Filed 11/22/17 In re C.D. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.D., a Person Coming Under the Juvenile Court Law.	B281909 (Los Angeles County Super. Ct. No. DK03454)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.H., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Karin Borzakian, Commissioner. Affirmed in part, conditionally reversed in part with directions.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

K.H. (Mother) appeals from an order terminating her parental rights over her child, C.D. She asserts four errors. First, Mother argues the juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.; see also Welf. & Inst. Code, § 224 et seq.)[1] Second, she contends the juvenile court should have assessed the parental aunt and maternal grandmother for relative placement under section 361.3. Third, Mother asserts the juvenile court abused its discretion by denying her section 388 petition. Fourth, she argues the juvenile court erred by finding the beneficial parental relationship exception did not apply. We affirm the placement order and denial of Mother's section 388 petition. We conditionally reverse the parental rights termination order and remand for compliance with the notice requirements of ICWA and related California law. If proper notice is provided to the Blackfeet and Cherokee tribes and no tribe asserts C.D. is an Indian child, the order terminating parental rights is to be reinstated.

---

[1] Further statutory references are to the Welfare and Institutions Code.

II. PROCEDURAL HISTORY

A. The Initial Section 300 Petition

On December 16, 2013, the Los Angeles County Department of Children and Family Services (the department) filed a section 300 petition on behalf of one-year old C.D. Mother and Father, Robert D., placed their daughter in a detrimental situation because a knife, marijuana, and an open container of alcohol were found in the home within access of the child. The home was in a filthy and unsanitary condition with mildew, marijuana and spoiled food odors permeating the home. Further, the petition alleged in October 2013, Mother engaged in a violent confrontation with the maternal grandmother, Gigi H., and maternal aunt, Korrie H. The petition also alleged Father was a current marijuana abuser, which periodically rendered him incapable of providing the child with regular care and supervision. Mother knew of Father's drug use and failed to protect the child. The juvenile court detained the child and ordered the department to conduct a pre-release investigation of a paternal aunt, Della S.

On March 11, 2014, the juvenile court sustained the allegations in the petition under section 300, subdivision (b)(1) and removed the child from the parents' custody. The juvenile court found "no reason to believe this case comes under the ICWA statute." The juvenile court ordered Mother to attend individual counseling to address domestic violence, anger management, and child protection. In addition, she was ordered to attend parenting classes. Mother also was required to have mental health counseling, a psychiatric evaluation, and a medical

assessment. She was ordered to take all prescribed psychotropic medication. Further, Mother was to submit to random or on demand drug tests, and if she missed or had a positive test, she was to participate in a full drug rehabilitation program with random drug testing. Mother was granted monitored visits for a minimum of two visits each week for two hours per visit with the department having discretion to liberalize visitation.

At the September 9, 2014 six-month review hearing, the juvenile court found Mother was not in compliance with her case plan. The department was ordered to provide the parents with family reunification services and transportation assistance. The maternal grandmother was ordered to have no contact with the child.

At the March 10, 2015 12-month review hearing, the juvenile court found Mother was in compliance with her case plan. The parents were granted overnight visits for a minimum of two to three nights a week once an approved home was located. The department was granted discretion to allow contact between the maternal grandmother and the child.

At the April 8, 2015 progress hearing, the juvenile court ordered the department to observe the child during visits with the parents. The juvenile court allowed the child to stay with the parents when the foster parents went on vacation. The parents were granted unmonitored visits from Friday through Sunday and a visit during the week if possible. The department had discretion to allow extended visits and to release the child to the parents. On May 22, 2015, the juvenile court ordered Mother's overnight visits to occur at the maternal grandparents' house pending the next hearing.

At the June 23, 2015 18-month review hearing, the juvenile court granted Mother's section 388 petition. The child was placed in Mother's home under the department's supervision. The department was ordered to provide Mother with family maintenance services and to make unannounced visits to Mother's residence.

B. The Subsequent Section 342 Petition

On October 7, 2015, the department filed a subsequent petition under section 342. The subsequent petition alleged Mother was a current user of methamphetamine and amphetamine, which rendered her incapable of providing the child with regular care. On September 22, 2015, Mother was under the influence of illicit drugs while caring for the child. Further, in September 2015, Mother exposed the child to a violent confrontation between Mother and maternal aunt Korrie. Mother and the maternal aunt struck each other in the face with their fists. Such violent conduct between Mother and the maternal aunt endangered the child's physical health and safety.

At the October 7, 2015 detention hearing, the child was detained and removed from Mother's custody. The department was ordered to assess the maternal grandmother and any other relative for possible placement and given discretion to release the child to any appropriate relative. In addition, the department was ordered to provide the parents with family reunification services.

