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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re IRVING A., a Person Coming Under
the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Petitioner and Appellant,

v.

VERA K.,

Objector and Appellant.

A132677, A133201

(Alameda County
Super. Ct. No. HJ09013061)

This case involves the consolidated appeals of both the Alameda County Social Services Agency (Agency) and Vera K., former foster parent of the minor, Irving A. In its appeal, the Agency contends the juvenile court erred when it ordered that Irving remain in the foster home of Vera and Richard K.¹ following the state’s revocation of their foster license. According to the Agency, the court had no discretion to allow Irving to remain in an unlicensed foster home and its designation of the Ks. as prospective adoptive parents was premature.

¹ To protect their privacy, we shall refer to the former foster parents by their first names or, collectively, as the “Ks.”

In her appeal, Vera K. challenges the juvenile court's denial of her petition for modification, filed pursuant to Welfare and Institutions Code section 388,² after Irving's subsequent removal from her home. She contends the court abused its discretion when it ruled that changed circumstances did not warrant a finding that it would be in Irving's best interests to return to her care.

As to the Agency's appeal, it is moot and we shall dismiss the appeal. As to Vera K.'s appeal, we find no abuse of discretion in the juvenile court's denial of her section 388 petition, and shall affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Irving A.,³ now three years old, was born in July 2009 with a positive toxicology screen for opiates and suffering from drug and alcohol withdrawal symptoms. Irving's mother admitted that she was an active crystal methamphetamine user and that she drank alcohol during her pregnancy. The Agency detained Irving three days after his birth and filed a dependency petition, pursuant to section 300, subdivision (b). On August 12, 2009, the Agency placed Irving in the licensed foster home of Vera and Richard K.

In a section 366.26 hearing report, filed on June 24, 2010, the social worker reported that Irving, who had been born with clouded corneas, had had a corneal transplant on his left eye in May 2010, and that a corneal transplant on his right eye was scheduled for June 2010. Irving was developmentally on target and was described as a "very calm and happy child." He had been found adoptable and likely to be adopted. Vera and Richard, who wanted to adopt him, had three biological children and two other foster sons. These proposed adoptive parents had "a wealth of parenting experience from raising three children to adolescence and young adulthood," were "very involved in their children's academic and extracurricular lives," and had cared for numerous foster children over the prior year. Vera had a history of anxiety, which was being treated with

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

³ Irving is sometimes referred to as "Isaiah" in the various reports and court records.

medication, and Richard had received a criminal record exemption during the foster parent licensure process for convictions from more than 20 years earlier. The social worker reported that Irving was comfortable with his foster parents and was “clearly attached to his foster mother.”

The Agency’s proposed permanent plan for Irving was termination of parental rights and adoption. It was reported that the mother was in agreement with that plan.⁴

On July 12, 2010, the juvenile court ordered that Vera and Richard K. were deemed the prospective adoptive parents of Irving and that adoption was the appropriate permanent plan goal.

In a report filed on November 30, 2010, for the continued section 366.26 hearing, the social worker reported that another foster child, a seven-month-old boy, had recently been removed from the Ks.’ home due to medical neglect and that there were concerns about the Ks.’ care of Irving. In addition to their failure to follow up on medical appointments for the child removed from the home, “which resulted in the child being hospitalized twice in about a month, and serious long term consequences for his health and development,” the Ks. had “also failed to follow up on routine appointments, and appointments regarding a serious medical condition for Irving which has resulted in his permanent loss of vision. Additionally Irving has begun to have poor weight gain.” The Ks. had also failed to submit all needed documents for their adoption home study and were facing a possible revocation of their foster license. The Agency recommended that the court grant it discretion to transition Irving into an approved adoptive home, once identified.

On December 13, 2010, the juvenile court granted the Ks.’ request for de facto parent status, designated them again as Irving’s prospective adoptive parents, and appointed counsel for them pending a contested change of placement hearing.

⁴ The alleged father had said that he was not the biological father and asked to be ruled out as Irving’s father.

