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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re N.A.,

a Person Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

B344453

(Los Angeles County
Super. Ct. No. 20CCJP02884B)

APPEAL from an order of the Superior Court of Los Angeles County,
Craig S. Barnes, Judge. Affirmed.

Jesse Frederic Rodriguez, by appointment of the Court of Appeal, for
Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County
Counsel, and Kelly G. Emling, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

D.A. (father) appeals from the juvenile court's order denying his Welfare and Institutions Code section 388¹ petition following an evidentiary hearing. We affirm the order.

BACKGROUND

Father's child, N.A., was six years old (born Oct. 2013) at the time the Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on his behalf. At that time, mother had full custody of N.A. and father had monitored visits due to the issuance of a restraining order against father.

I. *Dependency Proceedings*

On February 24, 2021, the juvenile court sustained the second amended section 300 petition that alleged the following. Father "has a long-standing history of alcohol abuse and a criminal history of convictions of driving under the influence [(DUI)],^[2] with the most recent arrest for DUI on [Jan. 3, 2019]." There was also a current criminal protective order protecting mother and N.A. from father, due to a domestic violence incident while mother was driving a vehicle and N.A. was the passenger. In sustaining the petition, the court indicated that father proffered no evidence that his challenges with alcohol abuse had been ameliorated.

The juvenile court ordered N.A. removed from the parents and suitably placed, with reunification services and monitored visitation. Father's case

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

² Father had misdemeanor DUI convictions in 2014 and 2018.

plan included a full drug program, random drug testing, individual and mental health counseling, and a parenting program. N.A. was subsequently placed with a family member.

On July 13, 2021, father completed his parenting classes. A social worker told father he had to enroll in a full-time drug program because he tested positive five times for marijuana between March and June 2021, as well as one “leaked” result and one missed test.

On October 13, 2021, the juvenile court found father was in partial compliance with the case plan and had made partial progress toward mitigating the causes necessitating placement.

On January 21, 2022, father reported he had not enrolled in any additional programs, including a drug program. Father told a social worker that marijuana is legal, and he used it as medication and did not abuse it. As of March 2022, father had enrolled in weekly individual therapy.

On May 12, 2022, both counsel for N.A. and DCFS requested that the juvenile court terminate father’s reunification services. The court indicated that father “inexplicably . . . remained disengaged, until the matter was set for contest” and that he had “not made sufficient progress to warrant the court exercising [its] discretion” to continue reunification services. The court then terminated his services.

a. *First Section 388 Petition*

On January 17, 2023, father filed a section 388 petition seeking reinstatement of reunification services, unmonitored visits, DCFS discretion to liberalize his visits, and, in the alternative, to have N.A. placed in his care. Father stated he completed eight individual therapy sessions as of April 2022, a 12-week parenting class as of July 2021, and had enrolled in an 18-

month SB-38 program³ on March 9, 2022. At the time, father had nine months left in the program.

DCFS filed a response to the section 388 petition. DCFS clarified that the SB-38 program was “a court ordered DUI program for those convicted of a DUI for a second time.” The program was required for father’s DUI conviction. DCFS emphasized that the SB-38 program provided “no services for rehabilitation.” Father admitted to a social worker that he “wrecked” his car when he was arrested for his DUI. He indicated he no longer drank alcohol. DCFS also reported that father was not participating in mental health services and no longer participated in individual counseling.

At the hearing, counsel for N.A. argued against granting the section 388 petition. While father was enrolled in the SB-38 program to address his DUI, counsel reiterated it was not an alcohol rehabilitation program. Counsel argued it was a “stretch” to find changing circumstances at best, and it was not in N.A.’s best interest to grant the petition. DCFS then added, “While [DCFS recommended further family reunification services], . . . [t]here are some reservations.” The juvenile court granted father’s section 388 petition, finding “changed circumstances,” but noted that there was “still more work to be done.” The court ordered further reunification services, a full drug program with random testing, individual counseling, and that father’s visits remain monitored by DCFS.

In March 2023, father tested positive three times for marijuana. Father missed two tests that month. Father frequently requested make-up tests with DCFS. On April 7, 2023, father enrolled in a substance abuse

³ “SB-38” programs, also known as the “multiple offender DUI programs,” require 18 months of participation. (Johnson & Taylor, California DUI Defense (5th ed. 2024) Drinking and driving education programs, § 2:21.)

program and attended group sessions three days a week. However, father stated he did “not have a substance abuse problem and uses marijuana to deal with stress from work and anxiety.” Father disclosed that he eats a marijuana edible before work and smoked marijuana at night. In April 2023, father enrolled in individual therapy but reported he did not understand the need to participate in mental health services. He completed therapy in June 2023.