On December 9, 2015, the juvenile court ordered the department to assess the maternal grandmother for possible placement of the child. The department was given discretion to

release the child to any appropriate relative. On December 31, 2015, the department was ordered to prepare a report regarding its assessment of placement with the maternal grandmother.

At the May 2, 2016 adjudication hearing, the juvenile court sustained the allegations in the section 342 petition under section 300, subdivision (b)(1). The department was ordered to assess the maternal grandmother's home for possible placement. The department also was ordered to provide a supplemental report regarding Mother's drug testing and the progress of her visits.

At the May 25, 2016 disposition hearing, the juvenile court removed the child from the parents' custody under section 361, subdivision (c). The parents were denied further family reunification services. Mother was not allowed to reside or visit the maternal grandmother's home when the child was present. Further, the maternal grandmother was not permitted to monitor Mother's visits. The maternal grandmother was granted unmonitored day visits with the department having discretion to liberalize visitation and place the child with the maternal grandmother. The department was ordered to further investigate placement of the child with the maternal grandmother. The department also was directed to prepare an assessment plan and to initiate an adoptive home study.

On September 19, 2016, Mother filed a section 388 petition requesting return of the child, or in the alternative, further family reunification services and placement of the child with the maternal grandmother. Mother argued she was currently enrolled in a six-month program called Project 180 "moms on a mission" that addressed her case issues. The juvenile court granted a hearing on Mother's section 388 petition at a September 22, 2016 hearing.

At the same hearing, the parents were granted monitored visits for a minimum of two visits per week for two hours per visit, limited only by the availability of a monitor. Mother also was to have monitored phone calls. Maternal grandmother could not be the monitor for any visits or phone calls. The juvenile court also ordered the department to assess the paternal aunt Della Z. and paternal uncle, Albert Z., for placement.

At the December 2, 2016 hearing, the juvenile court ordered the department to investigate the mother's Native American heritage. The department was ordered to interview maternal grand cousin, Bernard L., to understand his and Mother's Native American ancestry and to give notice to the proper tribes. Mother was granted monitored visits two times per week for two hours each visit, limited only by the availability of the monitor. The maternal grandmother could not be the monitor for any visits or phone calls.

At the February 21, 2017 hearing, the juvenile court ordered the department to prepare a written telephone visitation schedule. In addition, the department was ordered to file a supplemental report to address visitation, ICWA notices and any updated response to Mother's section 388 petition. The juvenile court denied Mother's request to assess a non-blood related extended family member, Nancy T., for placement. The juvenile court found it was not in the child's best interest to place her with Nancy because the minor had been with her prospective adoptive family for a significant amount of time and had bonded with her caretakers.

C. The Combined Sections 388 and 366.26 Hearing

At the March 21, 2017 combined sections 388 and 366.26 hearing, the juvenile court denied Mother's section 388 petition. The juvenile court found Mother had not met her burden of showing a change of circumstance. Mother demonstrated only changing circumstance because she was currently in rehabilitation and taking classes. In addition, it was not in C.D.'s best interest to return her to Mother's care because Mother had not completed the residential treatment program. The juvenile court added: "[T]he child has been with the caregivers for years. The caregivers have taken care of the child, taken the child to doctors, to school, stayed up with the child, and have provided an environment for this child, as well, and the caregivers have done a very good job and the child has stabilized and the child is in a stable home at this point." The juvenile court also denied Mother's alternative request for additional family reunification services. The court found Mother had over two years of family reunification services, which was more than required by law.

At the March 22, 2017 section 366.26 hearing, the juvenile court found the child was adoptable. With the exception of a four-month period when the child was returned to the mother, C.D. has been with her caregivers since she was one. The juvenile court found the child was thriving, happy and safe in the care of her prospective adoptive parents. They met the child's educational, developmental, medical and dental needs. In addition, the caregivers had an approved adoptive home study. The juvenile court found Mother visited the child but did not act in a parental role. The court ruled the child's regular visits with Mother did not outweigh the benefits of adoption. The juvenile

court ordered adoption as the permanent plan and terminated parental rights.

III. DISCUSSION

A. The ICWA Notice Requirements

Mother argues the order terminating parental rights should be reversed because the department's ICWA notices were deficient. Under ICWA and California law, notice to an Indian child's tribe is required when the juvenile court has reason to know an Indian child is involved. (25 U.S.C. § 1912(a); § 224.2, subd. (a).) An "Indian child" is defined as a child who "is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); see § 224.1, subd. (a).)

