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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MELISSA M., a Person Coming
Under the Juvenile Court Law.

B254461
(Los Angeles County
Super. Ct. No. CK68208)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SONIA M.,

Defendant and Appellant.

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

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Sonia M. (Mother) appeals from the order terminating her parental rights with respect to her three-year-old daughter, Melissa M. The only issue on appeal is whether the court abused its discretion by summarily denying Mother's section 388 petition seeking reunification services that she filed shortly before the termination hearing.¹ We affirm.

FACTS AND PROCEEDINGS BELOW

Melissa came to the attention of the Department of Children and Family Services (DCFS) shortly after her birth in January 2011 when it received complaints that Mother frequently left Melissa with her paternal grandmother for extended periods of time without support and without telling the grandmother when she would return.

In September 2011, Mother entered into a voluntary family reunification agreement with DCFS in which Melissa was placed with her paternal grandparents and Mother agreed to address her issues of domestic violence and substance abuse.

During the Fall of 2011, Mother was transient and did not regularly inform DCFS of her whereabouts.

By November 2011, Mother was living at the Jewish Family Services Shelter in Sherman Oaks where she completed 6 sessions of counseling before leaving the program and moving to Perris California in January 2012.

Throughout January and February 2012, Mother missed at least half of her drug testing appointments.

During the period September 2011 to February 2012 Mother visited Melissa at her grandmother's home, but she was inconsistent or late in her visits and lax at communicating with grandmother about the visits.

In February 2012, Mother moved to her mother's home in San Pedro.

¹ All statutory references are to the Welfare and Institutions Code. We may review the denial of a section 388 petition in an appeal from an order terminating parental rights under section 366.26. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1317; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413, fn. 9.)

At a Team Decision Making Meeting in March 2012, DCFS determined that Mother's noncompliance with the voluntary reunification service plan she agreed to in September 2011 required it to file a section 300 petition. Melissa remained placed with her paternal grandmother where she had been living with her half-brother since September 2011.

In May 2012, the court sustained a petition as to Melissa under section 300, subdivision (b), based on domestic violence in Melissa's presence, Mother's unresolved substance abuse and her leaving Melissa with her paternal grandmother without making provision for her support. The court declined to order family reunification services for Mother and Melissa based on section 361.5, subdivision (b)(10) and (13)² and set the matter for a permanency planning hearing later that year. Mother did not challenge any of these orders. (The court did not conduct the permanency planning hearing and terminate Mother's parental rights until February 2014.)

In December 2012, DCFS reported that Melissa was happy living with her half-brother, R.R., and paternal grandmother. She was in good health and doing well in her

² Section 361.5, subdivision (b)(10) states that reunification services need not be provided if "the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian" or if "the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible. (§ 361.5, subd. (b)(13).)

grandmother's care. She could speak three-word sentences and was learning to feed herself. She was attached to her paternal relatives.

For her part, Mother was not visiting Melissa. She regularly called to talk with R.R. but she never asked to speak to Melissa.

DCFS reported that as of December 2012, Mother had not been in contact with DCFS for many months and was struggling with methamphetamine use.

On December 13, 2012, Mother gave birth to a daughter. DCFS removed the child based on Mother's drug use.

In April 2013, Mother complained that Melissa's grandmother was not cooperative in allowing her to visit, and requested that DCFS, not the grandmother, monitor her visits. On May 1, 2013, Mother visited Melissa for the first time in a year. After that visit, Mother remained inconsistent in her visits.

By June 2013, the paternal relatives continued to provide Melissa with a loving home. The child, having aged two years, was in day care from 8:00 a.m. to 3:00 p.m. everyday and reportedly doing well there. She was reported to be a happy, well-adjusted child, who was attached to her relatives.

In June 2013, Mother's visits were scheduled every Thursday for an hour, but no visits occurred because Mother did not contact DCFS in advance as required.

Mother visited Melissa one time in the Fall of 2013.

In October 2013 Mother gave birth to another child. This child too was removed from her care on allegations of drug abuse.