On August 8, 2023, father’s substance abuse counselor reported father tested positive for marijuana seven times between June and July 2023. Father had been in an outpatient substance abuse program since April 7, 2023, and had a tentative completion date of August 7, 2023. Father continued to test positive for marijuana. Father also tested positive for alcohol on May 25, June 30, and July 20, 2023. On four additional occasions, it appeared that father had diluted his urine. Father’s counselor had advised him to enter a residential treatment program but father declined. Father told the social worker he “rarely” drank and he did not have a substance abuse problem. He indicated that if N.A. returned to his care, he would be “too busy” to use marijuana and drink alcohol. DCFS was subsequently informed that father withdrew from the substance abuse program on August 3, 2023, after his case manager met with him to address his relapse episode on August 2.

Father then re-enrolled in an outpatient substance abuse program in October 2023. Father continued to report that he did not have a substance abuse problem with alcohol or marijuana. DCFS noted that father had a summary probation condition prohibiting him from driving within six hours of consuming any alcohol or drugs, or with any measurable amount of drugs

or alcohol in his system. Father had admitted to marijuana use and drinking one beer, but denied he drove under the influence of substances.

On November 30, 2023, father's counselor in the substance abuse program indicated that all of father's test results between October 6 and November 20, 2023 were positive for marijuana and intentionally diluted. For DCFS, father tested positive for marijuana on September 27 and October 4, 2023. Father was admonished by his counselor for providing diluted urine samples and on December 8, 2023, he was terminated from the program for refusing to provide a urine sample.

On December 7, 2023, at a permanency planning review hearing, the juvenile court granted six additional months of reunification services for father.

On December 29, 2023, father told the social worker that he had stopped smoking marijuana, but when informed that his test results were positive, he indicated that he smoked marijuana twice a month. Father continued to report that he does not have a substance abuse problem. On January 25, 2024, father told the social worker he was dishonest about his prior alcohol use. He reported he last drank alcohol on November 23, 2023, first stating he drank a six-pack of beer but then stating he drank cocktails. Between November 2023, and January 2024, father had seven positive marijuana test results. On February 7, 2024, father enrolled again in another outpatient substance abuse treatment program.

In February and March 2024, father tested positive for alcohol and marijuana. Father told the social worker he last consumed alcohol and smoked marijuana in January 2024. After being questioned by the social worker, father then admitted he had "one beer, two weeks ago." He later appeared to concede that he drank "alcohol the night before testing." Father

minimized his drinking by stating “he only drinks one beer” and he was “not dependent on alcohol.” Father explained he drank a beer and smoked marijuana to cope with stress. He denied drinking in front of his children or being under the influence while driving. Father told the social worker he was diagnosed with anxiety but did not take the prescribed medications because he was concerned about damaging his liver. Father was still on summary probation until June 4, 2025 for his second DUI conviction.

On April 16, 2024, at a contested permanency planning review hearing, father’s counsel conceded that father struggled with complying with his case plan. However, he argued father had not exhibited worsening behaviors with substance abuse. His counsel asserted father was still participating in the treatment program. Counsel for N.A. pointed out N.A. was ten years old and he had been in dependency proceedings for nearly four years. Counsel requested termination of family reunification services, asserting that father had exhausted the time available under the law. DCFS argued father’s marijuana levels were increasing, he had positive alcohol tests, and the outpatient program was considering terminating his services. DCFS recommended termination of father’s family reunification services.

The juvenile court stated father was “typified by [his] lack of traction in terms of compliance. Some measure of resistance from [father is] palpable. I think what he’s indicated is just the sense that he doesn’t need to change, and that he’s only trying to appease along the way, which has left his challenges unresolved.” The court then terminated reunification services, reasoning it did not see how “further services outweigh[ed] the benefits of permanency at this juncture.”

On October 28, 2024, father was arrested for a hit and run that resulted in property damage and a DUI.⁴

b. *Second Section 388 Petition*

On January 17, 2025, father filed another section 388 petition, seeking to have N.A. returned to his care or in the alternative, to grant him six months of reunification services. Father stated he completed an outpatient treatment program on December 24, 2024, and he was now in aftercare. DCFS requested that father's section 388 petition be denied without a hearing. DCFS argued that it was "commendable to complete a drug program . . . but two weeks . . . demonstrates changing . . . not changed circumstances." Counsel for N.A. joined in that request, contending father's petition was "very thin." The court declined to deny the petition outright and set the matter for a hearing.

On January 30, 2025, father told the social worker that he did not know why he tested positive for alcohol in February and March of 2024. Father stated, "I think I had a shot the night before." The social worker explained that "one shot" of alcohol the night before a urine test would unlikely yield a positive result. Father offered no further explanation. Despite his prior two DUI convictions, DCFS stated that father continued to lack "accountability for his substance use and DUIs."

