

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION _____

IN RE T.B.,)	NO. _____
)	
A Person Coming Under)	
the Juvenile Court Law.)	
_____)	
LOS ANGELES COUNTY DEPART-)	JUV. CT. NO.
MENT OF CHILDREN AND FAMILY)	_____
SERVICES,)	
)	
Petitioner and Respondent,)	
v.)	
)	
J.M.,)	
J.B.,)	
)	
Objectors and Appellants.)	
_____)	

APPEAL FROM THE JUDGMENT OF THE JUVENILE COURT
OF LOS ANGELES COUNTY

HONORABLE MICHAEL E. WHITAKER, JUDGE

APPELLANT'S OPENING BRIEF
(Pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835)

ATTORNEY NAME
State Bar No

Address
Telephone No.

By Appointment of the Court
of Appeal

Attorney for Appellant, J.M.

Table of Contents

Page

Table of Authorities

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN

IN RE T.B.,) NO. _____
)
A Person Coming Under)
the Juvenile Court Law.)
)
_____))
LOS ANGELES COUNTY DEPART-) JUV. CT. NO.
MENT OF CHILDREN AND FAMILY) _____
SERVICES,)
)
Petitioner and Respondent,)
v.)
)
J.M.,)
J.B.,)
)
Objectors and Appellants.)
_____))

Statement of Appealability

Mother has appealed findings and orders made on March 5, 2019, by the juvenile dependency court at a contested Welfare and Institutions Code¹ section 388 hearing and at a contested section 366.26 hearing. (2 RT 40-53.) The juvenile court denied the mother's section 388 petition in which she asked the juvenile court to return her one-and-a-half-year-old daughter to her custody. (2 RT 48-49.)

As to the section 366.26 issues, the juvenile court found by clear and convincing evidence the child was adoptable. (2 RT 48.)

¹All further statutory references are to the Welfare & Institutions Code unless otherwise specified.

It further found the beneficial parent-child relationship exception to adoption did not apply in the case. (2 RT 48-51.) After making these findings, the juvenile court terminated the mother and presumed father's parental rights to the child. (2 RT 51-52.)

The juvenile court's findings and orders are appealable. (Sec. 395, subd. (a)(1).) The mother filed a timely notice of appeal on March 5, 2019. (4 CT 1082-1083.) The father filed a timely notice of appeal on March 12, 2019. (4 CT 1084-1085.)

Introduction

J.M. is the mother of T.B. who was born in June 2017. (1 CT 1.) J.B. is T.B.'s presumed father. (1 RT 4.)

J.M. has three other children: S.J., born in June 2011; Ja.B., born in June 2016; and Jo.B., born in November 2018. (1 CT 86, 149; 4 CT 977.) K.J. is S.J's presumed father. (1 CT 11.) J.B. is Ja.B. and Jo.B. presumed father. (1 RT 4; 4 CT 977.)

This appeal pertains only to T.B.

Statement of Case

A. Dependency case #1 (S.J.'s case)

On August 27, 2012, the juvenile court sustained a section 300, subdivision (b)(1) petition which had been filed by the Los Angeles County Department of Children and Family Services ("DCFS") on behalf of S.J. (1 CT 11.) The petition alleged J.M. had placed S.J. in a detrimental situation when she engaged in prostitution while S.J. was in the room. (1 CT 11.) When the police arrived, J.M. fled leaving then one-year-old S.J. alone in the room. (1 CT 11.) It also alleged J.M. and K.J. had created a detrimental situation for S.J. by placing a drug pipe in his diaper bag. (1 CT 11.)

The juvenile court terminated jurisdiction over S.J. on June 20, 2014, and issued custody orders which granted sole physical custody to J.M. and visits to K.J. (1 CT 11.)

B. Dependency case #2 (S.J. and JaB.'s case)

DCFS filed a section 300, subdivision (b)(1) petition on behalf of newborn Ja.B. and then five-year-old S.J. on August 1, 2016. (1 CT 89.) The petition focused on J.M. and J.B.'s unresolved histories of substance abuse. (1 CT 89.) On November 10, 2016, the juvenile court sustained the petition. (1 CT 12.) Ja.B. and S.J. were removed from J.M.'s custody. (1 CT 89.)

