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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Paul M. et al., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

B261469

(Los Angeles County
Super. Ct. No. CK42835)

APPEAL from an order of the Superior Court of Los Angeles County,
Julie F. Blackshaw, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant.

Amir Pichvai for Plaintiff and Respondent.

In her most recent appeal, R.M. (mother) challenges the order denying her Welfare and Institutions Code section 388 petition¹ seeking the return of her twin daughters L.P. and E.P., or in the alternative, reinstatement of reunification services. Mother argues the juvenile court abused its discretion in denying the petition. We disagree and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Mother's son Paul M. (born in 1999) had been the subject of a dependency proceeding in 2000, when mother had left him unattended in a car. A number of referrals were made against mother over the next 10 years, having to do with her failure to adequately respond to concerns about Paul's inappropriate behavior or to properly supervise him and his half-sisters L.P. and E.P. (born in 2006). The referrals were deemed unfounded or unsubstantiated.

The children eventually were removed from mother's custody in 2011, after a social worker investigated yet another referral regarding Paul's exhibition of sexualized behavior. During the investigation, the twins originally were interviewed together, outside mother's presence. They disclosed that mother had hit them and that Paul had touched their private parts and had placed his penis in their mouths while mother left them in his care. Mother vehemently rejected her daughters' accounts of sexual molestation. The girls began to vacillate and recant immediately after mother confronted them about what she said were false accusations. Mother accused the social worker of conducting the interview in a suggestive manner and of teaching the girls the word "penis"; the social worker denied the accusation and claimed it was mother who first used that word in front of the girls.

Based on the results of the investigation, which included numerous interviews with various individuals, including the children's fathers, as well as the referrals made against mother over the years, the Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of the children. In 2012, the juvenile court

¹ Statutory references are to the Welfare and Institutions Code.

sustained allegations that mother inappropriately disciplined the children; that she failed to and was unable to supervise Paul, who exhibited mental health and emotional problems, as well as inappropriate behavior; that Paul sexually molested the twins, whom mother repeatedly left in his care; and that mother's ability to parent was inhibited by psychological and emotional problems, including "distorted perception of reality, . . . threatening and unpredictable behavior towards others, . . . obsessive-compulsive behaviors, [and] an inability to accept responsibility for her behavior or the behavior of her children." Mother was granted reunification services and monitored weekly visitation, and was ordered to undergo a psychological assessment. We affirmed the jurisdictional and dispositional order in *In re Paul M.* (Jan. 30, 2013, B240325) [nonpub. opn.]).

Psychological assessments did not disclose that mother suffered from a serious psychiatric illness, but DCFS reported mother's obsessive discussion of case issues during visitation and disruptive behavior at the group home where Paul had been placed. Specifically, DCFS reported mother continued to insist in the girls' presence that they either had made up the sexual molestation, or someone had suggested it to them.

In 2013, the juvenile court terminated mother's reunification services, returning Paul, but not the twins, to her custody. We affirmed that order in *R.M. v. Superior Court* (May 14, 2014, B251998 [nonpub. opn.]), citing the juvenile court's concern that mother's attitude towards the sexual molestation allegations was that of "a dog with a bone' who cannot refocus." The court stated it was reluctant to return the twins to mother because she would "obsess over convincing them that they were wrong and it didn't happen, and this didn't happen in their family. She could not let it go. She would not let it go. I don't think she can let it go."

Later, we affirmed an order denying mother's section 388 petition for a new trial on the jurisdictional finding of sexual molestation. (*In re Paul M.* (Oct. 16, 2014, B251989) [nonpub. opn.]) We rejected mother's contention that the twins' continued recantations were new evidence. We also rejected her belated reliance on the concerns of

expert witnesses about the reliability of the initial unrecorded joint interview with the twins since that issue had been raised at the jurisdictional stage.