In an addendum report filed on January 18, 2011, the social worker reported that the child who had been removed from the Ks.' home had been removed based on a diagnosis of failure to thrive and the Ks.' failure to follow through on medical appointments and prescribed medications. In addition, Irving's ophthalmologist had said that the delay in Irving's corneal transplants might lead to future eyesight problems because, having lived a long time with obscured vision, he had missed opportunities for visual pathways to develop. The doctor described his interactions with the Ks. as positive overall, but also described them as " 'flaky' " in that they had to frequently reschedule appointments. He said Irving would need a lot of medical follow up and needed caregivers who were " 'on top of' " all of his eye appointments.

The contested placement review hearing took place over multiple dates, beginning in February 2011. A court-appointed special advocate for an older foster child who lived at the Ks.' home testified that she believed "they were terrific foster parents. They were a warm, loving family" that treated the child for whom she advocated as a family member. On the occasions she was in the home, she "was particularly impressed with how well loved [Irving] seemed" by the entire family.

Vera testified that since Irving had been placed with her, she had taken him to 60 or 70 doctor appointments. Although she had missed a few of Irving's doctor appointments early on due to car trouble, after having a conversation with the social worker in March 2010, she had not missed any appointments. She did acknowledge that, at present, she was not able to drive in Oakland traffic by herself due to anxiety, for which she was taking medication. Her anxiety level had, however, improved a great deal and she also had a big support system, including her mother and daughter, both of whom lived nearby; her husband and two sons (ages 18 and 16); as well as other family members who lived locally. Vera believed that it was in Irving's best interests to remain in her home where he was "surrounded in love."

Dr. Melissa Rose, who had been Irving's pediatrician since October 2010, testified that Irving had not missed any of his frequent appointments with her since she had been his pediatrician and that she had no concerns for his medical health in the care of the Ks.

He had been diagnosed with failure to thrive, but she believed that the cause likely was organic, due to medical issues. Dr. Rose thought that the bond between Irving and Vera was very strong and that removal from a stable and caring environment would set him back developmentally and socially.

At the continued removal hearing on April 5, 2011, Irving's social worker, Holly Yep, testified that there had initially been delays in Irving's ophthalmological care due to car trouble, illness, and issues related to insurance authorization. More recently, Vera had missed only one medical appointment for Irving in January 2011, and Yep was not aware of any missed medical appointments in February or March. In March, Vera had taken Irving to 15 different appointments.

Yep also testified that she had visited the K. home in March 2011 and she believed that Irving was still comfortable and bonded with his foster family. She did not have any concerns about his mental and emotional state.

Meanwhile, on March 30, 2011, the California Department of Social Services (Department) had petitioned to have the Ks.' license to operate a foster family home revoked. The petition alleged, inter alia, that the Ks. had "demonstrated an inability and/or an unwillingness to cooperate with the department, doctors, social workers and/or other agencies and persons" in a number of ways, to the detriment of the foster child who had been removed. It also alleged that they had failed to keep several of Irving's medical appointments⁵ and that Richard had violated the conditions of his criminal record exemption by violating licensing laws or regulations as well as "when he became verbally aggressive, hostile and threatening to licensing workers." After the Ks. failed to

⁵ In an attached declaration, Irving's ophthalmologist stated that the Ks. did not seem to be aware of the urgency of Irving's medical problem and that they "often came late to appointments and rescheduled." He further stated that if Irving's "eyes were treated earlier, his lazy eye difficulty could of [*sic*] been less." He also stated that "[s]ome signs of cornea rejection are red eyes and sensitivity to light" and that "Irving is showing signs of sensitivity to light They just should of [*sic*] taken care of this problem more quickly"

respond to the petition, a default was taken and, on April 28, 2011, the Department ordered that the Ks.' foster care license would be revoked, effective May 8.

In the Agency's section 366.26 report, filed on May 2, 2011, the social worker reported that Irving had been diagnosed with, inter alia, fetal alcohol syndrome and failure to thrive.

In a May 12, 2011 letter to social worker Yep, Vera and Irving's therapist described Vera as "anticipatory and responsive to [Irving's] communication attempts during sessions, and he easily soothes and comforts in her arms when frustrated or in distress. Through the consistency and predictability of his relationship with Ms. [K.], [Irving] appears to have developed feelings of safety and security which allow him to freely explore the environment around his home."

