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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Chloe G., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIE G. et al.,

Defendants and Appellants.

B295364

(Los Angeles County
Super. Ct. No. DK21762A)

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

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant Julie G.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant Samuel A.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

Julie G. and Samuel A., parents of four-year-old Chloe G., appeal from juvenile court orders denying petitions they filed under Welfare & Institutions Code section 388¹ asking the court to reinstate their family reunification services and to vacate a section 366.26 hearing that was scheduled for Chloe.² Julie and Samuel contend the juvenile court abused its discretion by denying their petitions without a hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Juvenile Court Terminates Family Reunification Services for Julie and Samuel*

In April 2017 the juvenile court sustained a section 300 petition filed by the Los Angeles County Department of Children

¹ Statutory references are to the Welfare and Institutions Code.

² Although Julie appealed the termination of her parental rights without mentioning the denial of her section 388 petition, “we construe the notice of appeal to encompass that denial.” (*In re Angelina E.* (2015) 233 Cal.App.4th 583, 585, fn. 2; see *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450.)

and Family Services, finding Chloe came within the court's jurisdiction as a result of Julie and Samuel's history of violent altercations, Julie's mental and emotional problems, and Samuel's history of substance abuse and current abuse of opiates and alcohol. The court removed Chloe from Julie and Samuel, placed her in the care of the Department for suitable placement, and ordered monitored visits and family reunification services for Julie and Samuel. The court ordered Julie to participate in a domestic violence support group, submit to six random, on-demand drug tests, and "do a full on drug treatment program." The court ordered Samuel to participate in a full drug treatment program, random drug and alcohol testing, parenting classes, counseling for case-related issues, and a domestic violence program for perpetrators.³

In October 2017 the juvenile court held a six-month review hearing under section 366.21, subdivision (e). Chloe was adjusting well in the home of her foster mother and had weekly visits with Julie and Samuel. Samuel, however, had "missed many visits." Moreover, neither he nor Julie had enrolled in any of their court-ordered programs, both had missed all seven of their drug tests, and Julie refused to give the Department the contact information for her psychiatrist. The Department recommended terminating reunification services for both parents, and the juvenile court continued the matter for a contested hearing.

When the hearing resumed in December 2017, the court found Julie's and Samuel's progress in their case plans was

³ The court also ordered Samuel, who was convicted in June 2016 of felony elder abuse, to comply with the terms of a 36-month probation he was serving for that conviction.

“nonexistent.” The court terminated family reunification services for Julie, but finding the Department had not provided reasonable services to Samuel, ordered his services to continue.

In July 2018 the juvenile court held a contested 12-month review hearing under section 366.21, subdivision (f), with the Department again recommending the court terminate services for Samuel. Samuel was still not visiting Chloe consistently, and his last visit was in February 2018. He had missed all seven drug tests since the December 2017 hearing. And although he had enrolled in services at a drug and alcohol treatment facility in December 2017 and at one point claimed to be taking a parenting class there, the facility reported Samuel “ha[d] not shown up . . . since the intake date” and was consequently “discharged . . . for ‘no show.’” Finding that the Department had now provided Samuel with reasonable services and that his progress under the case plan was “minimal,” the court terminated his family reunification services. The court set the matter for a permanency planning hearing under section 366.26.

B. *The Juvenile Court Denies Julie’s and Samuel’s
Section 388 Petitions*

On January 28, 2019, the day of the permanency planning hearing, Julie filed a section 388 petition, asking the court to reinstate her family reunification services or, in the alternative, “take the .26 hearing off calendar and change the recommendation to legal guardianship.” She asserted circumstances had changed since the order terminating her services because she was now “enrolled at Shields for Families, where she will participate and complete parenting, individual counseling, and anger management” programs. Attached to the

petition were documents reflecting Julie enrolled at Shields for Families four days before filing her petition. Julie asserted her request was in Chloe's best interest because "Chloe needs her mother in her life and severing the parent-child relationship would be detrimental to Chloe."

