Filed 5/11/23 In re L.C. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.C., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.R. et al., Defendants and Appellants.	E080327 (Super.Ct.No. J292766) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed.

Michelle D. Pena, under appointment by the Court of Appeal, for Defendant and Appellant, N.R.

Janelle B. Price, under appointment by the Court of Appeal, for Defendant and Appellant, A.C.

Tom Bunton, County Counsel and Kristina M. Robb, Deputy County Counsel for Plaintiff and Respondent.

Mother and Father appeal orders which resulted in the termination of their parental rights over their one-year-old son, L.C. They argue the juvenile court judge erred when she determined their recent period of sobriety didn't establish a change of circumstances to justify ordering a six-month period of reunification services. (Welf. & Inst. Code, § 388, unlabeled statutory citations refer to this code.) We affirm the orders because the judge did not abuse her discretion in determining their circumstances were in the process of changing and that ordering services wasn't in the best interests of the child.

I

FACTS

A. *Detention*

L.C. came to the attention of Child and Family Services (the department) on April 6, 2022, when he was seven weeks old, after the department received a report that mother was using substances in his presence. According to police, mother was seen with a cloud of white smoke coming out of her mouth and hiding drug paraphernalia while pushing L.C. in a stroller. Mother confirmed she had methamphetamine. The department detained L.C., and police arrested mother.

On April 8, 2022, the department filed a section 300 petition alleging L.C.'s parents had failed to protect him (subd. (b)(1)), failed to provide support (subd. (g)), and had previously been found to have abused L.C.'s sibling (subd. (j)). The department

alleged the parents had a history of domestic violence as well as substance abuse problems and led an unsafe and unstable lifestyle. They also alleged L.C. was left without care and support due to his parents' incarceration. Finally, they alleged L.C.'s sister had been adjudged a dependent due to their parents' problems with substance use and domestic violence. At the end of that case, the juvenile court terminated their reunification services and their parental rights.

In this case, the juvenile court ordered L.C. removed from his parents and placed in the temporary care of the department. Mother was incarcerated at West Valley Detention Center for charges of child abuse with possible great bodily injury or death, providing false identification, being under the influence of controlled substances, and possession of unlawful paraphernalia. Father had been incarcerated on March 26, 2022, and at the time lived at Glen Helen Rehabilitation Center facing charges of burglary, grand theft, unauthorized entry of a dwelling, obstructing a police officer, and petty theft.

B. *Jurisdiction/Disposition and Placement*

The department recommended sustaining the allegations in the petition. They also recommended bypassing reunification services under section 361.5, subdivision (b)(10) and 361.5, subdivision (b)(11) because the juvenile court had already terminated the parents' reunification services for L.C.'s sister and also terminated their parental rights over her.

The department also pointed to the parents' criminal history. Mother had been charged with vandalism and graffiti, possession of a controlled substance, and

trespassing. Father had faced multiple charges for possession of a controlled substance, disorderly conduct, shoplifting, domestic violence, grand theft, petty theft, conspiracy, assault by means of force likely to produce great bodily injury, assault with a deadly weapon, carrying a concealed weapon, burglary, and trespassing. At the time of the department's report, both parents remained incarcerated with an unknown release date.

The jurisdiction/disposition report provided additional information about the sister's dependency. She was removed from mother and father in February 2017, when she was eight months old. The evidence suggested domestic violence played a significant role in the parents' relationship, that incidents of abuse had taken place in front of the child, and the child had been hit on some occasions. Both parents smoked methamphetamines daily, including in front of the child. A social worker interviewed mother, and she seemed to recognize the problems stemmed from her relationship with father, her poor living conditions, and her drug dependency. Father, on the other hand, objected that any evidence of their problems had been obtained illegally.

The child was placed with her maternal grandmother and her parents had weekly two-hour visits. At the contested six-month review hearing in November 2017, the juvenile court judge terminated the parents' reunification services. Father was arrested in December 2017 for grand theft and remained incarcerated. Mother was arrested in January 2017 for possession of unlawful paraphernalia, and was put on probation. The judge terminated parental rights on June 29, 2018. The maternal grandmother adopted L.C.'s sister on September 10, 2021.

On May 10, 2022, the juvenile court judge, San Bernardino Superior Court Judge Erin K. Alexander, held a contested jurisdiction/disposition hearing for L.C. Both parents were out of custody and present in court with their counsel. The judge found father was L.C.'s presumed father. She dismissed counts under section 300 subdivision (g) and found L.C. came under the court's jurisdiction under subdivisions (b)(1) and (j) of section 300.