On February 11, 2025, the juvenile court held a hearing on father's section 388 petition. Both DCFS and counsel for N.A. recommended that the court deny the petition. Counsel for N.A. argued father had failed to

⁴ At the later hearing on his second section 388 petition, father refuted he was involved in the hit and run, claiming that someone else stole his vehicle from his home. He testified the case was dismissed.

demonstrate a “material change” to warrant a finding of changed circumstances. Father testified about living with and caring for N.A. during the first five or six years of his life. Father also discussed his struggles with alcohol. Father testified about his alcohol programs, relapses, counseling, aftercare, and testing. Father further testified that he was in denial about his alcohol problem but was now using techniques he learned from his classes to avoid triggers.

The juvenile court directed father’s counsel to address the threshold question of changed circumstances. Father’s counsel argued father had demonstrated a changed circumstance by completing an outpatient program and that “it’s reasonable for someone like [father] to take five years to kind of find his way through this.” Counsel further argued “relapse is part of recovery,” and “father shows more promise [by] having failed a couple of times and remains steadfast in his commitment to being sober in the future.”

Counsel for N.A. contended that father had a prior successful section 388 petition that extended the time of N.A.’s “path to permanency.” At this point, the dependency case has been pending for five years. Counsel also stated that “father’s recollection of the path that he’s taken seems inconsistent with the reality of the facts.” Counsel argued father’s completion of a program a month and a half ago, after several failed attempts to complete other programs, was “not significant and material to show that he has changed.” Therefore, counsel again argued that the court should deny the 388 petition. DCFS argued father showed only changing, not changed circumstances. DCFS also believed that father was not being transparent about his alcohol use and downplaying his positive test results for alcohol. Despite his prior successful section 388 petition, DCFS contended father’s behavior demonstrated his “issues with alcohol are pervasive and deeply-

rooted.” Also, “the fact that it took [father] five years” to complete a substance abuse program showed “he is still not ready.”

The juvenile court noted father’s admission that he had been an alcoholic since the age of 17 and he “had some starts and stops along the way.” The court found it disappointing that father “had disengaged in services in the spring of 2024.” And it was “only recently that [father] has engaged himself” in a rehabilitative program. The court also found father’s explanation about his more recent positive test result for alcohol not credible. The court surmised that “it looks as if the candor issue, which I think is such a crucial piece in terms of maintaining sobriety, is one that is still evolving.” The court concluded father fell short of “changed circumstances” and denied the petition.

Father timely appealed.

DISCUSSION

“Section 388 accords a parent the right to petition the juvenile court for modification of any of its orders based upon changed circumstances or new evidence. [Citations.] To obtain the requested modification, the parent must demonstrate both a change of circumstance or new evidence, and that the proposed change is in the best interests of the child.” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478, fn. omitted.) “The change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order.’ [Citation.]” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 [“the change in circumstances must be substantial”].) We review a juvenile court’s denial of a section 388 petition for an abuse of discretion and

its factual findings for substantial evidence. (*In re J.M.* (2020) 50 Cal.App.5th 833, 846.)

As discussed above, father received family reunification services on and off for approximately four years. In March 2021, the juvenile court initially ordered reunification services, which were then terminated 13 months later in May 2022. However, the court granted father's first section 388 petition for additional reunification services in February 2023. After finding father was not in compliance with his case plan, the court again terminated services in April 2024. Father's second section 388 petition was filed in January 2025.

On appeal, father contends he had "changed his circumstances by completing the outpatient program, continuing in an aftercare program, and testing clean." We disagree. "In the context of a substance abuse problem that has repeatedly resisted treatment in the past, a showing of materially changed circumstances requires more than a relatively brief period of sobriety or participation in yet another program. (E.g., *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [parents' most recent efforts at sobriety 'were only three months old' and did not demonstrate changed circumstances]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [parent's seven months of sobriety since his last relapse were insufficient to show changed circumstances, given the parent's history]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [It is the nature of addiction that one must be "clean" for a much longer period than 120 days to show real reform].)" (*In re N.F.* (2021) 68 Cal.App.5th 112, 121.)

While we commend father's efforts, the completion of an outpatient program less than a month before filing his second section 388 petition did not establish "changed circumstances." Father has an admittedly long substance abuse history, which resulted in two DUI convictions. Father was

terminated twice from outpatient substance abuse programs due to his positive test results and his refusal to test. As noted by counsel for N.A., the dependency proceedings have been ongoing for five years. During that time, father had consistently denied or minimized any substance abuse issues and persisted with consuming alcohol despite court orders to the contrary. As noted by the juvenile court, father's lack of candor with DCFS about his repeated substance abuse jeopardized his sobriety. Under these circumstances, the court reasonably determined that father's protracted and serious substance abuse, which was the reason for N.A.'s detention, had not materially changed. As such, no abuse of discretion has been shown on this ground. Because father has failed to demonstrate changed circumstances, we do not reach the issue of whether there was evidence to demonstrate it was in N.A.'s best interest to grant the section 388 petition.

DISPOSITION

The juvenile court's order denying father's section 388 petition is affirmed.

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ZUKIN, P. J.

WE CONCUR:

COLLINS, J.

MORI, J.