S.J. was placed with K.J. and Ja.B was placed in foster care. (1 CT 12-13.) On October 19, 2017, the juvenile court terminated jurisdiction over S.J. and issued custody orders which granted

K.J. sole physical custody and provided J.M. with monitored visits with S.J. (3 CT 673.) The juvenile court terminated reunification services for J.M. and J.B. for Ja. B. on May 3, 2018. (3 CT 674.) Ja.B.'s section 366.26 hearing was scheduled for September 14, 2018. (3 CT 674.)

C. Dependency case #3 (Jo.B.'s case)

Jo.B. was born in November 2018. (4 CT 977.) DCFS filed a section 300, subdivision (b)(1) petition on behalf of newborn Journee on January 30, 2019. (4 CT 977.) The petition focused on J.M. and J.B.'s substance abuse history. (4 CT 977.) Jo.B. was initially released to J.M.'s custody and remained in her custody through T.B.'s section 366.26 hearing on March 5, 2019. (2 RT 26.)

This petition had not been adjudicated by the time of T.B.'s section 366.26 hearing on March 5, 2019. (4 CT 977.)

D. Dependency case #4 (T.B.'s case)

1. DCFS files a petition for T.B; the juvenile court releases T.B to J.M.

On July 19, 2017, DCFS filed a petition on behalf of T.B. which included two section 300, subdivision (b)(1) counts and two section 300, subdivision (j) counts. (1 CT 1-8.) The section 300, subdivision (b)(1) counts focused on J.M. and J.B.'s histories of substance abuse which rendered them unable to provide regular care for T.B.. (1 CT 3.) The two section 300, subdivision (j) counts focused on J.M and J.B.'s histories of substance abuse and the current dependency of S.J. and Ja.B. due to J.B. and J.B.'s

substance abuse issues. (1 CT 4.) S.J. and Ja.B. were dependents of the juvenile court when T.B.'s section 300, subdivision (b)(1) petition was filed. (1 CT 12.)

At the detention hearing on July 19, 2017, the juvenile court found J.B. was T.B.'s presumed father. (1 RT 4.) It further found DCFS had presented a prima facie case T.B. was a child described by section 300. (1 RT 5.) The juvenile court ordered T.B. released to J.M. and J.B. (1 RT 5.)

2. The juvenile court sustains the section 300, subdivision (j) counts in T.B.'s petition

At the jurisdiction hearing on August 31, 2017, the juvenile court dismissed the two section 300, subdivision (b)(1) counts from T.B.'s petition. (1 CT 3; 2 CT 514.) It made minor amendments in the two section 300, subdivision (j) counts and then sustained these counts. (1 CT 4; 2 CT 514.) T.B. remained released to J.M. and J.B. under DCFS supervision. (2 CT 513.)

The disposition hearing was continued to October 19, 2017. (2 CT 515.)

3. DCFS files a section 387 petition because J.M. fails to drug test and J.B. tests positive for cocaine and marijuana

On October 11, 2017, DCFS filed a section 387 petition on behalf of T.B. (2 CT 516-519.) The petition alleged the juvenile court's order of August 31, 2017, which released T.B. to J.M. and J.B. had not been effective. (2 CT 518.) The petition focused on J.B.'s continued abuse of cocaine and marijuana and J.M.'s

failure to regularly participate in random drug testing. (2 CT 518.)

At the detention hearing on October 12, 2017, the juvenile court found DCFS had presented a prima facie case T.B. was a child described by section 300. (3 CT 609.) It further found substantial danger existed to T.B.'s physical and emotional health and there were no reasonable means to protect her without removal from J.M. and J.B. (3 CT 609.) The juvenile court also found it would be detrimental to T.B. to be placed with J.M. and J.B. (3 CT 609.) And it found DCFS had made reasonable efforts to prevent T.B.'s removal from her home and there were no services available which could prevent removal. (3 CT 609.)

Following these findings, the juvenile court detained T.B. from J.M. and J.B. (3 CT 609.) It ordered J.M. and J.B.'s visits with T.B. be monitored. (3 CT 610.) The jurisdiction hearing was scheduled for December 21, 2017. (3 CT 611.)

On December 12, 2017, DCFS filed an amended section 387 petition for T.B. (3 CT 612-615.) The amended section 387 petition repeated the allegations in the original section 387 petition and added a section 300, subdivision (b)(1) count which focused on J.M.'s positive drug tests for cocaine on October 23, 2017 and December 7, 2017. (3 CT 614.)