The judge found clear and convincing evidence that the section 361.5, subdivision (b)(10) and (11) reunification services bypass provision applied because of the sister's dependency and the fact that the parents had failed to make reasonable efforts to address the problems that gave rise to the prior dependency. The judge noted father had numerous arrests since the termination of parental rights as to the sister in 2018, including multiple drug-related offenses, and that L.C. was removed after mother was seen using drugs while caring for him. The judge therefore denied reunification services for L.C.'s parents.[1]

The department recommended the juvenile court judge terminate parental rights and select a permanent plan of adoption. L.C. was living with his maternal grandmother and sister. He appeared to be meeting his developmental milestones and appeared happy and active. His grandmother said he ate well, slept well at night, and woke up only to eat.

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[1] On May 16, 2022, mother and father filed notices of intent to file writ petitions. On June 7, counsel for mother filed a no issue statement letter, and her writ was dismissed the next day. On June 28, father's writ was dismissed as defaulted.

L.C. appeared to have a strong attachment to his grandmother, who reported they had a parent/child relationship. She said she wanted to adopt L.C. because she loved him and believed that no one could take care of him as well as she could. She said she wanted L.C. and his sister to grow up together.

During this period, mother and father visited L.C. separately under the supervision of maternal grandmother. The parents did well during these visits, and the grandmother said they were loving towards him, they did well in changing his diaper and clothes, and there were no concerns with their visits.

C. *The Parents' Section 388 Petitions*

On September 14, 2022, mother filed a section 388 petition asking the juvenile judge to change the order denying reunification services. She identified her participation in treatment and services over a period about five months as the change justifying a modification of the order. She said she had completed individual counseling sessions, parenting classes, a domestic violence program, and a substance abuse treatment program. She attached certificates and letters showing she had completed 12 hours of parenting education, attended eight therapy sessions, completed an outpatient treatment program with group and individual therapy, had enrolled in a relapse and recovery class, attended domestic violence treatment for 12 weeks, returned nine negative substance abuse tests (out of 10), and attended Alcoholics Anonymous 12-step meetings from April 30, 2022 to August 9, 2022. She pointed out her visits with L.C. had been consistent and appropriate. She argued ordering reunifications services would be in L.C.'s best interests.

"[L.C.] is a very young infant and would benefit from the opportunity to reunify with his mother . . . [who] has been visiting consistently and appropriately as noted in the 26 report, and there is a strong bond between this child and his mother."

On September 15, father filed his own section 388 petition. He also argued his completion of services and sobriety justified allowing reunification services. He presented certificates and letters showing he had completed parenting education, a 12-week anger management program, an alcohol and drug outpatient program, individual therapy, a 12-step program, a 12-class domestic violence program, and returned 7 negative drug tests. He also took five drug tests with no results. He argued reunification was in L.C.'s best interests.

The department recommended the parents not be granted reunification services. They acknowledged mother told them she had been sober about seven months, had completed a four-month outpatient treatment program, and was participating in an aftercare program and attending alcoholics anonymous. However, they pointed out she was *not* attending narcotics anonymous, which would seem to be more suitable, because she said she didn't like the class. During the interview, mother appeared to minimize her responsibility. She said she believed the department had removed L.C. because she was "holding a pipe." She told the social worker someone else had handed her the pipe and also denied there were controlled substances in the pipe and denied using substances herself. They reported that father, reflecting on his own treatment and programs, reported, "I don't have any domestic violence issues or parenting issues or no anger management

issues." He reported participating in an outpatient program from May 2022 through September 2022 but denied participating in any aftercare services or relapse prevention. He said he was staying sober by using what he learned in his outpatient program and the best way to stay sober was "not to do it."

The department interviewed the maternal grandmother as well. She said she could see both mother and father attempting to be better parents. She said L.C. had a bond with his parents, but said he was more bonded with his sister, and she believed it would cause emotional trauma to L.C. if he were separated from her. The grandmother said she was still concerned about the parents' sobriety and stability.

D. *Hearings and Ruling*

On October 19, 2022, the juvenile court judge found sufficient evidence for an evidentiary hearing, continued the section 366.26 hearing, and set a combined hearing to address both parents' petitions.