No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the Indian tribe receives notice. (25 U.S.C. § 1912(a); see § 224.2, subd. (d); *In re Isaiah W.* (2016) 1 Cal.5th 1, 5.) Notice must include known information about the name, birthdate, birthplace and address of the child, biological parents, grandparents, and great-grandparents, or Indian custodians, and the name of the Indian tribe in which the child is a member or eligible for membership. (25 C.F.R. § 23.111(d)(1)-(4) (2017); § 224.2, subd. (a)(5).)[2]

---

[2] Section 224.2, subdivision (a)(5) provides that notice shall include: "(A) [t]he name, birthdate, and birthplace of the Indian child, if known. [¶] (B) [t]he name of the Indian tribe in which the child is a member or may be eligible for membership, if known. [¶] (C) [a]ll names known of the Indian child's biological

"Notice requirements are strictly construed and must contain enough information to allow a meaningful review of the tribal records." (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 56; *In re J.M.* (2012) 206 Cal.App.4th 375, 380.) The juvenile court and the department have "an affirmative and continuing duty" to inquire into a child's Indian status. (§ 224.3, subd. (a); *In re Isaiah W., supra*, 1 Cal.5th at pp. 9, 14.)

We review the juvenile court's findings for substantial evidence. (*In re Charlotte V., supra*, 6 Cal.App.5th at p. 57; *In re D.N.* (2013) 218 Cal.App.4th 1246, 1251.) "[W]here notice has been received by the tribe, as it was in this case, errors or omissions in the notice are reviewed under the harmless error standard." (*In re E.W.* (2009) 170 Cal.App.4th 396, 402-403; accord, *In re Charlotte V., supra*, 6 Cal.App.5th at p. 57.) "Deficiencies in ICWA inquiry and notice may be deemed harmless error when, even if proper notice had been given, the child would not have been found to be an Indian child." (*In re D.N., supra*, 218 Cal.App.4th at p. 1251; accord, *In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.)

---

parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known." (§ 224.2, subd. (a)(5)(A)-(C).)

1. The ICWA Inquiry

On December 16, 2013, Father denied having any American Indian ancestry. On January 16, 2014, Mother filed an ICWA-020 parental notification of Indian status form. Mother indicated she may have Native American ancestry: "My grandmother [Eleanor R.] was 1/2 Cherokee. [¶] My father was part Blackfeet."

On December 2, 2016, Mother filed another ICWA-020 parental notification of Indian status form. Mother indicated she may have Blackfeet ancestry. She provided the name of a maternal grand cousin, Bernard L., and his telephone number. At a hearing on the same date, the juvenile court ordered the department to investigate the mother's Native American ancestry. The department was to interview maternal grand cousin, Bernard L., to understand his and Mother's American Indian ancestry. Further, the department was ordered to give notice to the proper tribes.

A social worker contacted Mother about her Native American ancestry. Mother reported she had possible Cherokee or Blackfeet ancestry and indicated the maternal grandmother had the information. The social worker spoke with the maternal grandmother, who provided information about the maternal family's Native American ancestry.

On January 9, 2017, the department sent the ICWA notices to the Blackfeet Tribe of Montana, the Eastern Band of Cherokee Indians, the Cherokee Nation, the United Keetoowah Band of Cherokee Indians in Oklahoma (United Keetoowah Band), the Bureau of Indian Affairs and the U.S. Secretary of the Interior. The ICWA notices provided the names, birthdates, and addresses

of the parents, and specified Blackfeet and Cherokee under "Tribe" for Mother. The ICWA notices identified maternal grandfather as Ruben H. with Cherokee listed under "Tribe." The ICWA notices also provided the name, birthdate, and address of the maternal grandmother and listed Blackfoot under "Tribe." The maternal great-grandfather, Thomas Champion B., was listed as Blackfoot under "Tribe" with a birthplace (Ohio), and a date of death. Finally, the ICWA notices identified the maternal great-grandmother's name (Eleanor Ann R.), her birthdate, birthplace (South Carolina), and year of death.

In January and February 2017, the tribes sent back letters indicating the child was not eligible for membership in their respective tribes. In a January 18, 2017 letter, the United Keetoowah Band wrote it had searched through its enrollment records and the child was not a descendent from anyone on the Keetoowah roll. Likewise, a January 23, 2017 letter on behalf of the Eastern Band of Cherokee Indians stated based on review of the tribal registry, C.D. was not registered or eligible to register as a member of the tribe. Further, a February 9, 2017 letter from the Cherokee Nation reported it had examined the tribal records for the names provided in the ICWA notice and found none were current enrolled members. Finally, the Blackfeet Tribe sent a February 28, 2017 letter stating it was unable to locate the names of the mother, father, maternal grandmother and maternal great-grandfather on the tribal rolls.