4. The juvenile court sustains the amended section 387 petition

At the jurisdiction hearing on December 21, 2017, J.M. and J.B. entered pleas of no contest to the allegations in the

amended section 387 petition. (3 CT 633-634, 635-636, 638.) The juvenile court sustained the amended section 387 petition. (3 CT 636.)

5. The juvenile court removes custody of T.B. from J.M. and J.B.

At the disposition hearing on December 21, 2017, the juvenile court found by clear and convincing evidence pursuant to section 361, subdivision (a), section 361, subdivision (c) and section 362, subdivision (a) that it was necessary to remove T.B. from J.M. and J.B.'s custody. (3 CT 639.) The juvenile court further found DCFS had made reasonable efforts to prevent T.B.'s removal from her parents. (3 CT 639.) Following these findings, the juvenile court removed custody of T.B from J.M. and J.B. (3 CT 639.)

The juvenile court granted reunification services to J.M. and JB. (3 CT 640.)

The juvenile court served J.M and J.B. with notification of their rights to appeal the juvenile court's jurisdiction and disposition findings and orders. (3 CT 640.)

6. The juvenile court terminates J.M.'s reunification services and schedules a section 366.26 hearing for T.B.

At the six month review hearing on July 2, 2018, J.M. requested a contested hearing on the DCFS recommendation that her reunification services be terminated and a section 366.26 hearing be scheduled for T.B. (4 CT 863.)

At the contested six month review hearing on September 28, 2018, the juvenile court found DCFS had provided J.M. with reasonable reunification services. (2 RT 13; 4 CT 971.) It further found J.M.'s progress toward alleviating or mitigating the causes which necessitated T.B.'s out-of-home placement had been minimal. (2 RT 13; 4 CT 971.) The juvenile court also found J.M. had failed to regularly participate in or failed to make substantial progress on her case plan and that there was not a substantial probability T.B. would be returned to J.M.'s custody by the 12 month date. (2 RT 14.) Following these findings, the juvenile court ordered J.M.'s reunification services terminated. (2 RT 14; 4 CT 971.) The juvenile court scheduled T.B.'s section 366.26 hearing. (4 CT 971.)

J.M. was served with notice of T.B.'s section 366.26 hearing. (2 RT 15.) The juvenile court orally advised J.M. of her right to file a writ petition in order for this Court to review its findings and orders which resulted in the termination of J.M.'s reunification services and the scheduling of T.B.'s section 366.26 hearing. (2 RT 15-16.)

7. J.M files a section 388 petition and requests the juvenile court vacate T.B's section 366.26 hearing and place T.B. with her

On February 21, 2019, J.M. filed a section 388 petition. (4 CT 1030-1033.) She requested the juvenile court modify its orders of September 28, 2018, which terminated her reunification services and scheduled T.B.'s section 366.26 hearing. (4 CT 1031.) As to changed circumstances, J.M. alleged she had completed a

parenting class, had enrolled in a substance abuse program and had been involved in counseling. Additionally J.M. had recently given birth to Jo.B. who was a dependent and who had been placed with her. (4 CT 1031.)

J.M. requested the juvenile court vacate T.B.'s section 366.26 hearing and place T.B. with her with additional family maintenance services. (4 CT 1031.)

As to best interest, J.M. quoted from *In re Julia U.* (1998) 64 Cal.App.4th 532, 544 which stated, in part: "The relationship of a natural parent and child is a vital human relationship which has far reaching implications for the growth and development of the child." (4 CT 1031.)

The juvenile court scheduled a hearing for J.M.'s section 388 petition. (4 CT 1035.)

8. The juvenile court denies J.M.'s section 388 petition

At the contested section 388 hearing on March 5, 2019, the juvenile court received into evidence J.M.'s section 388 petition and the March 5, 2019, interim review report which was DCFS' response to the 388 petition. (2 RT 24.) J.M. testified. (2 RT 26-35.)

In closing argument, J.M. asked the juvenile court to grant the section 388 petition. (2 RT 35-37.) J.B. joined in her arguments. (2 RT 37.) DCFS and minor's trial counsel requested that the juvenile court deny J.M.'s section 388 petition. (2 RT 37-37, 39.)