The initial hearing occurred on November 16, 2022. Both parents submitted additional evidence showing their continued diligence with rehabilitation and evidence of continued sobriety. Mother submitted two additional drug test results from October 25 and November 15, evidence she attended 11 meetings of her 12-step group from August to November, and a letter indicating she had been sober for eight and a half months. Father submitted three additional drug test results, an update from his outpatient aftercare program, and evidence he had attended nine AA/NA meetings between August and November.

Father testified he had completed domestic violence, anger management, and parenting classes, and attended AA/NA meetings and individual therapy. He said the parenting classes taught him about different parenting styles and child development, outpatient services and aftercare taught him how to cope, substitute good habits for bad, maintain sobriety and "stay away from places, persons and things that have drug use." He said he had been sober for about eight months. Domestic violence services taught him how to identify physical, emotional and social domestic violence and how to stay away from unhealthy environments and relationships. Father said it would be in L.C.'s best interest to order reunification services "[b]ecause there has been a substantial change in the way I think, the way I act, the way I interact with my child, the way I live my daily life, thanks to the classes."

Mother also testified. She blamed the removal on running into her cousin while on a trip to the store. He offered her a beer and his meth pipe, which she explained is what led to her arrest for using a controlled substance in front of her child. She did admit to using drugs in front of the child and said she was responsible for what happened. She said she had addressed the problems that led to the removal by taking a significant number of treatment and educational sessions, including 12 parenting classes, 12 individual therapy sessions, 24 child abuse classes, 12 weeks of an outpatient program, an ongoing aftercare program and AA meetings, and 12 domestic violence sessions. She acknowledged submitting the results for a positive test but said the test was a mistake and although she tried to get a letter from her program, she was not able to do so. She denied using any

substances since removal. She also testified she and L.C.'s father support each other in their sobriety by going to meetings, sticking together, and staying at home. She said they were married three months before the hearing and had not fought since they became sober.

Minor's counsel opposed changing the order and granting services. They argued that at best the parents circumstances were in the process of changing, and could reverse. The department opposed the petition as well.

The judge took the case under submission "to read some additional case law." She continued the hearing for an in-progress hearing and ordered the parties to prepare to argue issues related to section 366.26.

On December 6, 2022, the judge acknowledged the parents were making progress in addressing the root causes of the removal but concluded they hadn't shown, by a preponderance of the evidence, that their circumstances were changed. The judge noted mother had participated in an outpatient program in the case of L.C.'s sister but relapsed after she had given birth to L.C. Father had exhibited a similar history. The judge said that to find changed circumstances, she would have to find the "parents are stable in their sobriety today and ready for a return" which they hadn't established. She emphasized that both parents had completed outpatient programs only four months earlier, not enough to show recovery had taken root in the face of a long history of attempted recovery and relapse.

The judge also concluded there was insufficient evidence that changing her order and allowing an additional period of services would be in the child's best interest. She concluded the child's best interest would be served by securing permanency in a home where he was bonded to his caregiver and would live with his sibling. The judge recognized the parents and their son had gotten along well at visits, but noted the child's primary bond was with his sister and concluded it would not be in his best interest to separate him from his caregiver and his sister. The judge denied the petitions, terminated parental rights, and selected adoption as the permanent plan.

Both parents filed timely notices of appeal.

II

ANALYSIS

Mother and father argue the juvenile court judge abused her discretion by denying their section 388 petitions seeking a change in the order denying reunification services on the ground that they hadn't established their circumstances had changed. They also argue it was an abuse of discretion to find it was not in L.C.'s best interest to provide reunification services when they were making reasonable efforts to address the problems that started the dependency.

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. The parent bears the burden to show both a legitimate change of circumstances and

that undoing the prior order would be in the best interest of the child." (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [cleaned up]; § 388, subd. (a)(2).)

The trial judge may consider the entire factual and procedural history of the case to determine whether the parent has made a showing of changed circumstances. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) The parent must show circumstances have changed, not merely that they are in the process of changing. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The change "must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.) Showing circumstances are in the process of changing is insufficient because of the interest in promoting stability for the child, a concern that is heightened in cases like this where the child is of very young age. (*In re A.S.* (2009) 180 Cal.App.4th 351, 358; *In re Casey D.*, at p. 47.)

