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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re LYDIA C. et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARTHA L.,

Defendant and Appellant.

B275288

(Los Angeles County  
Super. Ct. No. CK59439)

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Commissioner. Affirmed in part; dismissed in part.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

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Martha L. (mother) appeals from the dependency court's March 10, 2016 order denying without a hearing her petition to change court orders under Welfare and Institutions Code section 388.<sup>1</sup> We affirm the order, and dismiss as moot the portion of mother's appeal challenging the court's order as to her daughter, Lydia C.

## **FACTS AND PROCEDURAL HISTORY**

Mother has four children and an extensive history with the Los Angeles County Department of Children and Family Services (Department). As mother's brief explains, mother's three oldest children, Lydia C. (born in February 1999), S.S. (born in August 2001), and Mason S. (born in August 2004), "were subject to sustained dependency petitions in 2005, 2010, 2011, and 2012, based in part upon mother's untreated mental illness, substance abuse, and failure to provide for the children." Aside from the multiple dependency proceedings, mother also has a long history of drug use and multiple criminal convictions for drug-related offenses. Mother was arrested in late 2003 for possession of a controlled substance, and was convicted and sentenced to 60 days in jail. She was convicted of felony burglary in 2006 and placed on probation for three years. While on probation, she was arrested for receiving stolen property in 2007, and

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

possession of a controlled substance in 2008 and again in 2009. In 2010, mother pleaded guilty to felony possession of a controlled substance and as part of her plea, the remaining charges (possession of drug paraphernalia, possession with intent to sell, and driving with a suspended license) were dismissed.

The current case involves two related dependency petitions filed by the Department in the fall of 2013. The first identified mother's three oldest children and was filed after the Department learned that mother had left the children with her boyfriend for about two months without communication, and the children reported domestic violence between mother and her boyfriend. Mother was pregnant with Atticus S. at the time, and a separate petition was filed shortly after his birth in October 2013, based on mother testing positive for methamphetamine.

Mother acknowledged her prior drug use, but claimed she had only used methamphetamine two times recently, once on September 27, 2013, and again two days before giving birth to Atticus. The Department's report quoted mother, "Those are the only two times. I have been to a rehabilitation program, my meetings. I am going to be going to therapy to address all my problems which would help everything involved, so I don't feel my history of drugs endangers my children because I am taking care of it.' Mother confirmed she has attended two NA meetings, but stated she is not willing to reenter a drug rehabilitation program for her relapses." Mason and S.S.'s father described

mother's predicament as follows: "You know when she got out of prison last time, she got her act together and she was taking prescription to take care of her mental and emotional problems. It sounds to me like she's on meth again. Every time she's using meth, she loses her priorities. I've seen her clean up and fall back and every time she falls back, she's hanging out with the wrong people and she's doing meth."

The dependency court exercised jurisdiction over the children based on mother's history of drug abuse, most recently testing positive for methamphetamine in the fall of 2013 while she was pregnant with Atticus. Other bases for jurisdiction included domestic violence between mother and Robert S., as well as mother's mental and emotional problems, including a diagnosis of bipolar disorder and her failure to take psychotropic medications. At the January 2014 disposition hearing, the court granted mother monitored visitation with all four children for three hours per visit, three times a week. Mother agreed to a case plan that called for a full drug abuse treatment program, drug testing, a 12-step program with court card and sponsor, a domestic violence program, family counseling, and individual counseling to address case issues, including mental health problems, drug use, co-parenting and domestic violence. Atticus was placed in the home of his presumed father, Robert S.,<sup>2</sup> who was to receive family maintenance services.

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<sup>2</sup> The court found Robert was only Atticus's presumed father. S.S. and Mason share a different father, and Lydia has a different father as well.

The older children were placed with their maternal great grandmother.

Less than a month later, the Department learned that Robert was suspected of possessing and distributing child pornography, including sexual photos of Atticus. The Department promptly removed Atticus from Robert's home, and filed a subsequent petition under section 342.