The juvenile court found J.M.'s testimony lacked candor. (2 RT 41-42.) It found that when J.M. was asked questions about her positive drug tests, she focused only on cocaine and was not candid about her marijuana use. (2 RT 41-42.) The juvenile court further found that, contrary to J.M.'s testimony, her marijuana levels were not decreasing but, in fact, were increasing. (2 RT 42.) It specifically found J.M.'s cannabis level on the February 21, 2019, test was 187 nanograms and on the prior test the cannabis level was 141. (2 RT 42.) The juvenile court found J.M. had twice tested positive for cocaine and had tested positive four times for marijuana during her pregnancy with Jo.B. (2 RT 42.)

Following the above findings, the juvenile court found J.M. had not proven circumstances had changed. (2 RT 41.)

The juvenile court further found J.M. had limited monitored visits with T.B. and that she had cancelled multiple visits. (2 RT 43.) It also found T.B. had been placed in the same foster home as Ja.B. for a significant amount of time. (2 RT 43.)

Following the above findings, the juvenile court found it was not in T.B.'s best interest to grant J.M.'s requests and denied her 388 petition. (2 RT 43.)

9. The juvenile court terminates J.M.'s parental rights to Taylor

The parties stipulated that all evidence received at the contested section 388 hearing could be considered by the juvenile court at T.B.'s section 366.26 hearing. (2 RT 45.)

J.M. asked the juvenile court to find the beneficial parent-child relationship exception to adoption applied to her

relationship with T.B. (2 RT 47.) J.B. also asked the juvenile court to find the beneficial parent-child relationship exception applied to his relationship with T.B. (2 RT 47-48.) DCFS and minor's trial counsel asked the juvenile court to terminate J.M. and J.B.'s parental rights to T.B. (2 RT 46-47.)

The juvenile court found by clear and convincing evidence T.B. was adoptable. (2 RT 48; 4 CT 1077.) It further found J.M. and J.B. had not maintained regular visitation with T.B. (2 RT 50; 4 CT 1078.) The juvenile court also found J.M. did not establish that T.B. was bonded with her. (2 RT 50; 4 CT 1078.) It went on to find any benefit T.B. may obtain from continuing her relationship with J.M. was outweighed by the physical and emotional benefits she would receive through the permanency and stability of adoption. (2 RT 50; 4 CT 1078.) And the juvenile court found J.M. had not shown she occupied a parental role in T.B.'s life. (2 RT 50; 4 CT 1078.)

After making these findings, the juvenile court terminated J.M.'s parental rights to T.B.. (2 RT 51.)

**Statement of Proceedings Under the ICWA and Related
California Statutes**

On July 19, 2017, J.M. and J.B. filed Parental Notification of Indian Status forms. (1 CT 71, 72.) They reported having no Indian ancestry. (1 CT 71, 72.) On July 19, 2017, the juvenile court found it had no reason to know T.B. was an Indian child as defined by the Indian Child Welfare Act. (1 RT 4; 1 CT 82.)

Statement of Facts

A. J.M. has a criminal history which, in part, triggers S.J.'s first dependency case

J.M. was born in May 1991. (1 CT 23.) She has an extensive criminal record related to prostitution. (1 CT 23-32.)

On March 8, 2012, DCFS received a referral from the Los Angeles police department vice unit. (2 CT 365.) The report indicated J.M. had been arrested for performing sex acts with men in the presence of then nine-month-old S.J. (2 CT 365.) J.M. was subsequently charged with and convicted of prostitution and willful cruelty to a child. (1 CT 31.)

B. J.M. and J.B. meet in 2015 and have three children

J.B. was born in approximately 1981 and was about 34 years old when he met J.M. on a visit to Southern California in February 2015. (2 CT 264, 273.) After meeting J.M., J.B. remained in Southern California. (2 CT 264.) Ja.B. was born in June 2016. (4 CT 1040.) T.B. was born in June 2017 and Jo.B. was born in November 2018. (1 CT 1; 4 CT 977.)

C. J.M. and J.B. have drug issues which leads to the filing of Ja.B. and S.J.'s section 300 petition

In June 2016 J.M. tested positive for marijuana at Ja.B.'s birth which resulted in DCFS conducting an investigation. (2 CT 253.) On July 21, 2016, J.M. and J.B. tested positive for cocaine and marijuana. (1 CT 89.) At the time of these positive drug tests, Ja.B. and S.J. were in their care. (1 CT 89.)