2. The IWCA Notices Were Inadequate

Mother asserts several deficiencies in the ICWA notices.[3] In her December 2, 2016 ICWA-020 form, Mother identified the maternal grand cousin, Bernard L., as having information about her Blackfeet ancestry.[4] She contends the ICWA notices fail to include any information on the maternal grand cousin. But under ICWA and section 224.2, subdivision (a)(5)(C), notices need only include the child's direct lineal ancestors. (*In re Charlotte V., supra*, 6 Cal.App.5th at p. 58; *In re J.M., supra*, 206 Cal.App.4th at p. 381; 25 C.F.R. § 23.111(d)(3) [ICWA notice must include "[i]f known, the names, birthdates, birthplaces, and

---

[3] Separately, the department concedes the ICWA notices are deficient because they omit Mother's birthplace. The department reports Mother was born in Panorama City, California but the ICWA notices list Mother's birthplace as unknown. The ICWA notices' omission of Mother's birthplace was harmless error. There is no basis to conclude information about Mother's birthplace would have changed the tribes' determination that C.D. is not an Indian child. (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784 [mother's wrong birthyear in the ICWA notices was harmless error].) Nevertheless, as we are remanding for proper notices to be given to the Blackfeet and Cherokee tribes, those notices must provide Mother's birthplace.

[4] Although the juvenile court ordered the department to interview the maternal grand cousin about the maternal family's American Indian ancestry, there is no evidence the department spoke with him. The department has "an affirmative and continuing duty" to inquire into a child's Indian status and should have interviewed the maternal grand cousin. (§ 224.3, subd. (a); *In re Isaiah W., supra*, 1 Cal.5th at pp. 9, 14.)

Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents"].)

However, we agree with Mother that the ICWA notices are inadequate because they fail to identity maternal grandfather as Blackfeet and do not list any tribal affiliation for maternal great-grandmother. When she filled out her first ICWA-020 form on January 16, 2014, Mother stated that maternal grandfather was "part Blackfeet" and maternal grandmother was half Cherokee. Despite those statements, the ICWA notices did not provide that information. The notices identify maternal grandfather only as Cherokee. Thus, when the Blackfeet Tribe searched its tribal rolls, it did not look for maternal grandfather's name because he was not listed as Blackfeet.

Likewise, the ICWA notices do not identify the maternal great-grandmother as Cherokee. While Cherokee Nation specifically examined its tribal records for the maternal great-grandmother's name because it searched more names than merely those identified as Cherokee, it is unclear whether the United Keetoowah Band or the Eastern Band of Cherokee Indians did the same. Those two tribes do not identify which individuals they searched for. Here, the ICWA notices do not contain enough information to allow the tribes to conduct a meaningful review of the tribal records because the notices do not list the maternal grandfather and maternal great-grandmother's tribal affiliation as reported by Mother initially. Therefore, we conditionally reverse the order terminating parental rights and remand for compliance with the notice requirements of ICWA and related California law.

B. The Relative Placement Preference Under Section 361.3

Mother contends the juvenile court failed to exercise its independent judgment by not considering placement of the child with the paternal aunt and maternal grandmother under section 361.3. When a child is removed from the parents' physical custody, "preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative . . . ." (§ 361.3, subd. (a).) "'The . . . relative placement preference places the relative "at the head of the line when the court is determining which placement is in the child's best interest." [Citation.]' [Citation.]" (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1296.) "The statute acknowledges . . . that the court is not to presume that a child should be placed with a relative, but is to determine whether such a placement is *appropriate*, taking into account the suitability of the relative's home and the best interest of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)

1. The Department's Relative Placement Assessments

On December 24, 2013, the department reported the assessment for paternal aunt, Della S. (also known as Della Z.), was negative. The department could not recommend placing the child with Della because it did not have results for the live scan background checks of Della and another paternal aunt, Mindy Z. Della needed to resubmit new fingerprints for live scan after the first set was rejected because of its poor quality. In addition, Della did not have a crib or car seat for the child. Furthermore,

Della provided conflicting statements as to whether her estranged husband, Marcus S., still resided with the family. Della indicated her husband would refuse to submit to a live scan clearance. Moreover, Marcus's CLETS results revealed he had a criminal history that would require a waiver.