Ultimately, on May 23, 2011, at the conclusion of the series of continued placement review hearings, the court found insufficient evidence to conclude that it was in Irving's best interests to be removed from the Ks.' custody. Several issues, including missed and rescheduled appointments and problems with vehicles, caused the court some concern. It concluded, however, that the bond between Irving and the Ks. outweighed the "inconsistency" on the Ks.' part. It further stated that evidence of Irving's failure to thrive was disturbing, but found no evidence that it was due to lack of attention on the part of the Ks. The court further found that the revocation of the Ks.' foster care license was, for the most part, based on issues related to the foster child who had been removed, not Irving, and that, "[i]n order to be a prospective adoptive parent, you do not have to have a foster care license." The court therefore believed that the revocation was "separate and apart from the issues involved here in terms of whether or not removal was in the best interest of [Irving], though I believe it is a factor to consider; and is not a definitive factor." The court concluded: "All in all, the Court believes that the removal at this time is not justified; that [the Agency] hasn't shown the Court that it's in [Irving's] best interest to leave this family at this point." The court also denied the Agency's request to remove the Ks.' prospective adoptive parent designation.

On July 18, 2011, the Agency filed a notice of appeal, challenging the juvenile court's orders of May 23, 2011 denying the Agency's request to change Irving's placement and refusing to remove the Ks.' prospective adoptive parent designation. On July 22, 2011, the Agency filed a petition for extraordinary writ (case No. A132686), which we denied on September 8, 2011.⁶

Meanwhile, in the Agency's interim review report, filed on July 7, 2011, the social worker reported that, on July 1, 2011, the Agency had received notification from the Bureau of Criminal Identification and Information that Richard had been arrested on both June 16 and June 17, 2011 by the Pleasanton Police Department. According to police reports, on June 16, Richard was at a Walmart store when he was arrested for public intoxication. The following morning, he returned to the store "and refused to leave the premises when asked by the security guard. [Richard] became angry and grabbed the cell phone from the security guard and made threats to kill and harm him if he called the police." Richard then fled to his home, where Pleasanton police found him locked in the bathroom. Police had to force their way into the bathroom and taser him at least twice to subdue him. He was then arrested. According to the social worker, a charge of second degree robbery was pending. Police spoke to Vera, who said that Richard was " 'bi-polar and not taking his medication.' "

The social worker further reported that, after receiving this information on July 1, the Agency obtained a search and seizure warrant, removed Irving from the Ks.' home, and placed him in an approved concurrent foster home that same day. The new caregivers were aware of Irving's medical needs and were committed to adopting him. They had told the social worker that he appeared to be unused to eating breakfast when he arrived, but had begun to do so. They also reported that he did not appear to have taken naps or to have been on any kind of sleep schedule, but was slowly adjusting.

⁶ On May 18, 2012, Vera filed a motion to dismiss the Agency's appeal as nonjusticiable under section 366.26, subdivision (n)(5), one of the grounds she now raises on appeal. We deferred and ordered that the motion be considered with the consolidated appeals.

Also on July 1, 2011, Irving was seen for a second opinion regarding concerns about his ongoing failure to gain weight. The doctor agreed that Irving should be hospitalized for three days so that an inpatient calorie count procedure could be done.

On July 7, 2011, the juvenile court held an interim review hearing to address Irving's removal and the Agency's ex parte request to approve the oral calorie count procedure. Vera's counsel made an oral motion to contest the removal and requested an extension of time to file a written objection. Counsel for Richard, who had been appointed at the hearing, joined in the request. The court approved the requested medical treatment and the placement with the current caregivers, pending the removal hearing. The court also ordered counsel to file their written objections to removal by August 23, 2011, the date set for the contested removal hearing.

In two reports prepared for the removal hearing, filed on August 10 and 16, 2011, the Agency recommended that parental rights be terminated and that the Ks.' request to return Irving to their home be denied. The social worker reported that Irving had been hospitalized from July 18 to 20 for the inpatient calorie count. Although he had gained a small amount of weight since July 1, his doctor was concerned and monitoring the situation. The new foster parents were continuing to work with Irving on improving his food intake.