In November 2016 J.M. was ordered to complete a reunification plan in order to regain custody of S.J. and Ja.B. (1 CT 93.) Her reunification plan called on her to complete a full drug treatment program with aftercare, attend a 12-step program and drug test weekly. (1 CT 93.) She was also ordered to attend counseling to address case issues which included anger management issues. (1 CT 93.)

D. J.M. admits continuing to use drugs after commencing her reunification services

When the social worker interviewed J.M. at the start of T.B.'s dependency case in July 2017, she admitted using cocaine after Ja.B. and S.J. had been removed from her custody. (2 CT 263.) When asked how much cocaine she used, J.M. replied, "Not that much. If I round it up, probably two times a week." (2 CT 263.) She also admitted using cocaine until about two months prior to T.B.'s birth in late June 2017. (2 CT 263.) And J.M. acknowledged she had a drug problem. (2 CT 263.)

E. J.M. begins drug treatment in March 2017

On March 29, 2017, J.M. entered the Shields for Families Healthy Start Program ("Shields"). (1 CT 277.) She attended individual substance abuse counseling and anger management classes. (1 CT 93.) Near in time to T.B.'s birth, J.M. was granted maternity leave from Shields. (1 CT 93.) By August 14, 2017, J.M. was again participating in substance abuse treatment at Shields. (2 CT 278.)

T.B. was detained with J.M. and J.B at the beginning of her dependency case and the family resided in the Exodus Family Centered Treatment Program at Keith Village. (1 CT 93.)
Between June 30 and August 9, 2017, J.M. had six negative drug tests but failed to show for one drug test. (2 CT 278.)

In the jurisdiction/disposition report prepared for the August 31, 2017, hearing, the social worker reported J.M. had expressed a desire and a motivation to remain sober in order to retain custody of T.B. and to regain custody of Ja.B. and S.J. (2 CT 282.) But the social worker also expressed concerns about T.B's well-being given J.M.'s past drug abuse history which included using cocaine and marijuana in March or April 2017. (2 CT 282.)

At the jurisdiction/disposition hearing, the social worker recommended T.B. remain released to J.M. and J.B. (2 CT 283.) The social worker further recommended J.M. continue to participate in a substance abuse program with aftercare and drug testing. (2 CT 282.) And the social worker recommended J.M. attend NA/AA meetings, find a sponsor and attend individual counseling. (2 CT 282-283.)

F. J.M. fails to drug test, has positive drug tests, and drops out of drug treatment

Between June 30 and September 18, 2017, J.M. was required by the social worker to drug test 12 times. (3 CT 558.) On seven occasions she tested negative for all drugs; on five occasions she failed to show for the test. (3 CT 558.)

Between December 26, 2017, and June 5, 2018, J.M. failed to show for 24 drug tests. (3 CT 694.) She tested one time, on January 24, 2018; that test was positive for cocaine. (3 CT 694.) J.M. also failed to show for four drug tests at Shields while she attended its substance abuse program during this period. (3 CT 658.)

Shields prepared a progress report dated March 12, 2018, which addressed J.M.'s participation at Shields up to her discharge for noncompliance and abandonment of treatment on February 14, 2018. (3 CT 658-660.) Shields reported: "[J.M.] continues to struggle with her addiction to drugs and has difficulty maintaining sobriety... [J.M.] fails to take responsibility for her actions and makes excuses. [J.M.] has limited awareness into addiction. She tends to deflect away from her problems." (3 CT 659.)

After J.M. dropped out of Shields, the social worker recommended to J.M. that she attend a residential drug treatment program, but J.M. refused to transfer. (3 CT 647.)

In the last minute information report prepared for the July 2, 2018, hearing, the social worker reported J.M. did not show for three June 2018 drug tests. (4 CT 851.)

J.M. enrolled in the House of Uhuru Outpatient Drug Treatment Program ("Uhuru") on July 26, 2018. (4 CT 866.) She agreed to resume weekly drug testing. (4 CT 867.) J.M. failed to show for two drug tests in August 2018 and three drug tests in September 2018. (4 CT 942.)