The department also considered but rejected placement with the maternal grandmother. Prior to the March 11, 2014 adjudication hearing, the maternal grandmother told social worker Dana Rose that she had moved and wanted the child placed in her home. Rose explained the paternal grandmother could not be approved for placement because of her prior child welfare history. That history consisted of substantiated allegations of abuse and neglect and dependency court intervention.

On December 9, 2015, the juvenile court ordered the department to assess the maternal grandmother for possible placement of the child. On January 25, 2016, social worker Chekesha Bonam conducted a home evaluation and found the maternal grandmother did not have a bed for the child. Furthermore, maternal aunt Korrie refused to vacate maternal grandmother's home so the child could be placed there. Given Mother's prior physical altercations with Korrie, the department had concern they would get into another fight when Mother visited the child at maternal grandmother's home. In addition, the department was concerned about the maternal grandmother's prior child welfare history that resulted in three open cases in 1993, 1998 and 1999.

On May 12, 2016, Bonam again assessed maternal grandmother's home. The maternal grandmother lived with Korrie and a maternal cousin. Bonam found the home had a

toddler bed and appeared suitable for the child. But Bonam did not recommend placement with the maternal grandmother because of her prior dependency history, the previous physical alterations between Mother and Korrie, and the maternal grandmother is failure to the protect the child during those fights.

On November 28, 2016, the department recommended the maternal grandmother's visitation be changed to monitored visits. On numerous occasions, the maternal grandmother had not complied with a May 2016 court order by allowing Mother to speak with the child during the maternal grandmother's visits. Further, the department reported: "[The child] has some anxiety when she leaves with [maternal grandmother]. [C.D.] is alone with [maternal grandmother] for 4 hours and has reported that she does not always eat. She returns to caregiver parched and hungry."

On November 28, 2016, the department filed a supplemental report regarding the possible placement of the child with the paternal aunt, Della Z., and the paternal uncle, Albert Z. Bonam reported on October 24, 2016, she called Della and left several messages but she did not return the calls. Bonam was able to speak with paternal uncle Albert who agreed to have the child reside with his family. However, Bonam was unable to assess the paternal aunt and uncle because they failed to follow through with the department's live scan request.

2. The Placement Order Was Appropriate

We first consider whether Mother has standing to challenge the order placing the child with the foster family rather than a

relative. "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 238.) Here, relative placement would not advance Mother's argument against terminating parental rights because the child's placement with the foster family had no impact on the nature and quality of Mother's visits. Mother asserts relative placement could have made termination of parental rights unnecessary because either the paternal aunt or the maternal grandmother would have assumed legal guardianship. But nothing in the record suggests the paternal aunt or the maternal grandmother were interested in legal guardianship. Moreover, Mother lacks standing to appeal the relative placement preference issue after the termination of her reunification services on May 25, 2016. (*In re Isaiah S.* (2016) 5 Cal.App.5th 428, 437; *In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1460; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035.)

Even assuming Mother has standing, there was good basis for not applying the relative placement preference under section 361.3. Two court-ordered placement assessments of the paternal aunt, Della, failed to support placement with her. The December 2013, assessment did not recommend placement of her for an array of reasons that included the possibility that her estranged husband still lived at the home, his criminal history, and his refusal to submit to a background check. In the second assessment nearly three years later, the department was unable to assess Della because she failed to participate in her background check.

The department also assessed placement with the maternal grandmother in March 2014, January 2016, and May 2016. The assessments demonstrated that it was not in the child's best interest to be placed with the maternal grandmother. The department concluded the placement would not be appropriate because of the maternal grandmother's prior child welfare history, the prior physical altercations between the maternal aunt and Mother, and the maternal grandmother's failure to protect the child during those fights. During maternal grandmother's unmonitored visits, she had Mother speak by phone with the child, notwithstanding a court order that forbade her from monitoring Mother's contact with the child. Further, the maternal grandmother did not properly care for C.D. during her four-hour unmonitored visits. The child reported she was hungry and thirsty after visits because the maternal grandmother sometimes did not feed her.

Even if Mother had standing to enforce the relative placement preference, the assessments support the juvenile court's placement of the child with the foster family rather than a relative. The homes of the paternal aunt and maternal grandmother were not suitable and it was not in the child's best interest to be placed with either relative.