Mother made partial progress in her reunification services over the next year and a half. Between February and July 2014, mother was partially participating in reunification services, but had missed five out of eleven drug test dates. Mother continued her participation in reunification programs, completing a parenting program and a domestic violence program, and enrolling in a sex abuse awareness class and family therapy. Mother also continued monitored visits with her children without any problems being noted. By December 2014, the Department was recommending additional reunification services and gradually increasing the amount of responsibility mother would take for Atticus, recognizing that "mother has an extensive substance abuse history and her ability to have . . . fully integrated all that she has learned through these programs remains to be seen." The court granted mother unmonitored visitation with Atticus beginning in December 2014, and with the other three children after March 2015.

In May 2015, the children were moved from their maternal great grandmother's home to a foster home after

she was unable to care for them due to her deteriorating health.

*Department seeks to change court order*

In the spring of 2015, mother had two positive alcohol tests and admitted to drinking. She also had two no-shows, and two days where the test center was unable to contact her for an on-demand test. In April 2015, her drug and alcohol test showed a urine alcohol level of .12%. Mother was still participating in daily Narcotics Anonymous meetings. The Department suspended her unmonitored visits because of concerns with her alcohol levels and the fact that she was transporting the children during visits. The Department filed a petition under section 388 to formally change her visits from unmonitored to monitored. The day after a 12-month status review hearing, the court set a hearing on the Department's section 388 petition, directed the Department to prepare a report, and ordered mother not to drive a vehicle with the children as passengers and not to drink alcohol within 24 hours of a visit with the children.

During a June 2015 visit with Atticus, mother was arrested after a police officer identified mother's current address as a "known drug house" and stopped mother for a traffic violation. The deputy found nothing in mother's car, but arrested mother for an outstanding warrant for "Failure to Provide for Minor." In July, the social worker attempted to arrange a visit between mother and her children. S.S.

declined, saying she was not interested in visiting her mother. On the scheduled date, mother did not appear for the visit, and when the social worker contacted mother, she claimed she thought the visit was the following day. When the social worker arranged for mother to visit three of the children in the Department's Palmdale office, mother "stated that she does not have a car and chose to not come to the visit." On July 9, 2015, Lydia told a social worker she did not want to return to mother's care. Lydia also reported that when she told mother she wanted to live with her paternal uncle, mother asked what the point was of mother "getting clean" if Lydia did not want to return to mother.

In a September 2015 report, the Department summarized mother's situation as follows: "This family has been involved with the Department on and off since 2005. The children have been returned home of mother more than 3 times. It appears to the Department that due to the long history this family has had with the Department, the trauma the children have endured throughout their lives, and the instability of living with mother the children lack a bond with their mother and siblings. Lydia and [S.S.] have informed [the social worker] on multiple occasions that they do not wish to return to their mother's care, they have also declined visits due to not wanting to see their mother. The children have reported that their mother is inconsistent and Lydia believes her mother has not made getting the children back her priority." The Department recommended that the court terminate reunification services, explaining that "[d]ue



to the excessive time the children have spent in foster care and in and out of their mother's care, the children appear to lack a bond with their mother, and appear to not feel like they will be appropriately cared for if returned to her."

Mother also stopped appearing for drug testing in September 2015. According to an October 29, 2015 letter from a third party who was monitoring mother's visits, mother had four Saturday visits with her children from 2 p.m. to 6 p.m.

Lydia was present for three of the visits, and Atticus was present for all four.

After a contested 18-month hearing on October 29, 2015, the court identified placement with Lydia's paternal uncle as the permanent plan for all four children and terminated mother's reunification services. The Department withdrew its earlier section 388 petition.

### *Mother seeks to change court order*

Mother began participating in a substance abuse treatment program on October 15, 2015, and began a voluntary in-patient placement on October 30, 2015. According to a February 22, 2016 letter from the program director, mother was attending four daily sessions on successful job interviewing, learning new life skills, living with dual diagnosis of mental illness and substance abuse disorder, and self-esteem. She also met with a sponsor at least once a week, and had been hosting visitation with her children on Saturdays. According to the program director,

mother's random drug and alcohol tests were all negative. The letter also notes that mother "has met all requirements and reached every milestone necessary for Program resident to gain approval of the addition of their children living with then [*sic*] at the facility house."