Samuel also filed a section 388 petition the day of the permanency planning hearing, asking the court to reinstate his family reunification services and take the permanency planning hearing off calendar "or order home of parent father." Samuel asserted circumstances had changed since the order terminating his services because he had "since sought to obtain referrals to enroll in a parenting class, domestic violence class, anger management, and individual counseling" and was "currently enrolled in parenting and anger management" classes.

Documents attached to his petition reflected Samuel enrolled in a parenting class and sought information about other programs three days before filing his petition. Samuel asserted his request was in Chloe's interest because he had "made best efforts to participate in court ordered programs and is doing his best to provide a safe and nurturing home for the child."

The juvenile court summarily denied both petitions, stating it did so "in light of the fact that the court terminated services months ago, and the parents haven't completed programming." The court continued: "They have just enrolled in their case plan, but they have not completed it. [¶] The court finds it is not a change in circumstance. It might be a changing circumstance, but it is not a timely one." Proceeding with the permanency planning hearing, the court terminated parental rights and freed Chloe for adoption. Julie and Samuel timely appealed.

DISCUSSION

A. *Applicable Law and Standard of Review*

Section 388, subdivision (a)(1) provides; “Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made.” Section 388 thus “provides an “escape mechanism” for parents facing termination of their parental rights by allowing the juvenile court to consider a legitimate change in the parent’s circumstances after reunification services have been terminated.” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

“To obtain an evidentiary hearing on a section 388 petition, a parent must make a prima facie showing that circumstances have changed since the prior court order, and that the proposed change will be in the best interests of the child.” (*In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478; see *id.* at p. 479 [“Rule 5.570(d) [of the California Rules of Court] allows a juvenile court to summarily deny a petition on certain specified grounds, including that the petition ‘fails to state a change of circumstance or new evidence that may require a change of order’”].) The petition “must be liberally construed in favor of granting a hearing to consider the parent’s request,” but to make the required prima facie showing, “the allegations of the petition must be specific regarding the evidence to be presented and must not be conclusory.” (*In re Alayah J.*, at p. 478.) “A “prima facie” showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.’ [Citation.] ‘Whether [the petitioner]

made a prima facie showing entitling [the petitioner] to a hearing depends on the facts alleged in [the] petition, as well as the facts established as without dispute by the [dependency] court's own file.” (*In re B.C.* (2011) 192 Cal.App.4th 129, 141.) We review a juvenile court's determination to deny a section 388 petition without an evidentiary hearing for abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1160.)

B. *The Juvenile Court Did Not Abuse Its Discretion in Summarily Denying the Section 388 Petitions*

Julie and Samuel contend the juvenile court abused its discretion in denying their section 388 petitions without a hearing because they made the requisite prima facie showing. Regarding changed circumstances, Julie points to evidence she “resumed appropriate visits with Chloe” in December 2018 and “enrolled in the comprehensive Shields program.” Samuel does not point to any specific showing he made regarding changed circumstances, but presumably wants us to consider that he, too, had recently re-enrolled in services.

These showings were insufficient. The juvenile court terminated services for Julie in December 2017 and for Samuel in July 2018, after they made virtually no effort to participate in court-ordered services. And they continued to make no effort to participate in those services until a few days before filing their petitions. Those efforts were far too little and way too late. (See *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642 [no prima facie showing of changed circumstances where father made a “belated choice to return to treatment”]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 [no prima facie showing of changed circumstances on the ground mother was “seeking mental health

treatment” because she had been in treatment “for only four or five days,” italics omitted].)

Moreover, neither Julie nor Samuel made any showing their requests were in Chloe’s best interests. The conclusory assertions in their petitions did not constitute a prima facie showing. (See *In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157 [to make a prima facie showing “the allegations must . . . describe specifically how the petition will advance the child’s best interests”]; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808 [juvenile court did not abuse its discretion in summarily denying a section 388 petition where, although there was evidence of changed circumstances, the allegations did not show the request was in child’s best interests].) The juvenile court did not abuse its discretion in denying Julie’s and Samuel’s section 388 petitions without a hearing.

DISPOSITION

The orders denying Julie’s and Samuel’s section 388 petitions are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.