Regarding Irving's removal from the Ks.' home on July 1, 2011, the social worker reported that Irving went easily to the car with [a social worker] and showed no visible distress when Vera said goodbye to him. He also went readily to his new caregivers, showing "no separation anxiety or stranger anxiety, which is unusual for a child this age that has been placed with the same caretakers for most of his life." Irving had also had several supervised visits with Vera, Richard, and their children at a park in a town between their home and that of the current foster parents.

Since Irving's removal from her home, Vera had reported that she intended to file for separation from Richard and, on August 1, 2011, told the social worker that Richard was moving out of their house on August 3, 2011. A social worker had reported that, after Irving's removal, she had twice met with the Ks., at which time Richard had made

several inappropriate comments to her, including at least two that seemed sexual in nature. She noted that Richard had been consuming alcohol before or during the two times she had met with the Ks. Vera also had told a social worker that Richard had recently been diagnosed as bipolar, then had lost his medical insurance and run out of medication. She also had recently realized that he was drinking, too. In the two weeks before Richard's arrest, Vera said she had been spending a lot of time at her mother's house.

Richard's move out of the family home on August 3 also caused the social worker concern "because one of the factors in the [Ks.'] inability to transport Irving to his many medical appointments has been [Vera's] anxiety about driving by herself any distance from her familiar neighborhood. [Vera] had previously informed the agency that her mother and her husband were back-up drivers when she was too anxious to drive. This back-up had already been shown to be insufficient; resulting in many cancelled or rescheduled medical appointments. With [Richard] unable to help with transportation[, Vera's] ability to get Irving to medical care when needed is further compromised."

Vera acknowledged to a social worker that Richard had mood swings, but said that he was stressed due to unstable income and housing, and loss of employment. She denied that Richard was drunk during a social worker visit, and said that he was "very 'goofy and his personality is unique.'" She also said that he would not abuse or neglect a child.

Vera's counsel did not file objections to Irving's removal, as she had said she would do at the July 7, 2011 hearing, but instead filed a petition challenging the removal and subsequent placement in a new foster home, pursuant to section 388. Arguing changed circumstances, the petition stated that Richard had moved out of the home and now resided in Jackson, California. It further stated that Irving had been continuously in Vera's care since he was two months old and was bonded to her, noting that the court had found on May 23, 2011, that it was in Irving's best interest to remain in the Ks.' home.

At the August 23, 2011 hearing on Vera's section 388 petition for modification, Vera testified that she had become aware that Richard suffered from bipolar disorder about a year earlier. She also knew that he had not been taking his prescribed medications for two to three months before his arrest due to a lapse in insurance. She had not told the Agency about his diagnosis. In June, she and Irving had stayed "off and on" at her mother's house because she and Richard were having "a little bit of difficulties." When Irving was removed from their home on July 1, she and Richard had already been talking about separating and she asked the social worker to allow her to get a stay away order for Richard rather than remove Irving. She had not previously told the Agency about her and Richard's problems or about staying with her mother out of fear because things she had said before had been twisted and misconstrued. She did not have a trusting relationship with the Agency and had not wanted to complicate the situation.

After Irving was removed from the K. home, about three weeks before the August 23, 2011 hearing, Richard had moved out of the home, taking "the only running car we have," and now lived 80 miles away. If Irving were returned to her care, Vera would be able to get Irving to medical appointments because her daughter could drive her, or she could take public transportation. She could also get the car back from Richard. Since Richard had moved out, she now felt more comfortable driving, after being forced to rely on herself. Since moving, Richard had returned to their home and stayed overnight. Vera had a safety plan in place to protect Irving, which included going to her mother's house if necessary. She also had other family members she could turn to for help.

Since Irving's removal, Vera had missed a visit with him due to transportation problems. She was also late to another visit because she was coming from "up by Jackson" (where Richard had moved) and had missed the freeway exit.

Holly Yep, Irving's social worker, testified that Irving took 10 or 15 minutes to warm up to Vera, Richard, and their children during the first post-removal visit. The rest of the visit went well. During a more recent visit with Vera and the children, Irving appeared happy. Vera did not visit Irving while he was in the hospital for his calorie

count because she said she had agreed to attend a criminal court hearing to provide support for Richard. The week before the hearing, the Ks. had another visit with Irving, during which Richard went on a “tirade” against Yep.