When interviewed by the social worker on February 27, 2019, J.M. admitted using cocaine and marijuana during her pregnancy with Jo.B. and continuing to use marijuana after Jo.B.'s birth. (4 CT 1053.) When asked when she had last used marijuana, J.M. answered, "the day before yesterday." (4 CT 1053.) J.M. acknowledged she needed more time to deal with her drug problem and planned to remain at Uhuru until July 2019. (4 CT 1054.) She was grateful for the help of the maternal grandmother who kept her "on track" and provided her with a place to live. (4 CT 1054.) J.M.'s long-term plan was to stay sober, get her GED and find a job. (4 CT 1054.) Her immediate plan was to attend Uhuru and go to NA meetings. (4 CT 1054.)

G. J.M.'s drug use during her pregnancy with Jo.B.

While pregnant with Jo.B, J.M. tested positive for cocaine on May 3 and October 23, 2018; she tested positive for marijuana four times. (4 CT 977.) J.M. tested positive for marijuana at Jo.B.'s birth in mid-November 2018. (4 CT 977.) And she tested positive for marijuana three times between November 26 and December 19, 2018. (4 CT 977.)

H. J.M.'s visits with T.B. are not consistent

Between October 12, 2017, and January 2, 2018, J.M.'s two-hour monitored visits with T.B were two times a week. (3 CT 695.) During this period J.M. attended all the scheduled visits with the exception of one visit on December 21, 2017, which was the date of a court hearing. (3 CT 695.)

The visitation monitor reported J.M. had moments of positive interaction with T.B and was attentive to T.B's basic needs such as feeding and diapering. (3 CT 696.) The monitor also reported J.M had a difficult time reading T.B's cues. (3 CT 695.) During numerous visits, J.M. fell asleep when T.B took a nap. (3 CT 696.) When T.B. woke up, J.M. continued sleeping until the end of the visit. (3 CT 696.) On one occasion when J.M. was lying on the couch, T.B. fell asleep on top of her. (3 CT 696.) When T.B. woke up, she almost fell off the couch but J.M. woke up and caught her just in time. (3 CT 696.)

When the monitor redirected J.M., she became defensive, challenged the redirection and presented with a negative attitude. (3 CT 695.) T.B. easily transitioned from the visits with J.M. back to Ms. K., the foster mother. (3 CT 696, 755.)

On January 2, 2018, J.M.'s monitored visits with T.B. were increased to three-hour visits three times a week. (3 CT 695.) Between January 2 and June 7, 2018, J.M. visited Taylor 13 times. (3 CT 696.) However, J.M. also missed 24 scheduled visits. (3 CT 696.)

During June 2018, J.M visited Taylor only twice. (4 CT 851.) In July 2018 she visited T.B once. (4 CT 866.) J.M. visited T.B three times during August 2018. (4 CT 943.) In September 2018 J.M. visited Taylor once. (4 CT 943.)

The record does not contain information on J.M.'s visits with T.B. during the period from October 2018 through December 2018. In January 2019 J.M. cancelled five visits with T.B. and attended two visits. (4 CT 1055.)

I. J.M. does not have stable housing

In the last minute information report dated September 28, 2018, the social worker reported J.M. and J.B. did not have stable housing. (4 CT 943.)

J.M. separated from J.B. in November 2018. (4 CT 1053.) Following the separation, J.M. moved in with the maternal grandmother while attending Uhuru. (4 CT 1053.)

J. T.B. is placed with Ms. K.

On December 1, 2017, T.B. was placed in Ms. K.'s home where her sibling, Ja.B., had previously been placed. (3 CT 686.) T.B. and Ja.B. would remain in Ms. K.'s home through T.B.'s section 366.26 hearing on March 5, 2019. (4 CT 973.)

K. Social worker recommends J.M.'s parental rights to T.B. be terminated

The social worker prepared two reports for T.B.'s section 366.26 hearing. (4 CT 973-984, 1039-1057.) In both reports the social worker's recommendation was that J.M.'s parental rights to T.B. be terminated. (4 CT 984, 1056.) In the second report the social worker also recommended the juvenile court deny J.M.'s section 388 petition. (4 CT 1056.)

The social worker reported J.M.'s visits with T.B. had decreased in frequency and consistency after T.B.'s case was set for a section 366.26 hearing. (4 CT 983.)

T.B. had developmental delays and was active to the Regional Center where she received services three times a week.

(4 CT 978.) By November 2018, T.B. had completed occupational and physical therapy but continued to receive infant development services. (4 CT 978-979.)

