younger sister was living. Visitation returned to monitored visits. DCFS reported that the events had been "very disruptive to [the children], especially for Isiah, and undermine[d] his feeling safe in any home, not just in his mother's home." Isiah did not understand why he had to be apart from his mother once again, and after his first visit with Lorena he became furious to learn that he was not going to her home with her. He was

physically aggressive toward the social worker and his sister, and he was out of control in his sadness, anger, and feelings of abandonment.

DCFS recommended that visitation be decreased and that family reunification services be terminated. On July 24, 2017, the court terminated reunification services, ordered permanent placement services, and set the hearing for termination of parental rights for November 20, 2017. That hearing was continued to January 30, 2018.

In advance of the termination of parental rights hearing, DCFS reported to the court that although Isiah had only lived with his new caregivers for a few months, he had formed a close bond with them. Isiah called his foster mother “Mama.” Isiah was receiving appropriate care and supervision. The caregivers had ensured that the children’s needs were being met. They had followed through with medical and Regional Center services, obtained an individualized education plan for Isiah, and ensured he was placed in special education classes. Isiah was observed to be comfortable in his surroundings. The caregivers loved both Isiah and his sister and wanted to adopt them.

Isiah was enrolled in kindergarten. He demonstrated extreme behavioral problems in the classroom, including aggression toward school staff and peers. The other students in his classroom needed to be evacuated an average of once per day for their safety. Isiah did not, however, demonstrate excessive aggression at home. There, his behavior was more typical for a child his age, with the exception of significant attention-seeking behaviors. The school psychologist attributed this difference to home being less structured and demanding than school and also to Isiah’s likely feeling of “a more secure sense of belonging and

individual care.” She concluded that some of Isiah’s behavioral problems were likely a result of the trauma he had suffered. The psychologist suspected that Isiah’s numerous foster care placements had led to feelings of rejection, and that his family situation was likely responsible for Isiah’s need for very frequent attention, reassurance, and affirmation.

In January 2018, DCFS reported that Isiah appeared happy and well-adjusted to living with his foster family. The prospective adopted parents treated their foster children and biological children identically, with “overflowing love.”

On January 25, 2018, Lorena filed a section 388 petition seeking the reinstatement of family reunification services and the release of the children to her, or at least overnight visits with her. Lorena stated that she had been sober since her June 2017 relapse. Lorena had relocated to Orange County and in September 2017 she entered a homeless shelter where she participated in parenting education and an outpatient drug program. After she completed those programs, Lorena began another drug and alcohol program with a different provider. She had been attending individual counseling, group counseling, and domestic violence education consistently. Supporting documentation from her programs described Lorena as “an outstanding resident” dedicated to maintaining her sobriety and who took responsibility for her past bad choices. She was reported to “excel[] at applying what is taught in education to real life examples” and to “demonstrate responsibility and accountability for her actions” All of Lorena’s drug tests had been negative. She was participating in a relapse prevention/recovery program and was enrolled in a high school equivalency program. She had voluntarily turned herself into the

police to address a misdemeanor charge from 2015 that had resulted in a warrant for her arrest, and she promptly resolved her case. She had undergone training to prepare for employment.

Lorena had been taking parenting and brain development classes and learning about the impact of violence and trauma on children. She said, “They teach us ways on how to cope and why they [children] are feeling or behaving the way they are. . . . I know I put my son through a lot which caused him trauma. If I get reunification services again, I would like to have family therapy with [Isiah]. I think a lot of his behavior has to do with my separation . . . I think [therapy] will help us communicate with each other. I want to do therapy with him.” Lorena said that her plan to prevent future relapses was to continue attending her meetings, to stay in a program, to seek all available support, to continue attending church, and to stay away from people who were not “doing right.” She explained that she had changed her mentality: she no longer was concerned with what people would think about her, she knew what she wanted, she understood the effects of her choices, and she knew what was best for her and what goals she wanted to achieve.

Lorena had been diagnosed with Attention Deficit Hyperactivity Disorder and an anxiety disorder and had begun a medication regimen to treat it, although she had later discontinued the medications because she became pregnant again.

Lorena’s social worker had “a very mixed opinion about her reunification.” Lorena had made “continuous effort to keep her sobriety and also a relationship with her kids by visiting them consistently. But meanwhile, while she had Isiah with her in

May [2017], it told us that she was not able to keep her child safely under her care.” Lorena had not been completely honest: she had not advised the social worker of her pregnancy or told her anything about her new relationship. The social worker had concerns about Lorena reunifying with her children while having a newborn, and feared further “delay and confusion” would endanger the children’s emotional and physical stability. She understood that Isiah and Lorena had a “strong attachment,” but noted that he had many issues that needed proper attention. The social worker observed that Isiah’s foster caregivers, who wished to adopt him and his sister, were willing to provide that care, which meant a lot for their “true well-being.”