Yep testified that, after two years with the Ks., there was a bond between them and Irving. However, he showed no distress when he was removed from the Ks.’ home and went willingly to the new caregivers.

Yep acknowledged that the relationship between her and Vera had become “somewhat strained.” The strain began after the first foster child was removed from the K. home and when issues related to Irving’s weight arose, and especially since Yep had begun advocating for removal of Irving from the home. Vera had not been forthcoming with Yep since then. For example, Vera did not tell Yep when she was living in someone else’s home. In addition, Yep had not learned that one of Irving’s doctors had been recommending insertion of a nasogastric (NG) tube until at least a month later. Moreover, Vera had not shared other important changes in the family’s circumstances even before their relationship became strained, such as when she failed to inform the Agency of Richard’s bipolar diagnosis, made over a year earlier.

Yep expressed concern about possible risks to Irving if he were returned to Vera’s care. In particular, she was worried that Richard would have a great deal of access to Irving. Although he had recently moved out of the family home, Vera had talked about him spending the night at the house and they had arrived together at the last visit with Irving. Yep was also concerned about Vera getting Irving to his many medical appointments. Vera had said she was more comfortable driving now, but Richard had been one of her back-ups for transportation and her mother (another back-up driver) was having health issues.

At the conclusion of the continued hearing, the court denied Vera’s section 388 petition, stating: “As I listened to the testimony . . . and listened as Ms. [K.] testified, some of the same words that Ms. Thomas [Irving’s counsel] used also went to the Court’s mind. Home in crisis, chaos, and instability. And I believe that this child needs stability

at this point. And the Court feels that, based on the testimony it's heard, that that stability cannot be provided in the [K.] home at this time.

“This child has specific medical needs. The anxiety that is present with Ms. [K.], the state of mind that she displayed on the stand as she testified, the question[s] as to whether or not she really would be able to provide this child with the stability in order to get him to medical appointments in a timely and consistent manner, are questions that the Court has, and the Court doubts that at this point in time she can do that. She has testified that she's getting to the point where she can drive around by herself, and I don't believe that's good enough. There has to be consistency in getting him to his appointments, getting him there on time, and getting him to his appointments at all, and I don't believe that at this point in time she has displayed that she has that ability to consistently get him to his appointments, consistently get him to the medical treatment that he needs.

“And based on that, the Court cannot in good conscience at this time place him back in [the K.] home. I don't believe that is in his best interest to do so. I have no doubt . . . that he has been well loved by the [Ks.] and by their children, but given the current situation, I don't believe that it's in his best interest to be returned to that home.”

The section 366.26 hearing immediately followed the court's ruling on Vera's section 388 petition. At that hearing, the court terminated the parental rights of Irving's mother, his alleged father, and any other unknown fathers.

On September 12, 2011, Vera filed a notice of appeal from the juvenile court's denial of her section 388 petition.⁷

⁷ We deferred Vera's September 17, 2012 request to take additional evidence on appeal or, in the alternative, to take judicial notice for consideration with the consolidated appeals.

DISCUSSION

I. *The Agency's Appeal (A132677)*

The Agency contends both that the court had no discretion to allow Irving to remain in an unlicensed foster home and that its designation of the Ks. as prospective adoptive parents was premature.

Vera claims, inter alia, that the Agency's appeal should be dismissed, arguing both that the court's orders are nonappealable under section 366.26, subdivision (n)(5), and that it is moot since the Agency subsequently obtained the requested relief

“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.] However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding. [Citations.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 (*Yvonne W.*))

After filing its appeal, the Agency removed Irving from the Ks.' home and obtained the requested relief when the juvenile court denied Vera's section 388 petition for modification and ordered that he not be returned to Vera's care, an order we shall affirm in part II, *post*, of this opinion. We therefore agree with Vera that the Agency's appeal is moot.

The Agency nonetheless asks us to exercise our discretion to resolve the issues it has raised on appeal. (See *Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404.) It asserts that procedural issues regarding the designation of a prospective adoptive parent and, especially, the juvenile court's confusion about whether revocation of a foster care license should result in automatic removal of a minor from his placement “is extremely concerning and presents a concrete dispute of public interest.”