It is particularly difficult to establish that a parent's circumstances have changed when the problems that led to the dependency arose from sustained drug abuse. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 ["[i]t is the nature of addiction that one must be 'clean' for a much longer period ... to show real reform"]; see also *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [no changed circumstances where "recent efforts at rehabilitation were only three months old at the time of the section 366.26 hearing"].) That is true because drug addiction is persistent and difficult to shake, particularly so in the case of pernicious drugs like methamphetamines. Relapse is common, even after months of sobriety, and a return to use can throw a child back into

circumstances of neglect and abuse. That's precisely what happened with L.C.'s sister in the prior dependency. Few people see this occur more than juvenile court judges, who as a result have considerable discretion in deciding whether the evidence that a parent has made efforts to reform have resulted in circumstances that have truly changed. For that reason, we review a trial judge's determination for abuse of discretion, reversing only where a decision is beyond reason. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460.)

We don't find the judge abused her discretion here. Admittedly, this is a case in which the parents appeared to make a strong, though belated, effort to address the problems which led to the dependency. The judge's handling of the case shows she understood it to be a close call and required careful consideration. She held the parents had presented sufficient evidence with their petitions to warrant an evidentiary hearing, she took evidence and heard testimony, and then rather than rule from the bench, she took the case under advisement to review additional caselaw before reaching her determination. Her conclusion that the evidence showed at best changing circumstances was not unreasonable. Mother began using alcohol, marijuana, and methamphetamine around the time she graduated high school in 2013. Father's drug use was similarly of longstanding, judging by his history of drug arrests. In addition, as the judge noted, both parents attempted to shake their drug use while on reunification services for their older daughter, but ultimately relapsed and lost parental rights over her. All these circumstances provide a reasonable basis for the judge to have found parents were in the process of changing their situation. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at

p. 531, fn.9 [noting the difficulty of prevailing on a 388 petition for "the parent who loses custody of a child because of the consumption of illegal drugs and whose compliance with a reunification plan is incomplete during the reunification period. It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform"].) As the juvenile court judge here explained, "Although I am sincerely hopeful in the parents' future sobriety, after a history of attempted recovery and relapse thereafter, four months is insufficient amount of evidence of changed circumstances for purposes of a 388 today."

Other factors lent additional support. Though the parents said the right things at the section 388 hearing, taking responsibility and providing what appeared to be satisfactory answers about how they could stay sober, their recent previous answers to department social workers did not indicate the same recognition that their behavior would have to change. Mother attempted to minimize her responsibility, blamed circumstances for throwing her into contact with drugs, and at some points denied she was using at all. Father told the social workers, "I don't have any domestic violence issues or parenting issues or no anger management issues." He also denied participating in any aftercare services or relapse prevention and said the best way to stay sober was "not to do it." The juvenile judge was permitted to discount the parents credibility at the hearing. These recent comments by mother and father provided a basis for doing so, and for concluding their progress on addressing their drug and domestic violence problems was not advanced

enough to find circumstances had changed and reunification services were now warranted.

Mother objects that the judge wrongly required them to have established circumstances were changed to the extent she could return the child to their custody immediately. She argues the relevant question was whether circumstances were changed to the extent that granting a period of six months of reunification services would permit the parents to complete their efforts at rehabilitation and establish the child should be returned to their custody *after that period of six months*. We don't agree. Adopting such a rule would mean a juvenile court judge should reconsider a denial of reunification services whenever a parent who lost custody due to drug use can begin the process of rehabilitation and make sufficient progress to make it possible that reunification will occur after an additional successful six months of services. As we've discussed, with drug dependency, such a short period of sobriety is not a strong indicator of success, and so we conclude the trial judge did not abuse her discretion.

In any event, we don't believe the juvenile court judge abused her discretion by finding that ordering another six-month period of reunification services was not in L.C.'s best interests. "After the termination of reunification services . . . 'the focus shifts to the needs of the child for permanency and stability.' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 310 [noting that four months "may not seem a long period of time to an adult, [but] it can be a lifetime to a young child"].) L.C. has been living with his grandmother and sister for most of his young life.

He has a strong and healthy bond with them. Granting a section 388 petition would delay selection of a permanent home and not serve his best interests. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) Parents, meanwhile, are asking L.C. to wait for permanency on the chance they can extend their sobriety for another six months. " 'The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself.' " (*In re Daniel M.* (1993) 16 Cal.App.4th 878, 884.) Thus, even crediting the parents' claim to having a strong bond with L.C., we cannot conclude the judge acted unreasonably or arbitrarily in finding it would be detrimental to introduce further delay in the adoption process. Denial of the petitions was proper.

III

DISPOSITION

We affirm the juvenile court's orders.

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SLOUGH
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.