C. *Mother's Section 388 Petition*

Mother challenges the denial of her section 388 petition. Under section 388, subdivision (a)(1), a parent may petition for a hearing to change, modify or set aside any previously made order upon grounds of change of circumstance or new evidence. A petitioner requesting modification under section 388 has the

burden of proving by a preponderance of the evidence that the child's welfare requires such change. (Rules of Court, rule 5.570(h)(1)(D); *In re A.A.* (2012) 203 Cal.App.4th 597, 612; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.) "[T]he petitioner must show *changed*, not changing, circumstances." (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) In addition, the new evidence or change in circumstance must be of such significant nature that it requires modification of the challenged order. (*In re A.A., supra*, 203 Cal.App.4th at p. 612; *In re Mickel O., supra*, 197 Cal.App.4th at p. 615.) We review an order denying a section 388 petition for an abuse of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at pp. 317-318; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1158.)

1. The Section 388 Petition, Department's Responses, and Testimony

In the section 388 petition, Mother requested an order returning the child to her care, or in the alternative, reinstatement of family reunification services and placement of the child with the maternal grandmother. In support, Mother submitted two letters showing her participation in a drug treatment program. The first letter, dated September 2, 2016, was from the Public Health Antelope Valley Rehabilitation Center. The September 2, 2016 letter indicated Mother was receiving treatment at a residential treatment facility and concurrently enrolled in the MOM program. The second letter, dated September 13, 2016, was from her therapist at the MOM program. The program provided individual psychotherapy, psychiatric treatment and medication, drug and alcohol

rehabilitation, relapse prevention, random drug testing, intensive case management, parenting classes, and therapy groups addressing healthy relationships, anger management, and seeking safety. Mother received these services five days per week for five hours each day.

On September 22, 2016, the department filed a response to the section 388 petition. The department requested the child remain with her prospective adoptive parents. The department did not believe the maternal grandmother was an appropriate placement because she allowed Mother to have contact with the child outside of Mother's monitored visits. On June 15, 2016, Mother had a video chat with C.D. during the child's unmonitored visit with the maternal grandmother. On another visit on September 2, 2016, the child spoke with Mother on the maternal grandmother's cell phone. When Bonam discussed the matter with the maternal grandmother, she became combative and yelled and cussed at Bonam.

In a September 22, 2016 last minute information for the court, Bonam reported she received a phone call from Mr. A., Mother's landlord, on September 19, 2016. The landlord rented a room to Mother in Lancaster. He received a call from another renter who said the landlord's Lancaster home has been burglarized. The landlord rushed home and found it in disarray. The landlord believed Mother organized the burglary and evicted her. As Mother was leaving the house, the landlord found she and the maternal grandmother were in possession of some of his belongings. The landlord confronted Mother and the maternal grandmother and contacted the police. The landlord provided Bonam with video footage on September 20, 2016.

On November 18, 2016, the department filed a supplemental response to Mother's section 388 petition. The November 28, 2016 response recommended denial of Mother's request for family reunification services. The department believed Mother lacked the ability to care for herself and complete services. Mother did not drug test for the department. She also failed to show proof that she had seen a medical doctor for her head injury and a mental health provider to assess therapy and psychiatric services. In addition, Mother's landlord accused her of stealing items and provided video footage showing Mother and the maternal grandmother attacked him. The department was concerned Mother had not addressed her anger issues and was engaged in possible criminal activity.

At the March 21, 2017 hearing, Bonam expressed concern for the child's safety if returned to Mother's care. She believed Mother could not provide the child with stability because C.D. has been detained twice as a result of Mother's drug use and her aggressive and angry behavior. Bonam did not think Mother had resolved her case issues. She testified Mother's former landlord contacted the department, claiming Mother and maternal grandmother attacked him in June 2016. Mother broke into the landlord's home, or had individuals break into his home, and stole his belongings. The landlord provided Bonam a flash drive, which contained video clips from a home security camera and a list of the stolen items. Bonam recognized Mother, the maternal grandmother and the landlord in the video clips. In a lengthy video clip, Bonam saw Mother argue with and then attack the landlord. The maternal grandmother engaged in separate physical altercation with the landlord.

Mother testified in June 2016, she was moving out of the landlord's house because of conflicts with him. The landlord accused Mother of burglary, which she denied. She attempted to move out three times and called the police the last time when the landlord hit her in the face. In hindsight, Mother would have handled the June 2016 incident differently by talking calmly to the landlord. Mother testified she was not arrested.

Mother spoke to her therapist twice a week about anger management and practiced grounding and coping skills. Mother has completed courses on parenting, domestic violence, anger management, and substance abuse. She completed the MOM program on September 29, 2016. Mother was currently at Via Avanta, a residential treatment facility for mothers and children. She worked in the kitchen and attended group sessions and courses on parenting, domestic violence, relapse prevention, life skills and smoking cessation. Once Mother graduated, the program would help her find a job and housing.