We decline the Agency’s invitation to address the issues it has raised on the merits. It has already obtained the desired relief in this case, and there is no danger that the juvenile court’s allegedly erroneous prior orders will affect any future proceedings between the parties to these appeals. Moreover, the issues raised here can be addressed in future cases in which, unlike the present circumstances, the requested relief has not already been obtained. (See *Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404; see also *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 [“An issue is not moot if the purported error infects the outcome of subsequent proceedings”].)

Accordingly, we shall dismiss the Agency’s appeal as moot.⁸

II. Vera K.’s Appeal (A133201)

Vera K. contends the court abused its discretion when it denied her section 388 petition after it concluded that changed circumstances did not warrant a finding that it would be in Irving’s best interests to return to her care.⁹

The Agency first asserts that Vera’s appeal is moot and should be dismissed because her foster care license has been revoked. Because we find that Vera’s substantive claims are without merit, we need not reach the question of mootness. As we shall explain, assuming without deciding that Vera’s appeal is not moot, we find no abuse of discretion.

⁸ In light of this result, we need not address the other ground Vera offers for dismissal of the Agency’s appeal, both in her briefing on appeal and in her motion to dismiss: that the orders are nonappealable under section 366.26, subdivision (n)(5).

⁹ Vera appealed from the juvenile court’s order denying her section 388 petition and neither party disputes the applicability of section 388 to Vera’s appeal. (Compare § 366.26, subd. (n)(5) & § 366.28, subd. (b)(1) [child’s removal from designated prospective adoptive parents *after* parental rights have been terminated is normally not appealable]; see *State Dept. of Social Services v. Superior Court (D.P.)* (2008) 162 Cal.App.4th 273, 285-286 [section 366.26, subdivision (n), “represents a paradigm shift in the standards to be applied to agency decisions in the narrow category of *posttermination* removal of children from designated prospective adoptive placements”], italics added).

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”

“At a hearing on a motion for change of placement, the burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)). At such a hearing, the moving party must demonstrate that the proposed change in placement “was in the best interests of the child *at that time.*” (*Id.* at p. 322.) “[A] primary consideration in determining the child’s best interests is the goal of assuring stability and continuity. [Citation.]” (*Id.* at p. 317.)

We review the juvenile court’s denial of Vera’s section 388 petition for an abuse of discretion. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 71 (*Shirley K.*)). As our Supreme Court has “warned: ‘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.’ [Citations.]” (*Stephanie M.*, at pp. 318-319.)

In the present case, the juvenile court agreed with Irving’s counsel that the K. home was in a state of “crisis, chaos, and instability” and concluded that Vera could not provide the stability that Irving needed. The court also addressed Irving’s “specific medical needs” and expressed doubt that Vera’s anxiety—as exemplified by “the state of mind that she displayed on the stand as she testified”—would allow her to “provide this child with the stability in order to get him to medical appointments in a timely and consistent manner.” Although the court acknowledged that Irving had “been well loved by the [Ks.] and by their children,” it found that, “given the current situation, I don’t believe that it’s in his best interest to be returned to that home.”

Vera argues that the court’s findings related to the stability of her home, her anxiety, and her ability to get Irving to medical appointments were based on speculation, not evidence.¹⁰ We disagree.

The evidence described in the section 388 petition as showing a change of circumstances—Richard’s recent move out of the house—was not sufficient to dispel the court’s concerns about crisis and instability in the home, and in fact increased ongoing concerns about transportation. First, Richard, whose mental health issues had certainly contributed to the chaos in the home, had moved out a few weeks earlier. The evidence showed, however, that he continued to stay overnight at the home; that he had accompanied Vera to visits with Irving and that, at one of those visits, had gone on a “tirade” against the social worker; and that Vera had missed a visit with Irving because she had promised to be at Richard’s court proceeding. Vera also had minimized Richard’s problems to a social worker, stating that he had mood swings because he was “stressed,” and that he had not been drunk during a social worker visit, but had a “goofy” and “unique” personality. Social worker Yep also expressed concern that Richard would have continuing access to Irving. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 416 [upholding child’s removal upon a showing that mother had not been cooperative with social services agency and failed to recognize danger child’s stepfather posed to child]; compare *In re Steve W.* (1990) 217 Cal.App.3d 10, 23 [where mother had cooperated in prosecution of child’s father for killing child’s sibling and exercised “exemplary effort to resume her parenting” of child, juvenile court’s removal of child was improperly based on speculation that mother would enter into another bad relationship]; *In re Jennifer P.* (1985) 174 Cal.App.3d 322, 324-325 [where mother had immediately obtained a