Ms. K. had provided T.B. with appropriate care and supervision during the approximate 15 months T.B. resided with her. (4 CT 979.) T.B. was comfortable in Ms. K.'s home. (4 CT 979.) Ms. K. and T.B. were bonded. (4 CT 981.) She was willing to adopt T.B. (4 CT 979.) Ms. K.'s adoptive home study was approved on November 1, 2016. (4 CT 980.)

Ja.B. and T.B. had a good relationship. (4 CT 979.)

T.B. did not have contact with S.J. after the juvenile court terminated jurisdiction over him in October 2017. (4 CT 979.) The record is silent on whether T.B. ever had contact with Jo.B.

Applicable Law

- A. This brief is filed pursuant to *In re Phoenix H.* and requests a reasonable opportunity for Mother to personally file a brief and that appellate counsel be permitted to brief any issues that this Court might identify.**

This brief is filed pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 and raises no issues on appellant's behalf. In *In re Phoenix H.*, the Supreme Court held that in a case such as the present one in which appointed appellate counsel had not found an arguable issue, counsel should file a brief setting forth the "applicable facts and the law." (*Id.* at p. 844.) However, unlike a no-issue situation in criminal and conservatorship cases, the court of appeal is not required in all cases to permit the appealing parent in a juvenile dependency action to personally file a brief when appointed counsel does not raise an issue. (*Ibid.*) Rather, the court of appeal may exercise its discretion to permit a parent to file a pro se brief. (*Ibid.*) The Court is required to permit the parent to file arguments if the parent makes a "showing of good cause that an arguable issue does, in fact, exist." (*Ibid.*)

- B. Relevant Rules and Statutory Authority.**

Section 388, subdivision (a)(1) provides, in relevant part:

"Any parent or other person having an interest in a child who is a dependent child of the juvenile court ... 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, subdivision (a)(1).)

Section 366.26 subdivision (c)(1) states in relevant part, “[i]f the court determines, based on the assessment provided...,” and “any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.”

The relevant portions of section 366.26, subdivision (c)(1), require the court to terminate parental rights unless the court finds a “compelling reason for determining that termination would be detrimental to the child” due to the parent having maintained “regular visitation and contact with the child and the child would benefit from continuing the relationship” (§ 366.26, subd. (c)(1)(B)(i).)

Counsel has complied with the requirements of *In re Phoenix H., supra*, by setting forth the case and facts, informing the Court of Appeal there are no arguable issues, and providing a copy of the brief to the appellant. Appellant requests this Court exercise its discretion to permit appellant an opportunity to personally file a brief. (*Id.* at pp. 842- 845.)

Dated:

Respectfully submitted,

Attorney Name (SBN)

Attorney for Appellant

Certificate of Word Count

I certify that the foregoing brief contains _____ words including footnotes, according to the word count feature of WordPerfect, the computer program used to prepare this brief.

/s/
Attorney Name (SBN)

Declaration of Appellate Counsel

I, _____, declare:

1. I am the attorney appointed to represent the appellant who has appealed the March 5, 2019 juvenile court orders denying her section 388 petition and terminating her parental rights.
2. I have personal knowledge of the matters stated in this declaration.
3. I have reviewed the entire record on appeal, consisting of the Clerk's Transcript (4 Volumes) and the Reporter's Transcript (2 Volumes). I have discussed the case a staff attorney at the California Appellate Project.
4. I wrote to appellant on October 9, 2020 and I advised appellant in writing that I have found no arguable issues to be raised on appeal. I advised appellant that she may attempt to file a brief on her own without assistance of counsel (*in propria persona*) within thirty (30) days of the filing of this brief.

I also advised appellant in writing that the Court of Appeal has the discretion to permit or not permit the actual filing of the *in propria persona* brief depending on whether the Court concludes the brief shows good cause that an arguable issue does, in fact, exist. I advised appellant in writing that the Court is not required to permit appellant to pursue an appeal that has no arguable merit. (*In re Phoenix H.*(2009) 47 Cal.4th 835, 844- 845.) Appellant has been advised that

if she does not file, within 30 days of the filing of this brief, a personal brief establishing good cause to believe an arguable issue exists, the appeal will be dismissed.

5. The last known address of the appellant is:

6. I have mailed a copy of the record to the appellant.

7. I remain available to brief any issue that the Court requests.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 12, 2020, at Los Angeles, California.

/s/

Attorney Name (SBN)