2. The Denial of the Section 388 Petition Was Not an Abuse of Discretion

In her section 388 petition, Mother sought return of the child, or in the alternative, reinstatement of family reunification services and placement of the child with the maternal grandmother. Mother failed to meet her burden of proving her circumstance has changed. She continues to have unresolved case issues. Mother's former landlord accused her of burglary and provided video clips showing she argued with and then attacked the landlord in June 2016. Mother testified she completed the MOM program, which addressed substance abuse,

parenting, mental health and anger management. But on the same day she completed the MOM program, she enrolled in Via Avanta, another residential drug treatment facility. At the March 21, 2017 hearing, Mother testified she continued to reside and obtain services at Via Avanta. While Mother demonstrates her circumstance was changing, this is not enough to warrant modification of the placement order.

Furthermore, Mother has not met her burden of showing modification of the placement order would be in the child's best interest. (*In re Casey D., supra*, 70 Cal.App.4th at p. 48.) The four-year-old child was first detained when she was one and has resided with her foster parents for almost three years. The child was returned to Mother's care for about four months but was again removed after Mother had a violent confrontation with the maternal aunt in the child's presence and Mother tested positive for methamphetamine. Aside from the monitored bi-monthly visits, Mother has not been involved in the child's life since the second detention in October 2015. Mother has not demonstrated she could care for C.D. should the child be returned to her. By contrast, the foster parents have met all of the child's needs and are well-bonded with her.

As an alternative, Mother requests reinstatement of reunification services and placement with the maternal grandmother. But Mother is only entitled to six months, and at most 12 months, of reunification services under section 361.5, subdivision (a)(1)(B).[5] Here, Mother has received family reunification services for over two years from March 11, 2014 to

---

[5] In certain circumstances, family reunification services may be extended up to a maximum of 18 or 24 months. (§ 361.5, subd. (a)(3)(A) and (a)(4)(A).) Those circumstances do not apply here.

May 25, 2016. Moreover, Mother fails to show placement with the maternal grandmother would be in the child's best interest. The department conducted three placement assessments of maternal grandmother and concluded placement would not be appropriate because of her prior child welfare history and failure to protect the child during prior physical altercations between the maternal aunt and Mother. In addition, the maternal grandmother did not comply with a May 2016 order and failed to properly care for the child during unmonitored visits. The juvenile court did not abuse its discretion in denying Mother's section 388 petition.

D. *The Beneficial Parental Relationship Exception*

At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Marilyn H.* (1993) 5 Cal.4th 295, 304.) "In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption (the choice the court made here); (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds '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).)" (*In re Celine R., supra*, 31 Cal.4th at p. 53.)

To avoid termination of parental rights, a parent must prove one or more statutory exceptions apply. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re J.C.* (2014) 226

Cal.App.4th 503, 528.) One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i): "[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court 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." Mother has the burden of proving her relationship with the child would outweigh the well-being gained in a permanent home with adoptive parents. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300; *In re Anthony B., supra*, 239 Cal.App.4th at pp. 396-397.)

In determining the parental benefit exception, the court considers "'"[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs."'" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) "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 Breanna S., supra*, 8 Cal.App.5th at p. 646.) Furthermore, evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646; *In re J.C., supra*, 226 Cal.App.4th at p. 529.) Mother also must show she occupies a parental role in the child's life. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646; *In re Noah G., supra*, 247 Cal.App.4th at p. 1300.)

Appellate courts have reviewed the parental relationship determination by incorporating both the substantial evidence and abuse of discretion standards. (*In re Anthony B., supra*, 239 Cal.App.4th at p. 395; *In re J.C., supra*, 226 Cal.App.4th at p. 530; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) In evaluating the juvenile court's determination as to the existence of a beneficial parental relationship, these courts review for substantial evidence. (*In re Anthony B., supra*, 239 Cal.App.4th at p. 395; *In re J.C., supra*, 226 Cal.App.4th at p. 530; *In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re Bailey J., supra*, 189 Cal.App.4th at p. 1314.) But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. (*In re Anthony B., supra*, 239 Cal.App.4th at p. 395; *In re J.C., supra*, 226 Cal.App.4th at pp. 530-531; *In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

1. The Section 366.26 Reports and Testimony

The September 22, 2016 section 366.26 report and November 28, 2016 status review report recommended adoption as the permanent plan for C.D. The child was first placed with her prospective adoptive parents from December 13, 2013 to June 23, 2015. The child was returned to Mother's custody for about four months. Afterwards, the child was placed with the foster parents a second time from October 2, 2015 to the present.