Later in October 2013, Mother enrolled in the His Sheltering Arms substance abuse program in Los Angeles. By November she was participating in weekly meetings to address parenting, child development, HIV and STD education, drug relapse prevention, and anger management. The program reported that Mother was also learning life skills and "Women's Issues" and was in full compliance with the treatment program and openly admitted to her errors and the need to change her behavior. Mother's case manager stated that Mother's "progress to date is good."

In December 2013 Ronald Beavers, Ph.D., a clinical psychologist with the His Sheltering Arms drug recovery program, provided DCFS a report on Mother's progress in the program. Beavers noted Mother's participation in one-on-one counseling sessions designed to help her manage her feelings and modulate her emotions in a healthy way. He also noted that Mother was receiving treatment for post-traumatic shock disorder resulting from sexual abuse as a child, and observed that she was developing the necessary coping and life skills to interact with others in a socially appropriate way. Beavers concluded that Mother was gaining self-efficacy, and coping skills. He further reported that Mother "has demonstrated [over] the past forty-three (43) days willingness to maintaining her duties and responsibilities in her treatment." He also noted that her social skills were improving and that she continued to "interact with her peers in a healthy way, her social skills [were] dramatically improving ever since her trauma/addiction issues are being addressed." Dr. Beaver found that Mother had "displayed personal responsibility in her recovery and a continued willingness to address her trauma issues for herself and child without medication."

Also in December 2013, Mother filed a section 388 petition asking the court "to give me another chance with my daughter and give me back my parental rights." The court denied the petition without a hearing.

In January 2014, Mother remained in a substance abuse program where she tested negative for drugs, made good progress and was fully compliant with the terms of the program. Mother had successfully completed the 60-day probation period and was free to leave the residential facility.

In February 2014 the court held a permanency planning hearing. Mother attended the hearing but did not testify. Mother's counsel objected to the termination of Mother's parental rights and asked the court to place Melissa in a guardianship. The court found Melissa adoptable and terminated Mother's parental rights. (The record shows the parties and the court expect that Melissa will be adopted by her paternal grandmother with whom she has lived most of her life.)

Mother filed a timely notice of appeal.

DISCUSSION

We review the summary denial of a section 388 petition for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

To be entitled to a hearing on a petition to change, modify or set aside an order of the dependency court the petitioner must make a prima facie showing of a change of circumstances and that the new order would be in the best interest of the child. (§ 388, subd. (a)(1); *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Mother's petition failed to show that she had evidence of changed circumstances so we need not consider the second prong of the test.³

Mother admits that at the time the court made its decision to deny reunification services in May 2012, her circumstances were not "conducive to effective parenting." She was transient, had not completed a recovery program, was using drugs and alcohol, had not addressed her domestic violence issues, did not keep in contact with DCFS and did not regularly phone or visit Melissa.

But, Mother argues in October 2013, two months before she filed her section 388 petition, she changed her circumstances by enrolling in a residential drug treatment facility where she was receiving parent and drug counseling and taking domestic violence and anger management classes. And, "[m]ost importantly," she contends, "she had daily telephonic contact with Melissa."

The record does not support Mother's claim of contact with Melissa. The letter she cites from the drug counseling program to DCFS makes no mention of Mother's phone calls or visits with Melissa. The DCFS report to the court that she cites was written with respect to another of Mother's children, not Melissa. It appears from the

³ Mother's petition did not specify the order she wanted the court to change or modify. On appeal the parties treat the petition as asking for the court to order reunification services. We accept that interpretation.

record that during the 21 months from Melissa’s detention hearing to the filing of the section 388 petition, Mother had one 15-minute visit with Melissa.

Nor does the record support Mother’s claim of changed circumstances with respect to her drug use. Commendable as it is, her enrollment in a drug treatment program is not evidence of a “change of circumstance” but only a “*changing* circumstance.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47; italics added.) As the court pointed out in denying the petition in this case, Mother “has not completed [a] substance abuse program and has a history of not complying with court orders.” Mother’s two month participation in a drug treatment program is not a changed circumstance in light of its coming two years after she made a voluntary family reunification agreement with DCFS in which she promised to address her substance abuse. Melissa cannot wait for her mother to become a parent.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

MILLER, J.*

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