On February 25, 2016, mother filed a petition under section 388,<sup>3</sup> seeking to have Lydia and Atticus<sup>4</sup> placed with her, or alternatively, a reinstatement of her reunification services and unmonitored visitation. The court denied mother's petition without a hearing on March 10, 2016. On April 11, 2016, mother filed a notice of appeal challenging the denial of her section 388 petition. At a hearing on April 28, 2016, the court granted legal guardianship as to Lydia and found continued jurisdiction was no longer necessary.<sup>5</sup>

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<sup>3</sup> The court has granted mother's request for judicial notice of her section 388 petition.

<sup>4</sup> The court granted full custody of Mason and S.S. to their father on February 5, 2016, so mother's section 388 petition does not seek relief as to either Mason or S.S.

<sup>5</sup> Pursuant to Evidence Code sections 452, subdivision (d)(1), and 459, subdivision (a), we take judicial notice of the minute order dated April 28, 2016.

## DISCUSSION

### *388 Petition*

Mother contends the lower court erroneously denied her section 388 petition without a hearing. We disagree.

“We review the juvenile court’s denial of a section 388 petition for an abuse of discretion. [Citation.]” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.) 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.*).) “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.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478–479.)

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.) Although the 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. [Citation.]” (*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. [Citation.]” (*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. [Citation.]” (*Stephanie M., supra*, at p. 317.)

Mother argues her current participation in a residential drug treatment program is prima facie evidence of changed circumstances. Considering mother’s long and only partially successful history of battling drug abuse, we respectfully disagree. Mother tries to distinguish *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643–644, by arguing that unlike the father in that case, she is not in denial about her substance abuse issues. Even if true, that does not demonstrate that mother has made a prima facie showing of changed circumstances. In *In re Angel B.* (2002) 97 Cal.App.4th 454, 461, the appellate court affirmed the denial of a hearing for a mother who was seeking reunification services or supervised custody of her child, where the mother had enrolled in a residential drug treatment program, tested

clean for four months, had regular visits with her child, and obtained employment. Here too, mother was enrolled in a residential program for about four months. However, the broader context demonstrates that even four months of sobriety does not show changed circumstances for mother, who has struggled with drug and alcohol addiction as well as mental illness for over 10 years. At least twice before, she was able to stay away from drugs and alcohol long enough to regain custody of her children, only to slip back into drug or alcohol use once again. Mother's older children are no longer willing to consider reunifying with her.

Even assuming mother could establish that her participation in a residential drug treatment program constituted a significant change in circumstances (*In re A.A.*, *supra*, 203 Cal.App.4th at p. 612), mother did not make a prima facie case that the requested change might be in the children's best interests. Mother's petition claimed the requested change would be in the children's best interests because "it would enable the minors to return to their mother whom [they] have a close relationship with and maintain their relationship with their siblings." The only evidence presented about mother's close relationship was that her visits were taking place without issue. The record contains no evidence to support mother's assertion that she has a close bond with either Lydia or Atticus, or that it would be in their best interests for her to resume reunification services.

Refusing mother's request for a hearing on her section 388 petition was not an abuse of discretion given the circumstances of this case.

*Mother's appeal moot as to Lydia*

While mother's appeal was pending, the dependency court granted legal guardianship as to Lydia and found continued jurisdiction was no longer necessary. We provided the parties an opportunity to address whether we should take judicial notice of the court's April 28, 2016 order and find mother's appeal moot as to Lydia.<sup>6</sup> Mother's letter brief objects to dismissing mother's appeal as to Lydia as moot, arguing that if the court had conducted the required evidentiary hearing, the guardianship might never have been entered.

“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.]’ (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.)” (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.) Even if we were to conclude that mother was entitled to a hearing on her section 388 petition, which we do not, the only relief we could grant is a hearing. Because the court has already granted a guardianship as to

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<sup>6</sup> The court sent a letter on February 27, 2017, inviting counsel to file letter briefs.

Lydia, a hearing would not be an effective form of relief.  
Mother's appeal as to Lydia is therefore moot.

### **DISPOSITION**

The order denying mother's petition under section 388 is affirmed, and the portion of mother's appeal concerning Lydia C. is dismissed as moot.

KRIEGLER, J.

We concur:

TURNER, P.J.

KIN, J.\*

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