Lorena’s dependency investigator, who had known her for a number of years because Lorena had been a dependent child herself, had witnessed Lorena’s “grief and loss during her childhood, substance abuse and severe domestic violence during her young adulthood,” and observed her success in her parenting programs and substance abuse counseling. However, she believed that Lorena had yet to be able to put in place the skills and tools she had learned and to form a network of peers to support and promote her sobriety. While Lorena stated that she now was able to prioritize her children’s needs before her own, she was “still attempting to stabilize her life and alleviate her case issues which have triggered her to relapse and affected her mental health.” Ultimately DCFS did not believe it was in the best interest of the children to reinstitute reunification services, because the children were young, vulnerable, and diagnosed with life-long disabilities that would require constant care and supervision, and their mother was still in the process of addressing her trauma and substance abuse.

On February 8, 2018, after a contested hearing, the juvenile court denied Lorena’s section 388 petition on the ground that although Lorena had established a change of circumstances, the requested change would not be in the children’s best interest. The court found the children adoptable, determined that no exception to termination applied, and terminated her parental rights. Lorena appeals the denial of her section 388 petition and the termination of her parental rights with respect to Isiah.

DISCUSSION

I. Denial of Section 388 Petition

Section 388 is a general provision permitting the court, “upon grounds of change of circumstance or new evidence . . . to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” (§ 388, subd. (a)(1).) The statute permits the modification of a prior order only when the petitioner establishes by a preponderance of the evidence that (1) changed circumstances or new evidence exists; and (2) the proposed change would promote the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The court in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, at pages 530 through 532, set forth three factors to be analyzed in determining the best interest of a child for the purposes of a section 388 petition: (1) the seriousness of the problem that led to the dependency, and the reason for its continuation; (2) the strength of relative bonds between the child to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been removed or ameliorated. We review the court’s ruling for an

abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

We find no abuse of discretion here. While Lorena demonstrated that circumstances had changed and that she was actively, sincerely, and diligently addressing the problems that led to Isiah's dependency, the juvenile court could reasonably conclude on the evidence before it that reinstating reunification services was not in Isiah's best interest. The substance abuse problems that led to the dependency were extremely serious and difficult to ameliorate; and the evidence did not show that they had been resolved or could easily be ameliorated. Despite her efforts, her progress in programs and services, and her obvious love for her son, Lorena had been unable to care for Isiah when he was placed with her in 2017, and she quickly relapsed under the pressure of meeting his significant needs. She soon righted herself and again aggressively pursued her recovery, but her sobriety was recent and untested when she filed her section 388 petition.

While Isiah continued to be bonded with his mother and clearly loved her, he was also bonded with the prospective adoptive parents. Additionally, Isiah had suffered considerably from the absence of stability, the inconsistent presence of his mother, and the prior failed reunification attempt; he required a home environment where he felt safe and secure, and caregivers who provided predictability and avoided sudden changes to his daily routines. Isiah's prospective adoptive parents had demonstrated their ability to meet these needs: they provided love, stability, appropriate care, and access to the many services he required.

On the facts before it, and considering the factors identified in *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pages 530 through 532, the juvenile court could reasonably have concluded that Lorena did not demonstrate it was in Isiah's best interest to reinstate reunification services. Without doubting Lorena's love for her son, her motivation to be a good parent, or her commitment to her recovery, we cannot say that the juvenile court abused its discretion when it denied her section 388 petition.

II. Termination of Parental Rights

At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily-specified exceptions (§ 366.26, subd. (c)(1)(A)-(B)), the juvenile court "shall terminate parental rights." (§ 366.26, subd. (c)(1).)

One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." "The 'benefit' prong of the exception requires the parent to 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.’ [Citations.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) “A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*Ibid.*) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy “a parental role” in the child’s life.” (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621; see also *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

The parent has the burden of proving the exception applies. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) The court’s decision a parent has not satisfied this burden may be based on either or both of two component determinations—whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.) This second determination is a “quintessentially” discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,’ [and] is

appropriately reviewed under the deferential abuse of discretion standard. [Citation.]” (*In re K.P.*, at p. 622.)

Here, although the minute order is not entirely consistent with the court’s statements at the termination hearing, it appears from the court’s oral statements that the court found a beneficial relationship existed between Lorena and Isiah but that the relationship was not a compelling reason for determining that termination of parental rights would be detrimental to him. Substantial evidence clearly supported the implicit finding that a beneficial parent-child relationship existed: Lorena maintained regular visitation and contact with Isiah, and they were consistently observed to be bonded, to have a strong attachment, and to have a loving relationship.

Lorena, however, cannot show that the juvenile court abused its discretion in concluding that the relationship did not constitute a compelling reason for finding that adoption would be detrimental to Isiah. Isiah was bonded with his prospective adoptive parents and was comfortable in their home. The prospective adoptive parents had shown they could meet Isiah’s profound, life-long special needs and secure the services he required. They loved Isiah and his sister as their own children, were committed to adopting them, and had demonstrated that they could provide a stable, loving home. The court could reasonably conclude Lorena was not able to offer Isiah the security and stability that he desperately needed: she had been overwhelmed by the demands of taking care of him when he was in her custody in the past, her sobriety was nascent, and she was about to give birth to another child, increasing the pressures upon her. We recognize Lorena’s love and commitment to her son, and her sincerity and motivation in addressing the problems

that led to the dependency are commendable, but we cannot conclude that the juvenile court abused its discretion when it determined that any detrimental impact from the severance of the parent-child relationship was outweighed by the benefits to Isiah that would come from adoption.

DISPOSITION

The orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.