Mother's next section 388 petition sought a different placement of the twins because their foster father had forced E.P. to eat a banana E.P. had thrown in a trash can in a restroom at a visitation center. We affirmed the summary denial of that petition in *In re Paul M.* (Mar. 4, 2015, B257518 [nonpub. opn.]), noting the foster father's immediate apology to E.P. for what apparently was an isolated incident, and the girls' distress over mother's repeated discussion of that incident during visitation.

Meanwhile, in June 2014, DCFS recommended termination of mother's parental rights and adoption of the twins by the foster parents, whose home study had been approved and who had continued to care for the girls despite mother's "offensive racial comments" against the foster mother and her "ongoing complaints" about the foster parents. Three section 388 petitions followed. Paul's petition sought reinstatement of reunification services for mother and "more liberal sibling visitation." Mother's petition sought a return of the twins to her, unmonitored visits, or additional reunification services. Mother relied on her completion of 40 weekly therapy sessions, which addressed parenting and sexual awareness issues and provided her with techniques for stress reduction, as well as on reports of the family's successful participation in wraparound services. The twins' biological father, who had not maintained regular contact with them and had favored their adoption by the foster parents, also filed a section 388 petition, for the first time asserting his desire to raise his daughters.

The court ordered a bonding study of the relationship between mother, Paul, and the twins, in which the foster parents later were included. The bonding study described the interaction between mother and the children at the office of the evaluator, Dr. Crespo, in November 2014. Dr. Crespo observed that the twins mostly ignored mother, who instead of engaging them repeatedly questioned their lack of affection and suggested they had been coached to act distant. Dr. Crespo noted that mother failed to appreciate that her own abrasiveness may have undermined her reunification efforts and that he could not rule out an underlying personality disorder. He nevertheless opined that mother's

distrust of the dependency system and her sense of injustice would not prevent her from successfully parenting, as evident in the case of Paul, whom Dr. Crespo found to be well adjusted and not currently posing any risk to his half-sisters. Dr. Crespo attributed the twins' stated preference for adoption to the foster parents' unconscious influence, since adoption was the foster parents' main goal. He was concerned that the foster parents' negative view of Paul and mother would prevent the latter two from having any meaningful relationship with the twins if the court ordered adoption. Dr. Crespo concluded that the family had maintained "a positive visiting relationship," and the twins' successful adaptation in foster care suggested they could be reintegrated into mother's home with conjoint therapy.

Mother's section 388 petition was heard in December 2014. The twins, who had just turned eight, were ambivalent about whether they wanted to continue to see Paul and mother. L.P. testified she would like longer visits with Paul and she "kind of" wanted to visit with mother. After a pause and having become visibly upset, L.P. stated she did not want to visit with mother; she later stated she was worried mother would find out about her answers. L.P. was saddened by mother's frequent disparaging comments about the foster parents and did not want to hear them. L.P. claimed the monitor resolved conflicts during visitation. E.P. was unsure she wanted to visit with mother, and she did not want to return to mother's care. She wanted a monitor present at the visits because that made her feel "safe." She testified mother was "mean" at times, as when she showed E.P.'s underwear to everyone, when she yelled at E.P., or when she repeatedly told the girls they would go home with her, "and it never happens." In contrast, E.P. thought the foster parents were nice to her all the time.

The wraparound services facilitator, Stephen Singleton, testified he had monitored the family's weekly visits since the beginning of 2014. He stated it had taken some effort by mother to adjust to the rules of not discussing the foster parents or the case during the visits, and some visits were almost cancelled because of mother's failure to follow those rules. Overall, Singleton thought the family got along "pretty well," Paul was a

“mediating influence” and “pretty positive” with the twins, mother brought a “breadth of creativity” to the visits, and neither Paul nor mother were “mean” to the girls.