The child's foster parents wanted to adopt C.D. because they loved her and considered her family. They were aware of the responsibilities involved in adoption because they had gone

through training and adopted their seven-year-old son. C.D. attended preschool and was developmentally on target. The child loved her current home and was very bonded with the foster family. Social worker Bonam observed the child was happy, healthy, smart and well-behaved. The foster parents were capable of meeting C.D.'s needs and were concerned and responsive caregivers. The foster parents had an approved adoption home study from November 12, 2013. A home study update was approved on September 6, 2016.

Mother consistently attended monitored visits twice a month for two hours each visit. During the visits, Mother engaged with the child and they played age-appropriate games. However, the foster mother reported prior to visits, the child cried and refused to go to them. The child would ask the foster mother to stay in the parking lot during visits because she did not want her caregiver to leave. According to the foster mother, the child was anxious about being removed from her current home.

Bonam testified the now four-year-old child had been placed with her prospective adoptive parents for about three years. She believed it would be detrimental to the child to move her from the current placement. Bonam believed C.D. was well-bonded with her prospective adoptive parents while Mother did not have a parental bond with the child. As a monitor for Mother's visits, Bonam observed the child was excited to see Mother but was detached from her. When Bonam picked up the child to take her to the visits, C.D. would call her foster mother "mommy" and Mother by her given name. During a recent car ride, the child disclosed she saw Mother fight with the maternal aunt and felt scared. At some visits, the child would call Mother

by her given name and be corrected by Mother. When the visits ended, the child would hug Mother and run towards her foster parents. The child did not cry at the end of visits and seemed excited to go back to her caregivers.

Mother testified C.D. was in her care for a year before the child was first detained. The child was in her care for four months when she was detained a second time because of Mother's positive drug test. Mother's monitored visits with the child occurred at Via Avanta. She and the child played with toys and board games and played at the outside playground. They ate the food C.D. brought with her and snacks from the kitchen. Mother taught the child about God, her alphabet and showed C.D. how to write her name. Mother testified the child acted happy and excited during the visits. She stated the child called her "mom" and rarely called her by her given name.

2. The Beneficial Parental Relationship Exception Does Not Apply

Mother argues the juvenile court erred in ruling the beneficial parental relationship exception did not apply. We disagree. Although Mother consistently attended the bi-monthly visits, visitation never went beyond monitored visits. Furthermore, while Mother has maintained regular visitation, she fails to establish the existence of a beneficial parental relationship with the child.

The four-year-old child has resided with her foster family for close to three years. The foster mother stated the child had anxiety about being removed from the foster home. Before visits with Mother, the child would cry and refuse to go to them.

Bonam, who served as a monitor, opined Mother did not have a parental bond with the child. Bonam testified the child was excited to see Mother during visits but was detached from her. The child did not cry at the end of visits and seemed excited to go back to her caregivers.

Furthermore, while the child derived some benefit from the visits, there is little evidence Mother occupied a parental role in the child's life. Instead, the foster parents occupied that role. The child's needs were met by the foster parents, who wanted to adopt her. The child was well-adjusted, happy, and healthy, and had a deep bond with the foster family. While Mother played and engaged with the child during bi-monthly monitored visits, these interactions are not enough to establish a beneficial parental relationship.

Mother argues terminating her parental relationship with C.D. would be detrimental to the child. Mother relies on a March 10, 2015 status report showing C.D. was happy and well-adjusted, and that she bonded with Mother during visits. When the child returned to her foster parents after visitation, she had increased meltdowns, nightmares and separation anxiety suggesting she wanted to remain with her parents. But there was no evidence the child continued to display these regressive behaviors after visitation. Bonam testified the child did not cry at the end of visits and seemed excited to return to her foster parents. In addition, there is evidence Mother's visits caused anxiety for the child. The foster mother reported prior to visits with Mother, the child would cry and refuse to go to them. The juvenile court did not abuse its discretion in finding the detriment from terminating the parental relationship did not outweigh the benefits of adoption.

IV. DISPOSITION

We affirm the placement order and denial of Mother's section 388 petition. We conditionally reverse the parental rights termination order and remand for compliance with the notice requirements of ICWA and related California law. The juvenile court shall order the department to interview the maternal grand cousin, Bernard L., about Mother's American Indian ancestry. In addition, the ICWA notices must include Mother's birthplace.

If proper notice is provided to the Blackfeet and Cherokee tribes and a tribe claims C.D. is an Indian child, the juvenile court shall proceed in conformity with all provisions of IWCA. On the other hand, if no Blackfeet or Cherokee tribe assert that C.D. is an Indian child after receiving proper notice, the parental rights termination order shall be reinstated.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J. BAKER, J.

---

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