The court ruled there had been a change in circumstances, based on mother’s “significant progress, . . . much of it ha[ving] to do with her relationship with Paul, and dealing with the issues with Paul, and the fact that the family has, in many ways, dealt with the issues that brought us to court initially.” Nevertheless, the court found it would not be in the twins’ best interests to order additional reunification services for mother. The court relied on the twins’ testimony about their strong bond with the foster parents. The court acknowledged the girls’ “warm relationship” with mother and Paul, but noted their hesitancy about continued visitation, and mother’s non-parental role during the visits. The court also noted the girls were “very torn between their foster parents and the birth mother. . . . They call their mother ‘mean’ when she says critical things about the foster parents. That is not good for them. This is—it is not in their best interest to continue in a tug-of-war between these two families.” The court acknowledged that the wraparound services had provided “an incredible opportunity,” but “the children’s best interests are served by permanency with the foster parents.”

The court denied mother’s section 388 petition and Paul’s request for additional reunification services for mother, and granted the foster parents’ pending motion to be recognized as de facto parents. As the court delivered the ruling, mother interrupted, asking whether her son was “dangerous to society” and commenting that “after four years, the girls keep saying my son puts his pee-pee . . . in the mouth,” in an apparent reference to the alleged sexual molestation. The court admonished mother to be quiet, and clarified that its ruling was not based on a finding that Paul presented a danger to the girls. Mother, and Paul, went on making disruptive comments as the court wrapped up the hearing and continued unresolved issues to future hearings.

Mother timely appealed the denial of her section 388 petition.

DISCUSSION

“A juvenile court dependency order may be changed, modified, or set aside at any time. (§ 385.) A parent may petition the court for such a modification on grounds of

change of circumstance or new evidence. (§ 388, subd. (a).) The parent, however, must also show that the proposed change would promote the best interests of the child. (§ 388, subd. (a)(2); *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) ¶ Whether the juvenile court should modify a previously made order rests within its discretion, and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*)) ‘ . . . “[’]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’” (*Id.* at pp. 318–319.)” (*In re J.C.* (2014) 226 Cal.App.4th 503, 525–526.)

Mother’s claim that the court improperly denied her section 388 petition solely because of the children’s bond with the foster parents does not accurately reflect the law or the juvenile court’s reasoning. After reunification efforts have terminated, the court’s focus shifts from family reunification to promoting the child’s need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) “[I]n fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In light of the changed focus of the post-reunification inquiry, the court was correct to emphasize the children’s paramount interest in permanency and stability in the foster parents’ home where they had thrived for more than three years.

Mother selectively relies on the statement in *In re Jasmon O.* (1994) 8 Cal.4th 398 that “the existence of a successful relationship between a foster child and foster parent cannot be the sole basis for terminating parental rights or depriving the natural parent of custody in a dependency proceeding.” But that case does not hold that a child’s bond with the foster parents can never outweigh all other considerations, as mother seems to suggest. There, the juvenile court granted a child protective agency’s section 388 petition requesting modification of a transitional plan to place a dependent child with her

biological father. The agency carried its burden of proof that return of the child to the foster parents was in her best interest because she had developed severe separation anxiety and depression while in her father's care. (*Id.* at p. 410.) The Supreme Court concluded the juvenile court's decision was supported by substantial evidence. (*Id.* at p. 417.) It disapproved the proposition in *In re Venita L.* (1987) 191 Cal.App.3d 1229 that "the child's loss of a bond with foster parents cannot be the basis for depriving a natural parent of custody because such a rule would make the parent's right to reunification illusory" for failing to recognize that after the end of the reunification period "the parent's right to reunification may be outweighed by the child's interest in stability." (*In re Jasmon O.*, at p. 421.)

At most, the Supreme Court in *In re Jasmon O.*, *supra*, 8 Cal.4th 398 warned that courts "should carefully evaluate whether a child's distress in severing a temporary bond is simply situational, and not base their decisions on a transitory problem. . . ." (*Id.* at p. 418–419.) The child protective agency was the petitioning party with the burden of proof in that case, and it met its burden by showing that the existing plan to place the child with her father caused more than a transitory problem. (*Id.* at pp. 415–416.) In contrast, here, mother was the petitioning party who had the burden of showing by preponderance of the evidence that her children's welfare requires a modification of the existing orders terminating mother's reunification services and setting the case for permanent planning. (See Cal. Rules of Court, rule 5.570, subd. (h)(1)(C).) The juvenile court's conclusion that the girls "cannot be in this tug-of-war forever" indicates mother failed to prove by preponderance of the evidence that either the immediate return of the twins to her custody or the prolonged uncertainty of their living situation by resuming reunification services would be in their best interest. (See *In re Josiah Z.* (2005) 36 Cal.4th 664, 674 [“There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current ‘home,’ under the care of his parents or foster parents, especially when such uncertainty is prolonged”].)

Mother argues that the factors in *In re Kimberly F.* (1997) 56 Cal.App.4th 519 weighed in favor of granting her petition because the trial court found she had made

significant progress in dealing with the issues with Paul. *In re Kimberly F.* offered a nonexclusive list of best interest factors, consisting of “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children 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.” (*Id.* at p. 532.) The case has been criticized for not taking into account the divergent interests of child and parent at the post-reunification stage, something mother also fails to recognize. (*In re J.C., supra*, 226 Cal.App.4th at p. 527.) In any event, the balance of those factors does not favor mother as a matter of law.

The juvenile court based its finding of changed circumstances on mother’s “significant progress” in her relationship with Paul and case issues involving him. While the court stated the family had dealt with the case issues “in many ways,” it did not find that all issues had been resolved, or that they were resolved specifically as to the girls. On appeal, we make all intendments and presumptions in favor of the order, including “inferring the trial court made implied findings of fact that are consistent with its order, provided such implied findings are supported by substantial evidence. [Citation.]” (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 531.) While we may not reweigh the evidence supporting the express finding that mother has shown significant progress in her ability to parent Paul, it cannot be said that that finding automatically establishes the twins’ outright return to mother or additional reunification services for mother would be in the twins’ best interest because the three children are not similarly situated: the twins are significantly younger than Paul, have spent more time in foster care, and were the original source of the sexual molestation allegations against him.

Mother maintains that her refusal to accept the sexual molestation allegations and her distrust of the dependency system have nothing to do with her ability to parent the girls, but the record indicates otherwise. Indeed, mother’s antagonistic attitude towards the twins after they made the allegations of sexual molestation was the basis for the

juvenile court's decision not to return them to her care at the end of the reunification period. Dr. Crespo noted mother's failure to appreciate that her "abrasive nature" has "undermined her reunification efforts." Singleton's testimony shows mother's visitation with the twins has been successful largely because it has been monitored and subject to strict rules not to discuss the case or the foster parents in front of the twins. Even so, the girls testified to being upset by mother's repeated unrealistic insistence that they would go home with her on particular occasions and by her disparaging comments about the foster parents. Dr. Crespo's observation of mother's interaction with the girls in his office does not inspire confidence in mother's ability to refrain from discussing case issues in the girls' presence in an unmonitored environment. E.P.'s stated preference for monitored visits similarly suggests she does not feel "safe" with mother and Paul without a monitor.

Mother relies on Dr. Crespo's report to argue that the foster parents' influence may be responsible for the twins' preference for adoption, and that the foster parents' dislike of mother and Paul would prevent the twins from maintaining a relationship with their birth mother and half-brother in case of adoption. However, the twins' hesitancy about continuing visits with mother is not due solely to the foster parents' influence. The record shows mother's own behavior continues to cause the children distress, creates the impression that mother is "mean" at times, and makes the foster parents appear to be nicer in comparison. The record also shows the foster parents' dislike of mother is due to mother's openly hostile and confrontational behavior towards the foster parents, and their dislike of Paul is due to their belief that the sexual molestation occurred. On this record, we cannot conclude that the foster parents' desire to adopt is the only obstacle to mother's continued relationship with the twins.

Because the court's denial of mother's section 388 petition is supported by substantial evidence and is not beyond the bounds of reason, we must affirm it. (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318–319.)

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.