¹⁰ We need not address Vera’s arguments regarding the effect of the foster care license revocation on the result since the court did not appear to base its ruling on that revocation. Indeed, the court had previously denied the Agency’s request to remove Irving, stating that the loss of the license “shed a little bit of light on the case,” but was not itself “definitive.” For this reason, we also deny Vera’s motion to take additional evidence on appeal (§ 909) or, in the alternative, to take judicial notice of documents related to the revocation of her foster care license.

restraining order against child's abusive father, pursued criminal action against him, and had been divorced from him for some time, appellate court found insufficient evidence to invoke jurisdiction of juvenile court].)

Second, Vera had not told the Agency in a timely fashion about various family crises that could negatively affect Irving's wellbeing, such as Richard's bipolar diagnosis, his arrests, and the fact that she and Irving had been staying at her mother's home. In addition, the social worker did not learn until a month later about Irving's doctor's recommendation of insertion of an NG tube. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 416.)

Third, as to the issue of anxiety, the court was able to observe Vera on the witness stand and we cannot second-guess its finding that Vera's level of anxiety caused it concern about her ability to consistently get Irving to his medical appointments, which was crucial for his health and well-being. (Cf. *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [issues of fact and credibility are province of juvenile court].) In addition, while Vera testified that she had become more comfortable with driving and had not missed an appointment for some months, the court was reasonable in finding that circumstances since Irving's removal raised questions about Vera's ability to provide the frequent transportation Irving needed. For example, in the weeks since his removal, Vera had already missed one of their weekly visits due to transportation problems. Also, the people Vera had previously counted on to assist with transportation when she was too anxious to drive could no longer be relied upon to help. Yep testified that Richard had been one of Vera's back-up drivers, as had Vera's mother, who now had health problems. Vera also testified that Richard had taken their "only running car" when he moved 80 miles away.

Vera notes that there had been evidence showing, and the court had previously found, that Irving had a loving bond with Vera. At the time of the May 23, 2011 hearing, the court had found that the bond between Irving and the Ks. outweighed its concerns about detriment. By the time of the August 23, 2011 hearing on the section 388 petition, however, the situation had changed. As already discussed, additional concerns had

arisen about the Ks.' situation. In addition, Irving had been out of the Ks.' home for some time and was adjusting well. He was with new caregivers who told the social worker that they were "in love" with him. They were aware of and committed to supporting his medical needs. They were also willing to transport him to his many medical appointments, even though his doctors were located 100 miles away from his new home. They also had helped him adjust to a regular sleep and meal schedule and were working with him to improve his food intake. The new caregivers were committed to adopting him and they had an approved adoption home study. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 322 [moving party must demonstrate that the proposed change in placement is in best interests of child at time of hearing].)

Vera relies on *Shirley K.*, *supra*, 140 Cal.App.4th 65, 74, in which the appellate court found the juvenile court had abused its discretion when it denied a modification petition, in arguing for reversal of the juvenile court's order. *Shirley K.*, however, is distinct in significant ways from the present situation in that the grandmother, with whom the child had lived for most of her short life, was proactive in her efforts to protect her granddaughter. For example, she immediately reported her daughter's drug use both to law enforcement and the social worker, and also arranged for drug treatment. (*Shirley K.*, at p. 74.) Also unlike in this case, the social worker had overstated the problems in the home and had demonstrated bias against the grandparents. (*Ibid.*) Finally, in *Shirley K.*, a psychologist who had conducted a bonding study concluded that Shirley was significantly attached to her grandparents and would experience a "psychologically damaging loss" were she to not maintain very significant visitation with them. (*Id.* at p. 70.) Here, although Irving had been with Vera for most of his life and the court did not doubt the love between them, Irving did not show great distress at being removed from her home and was doing extremely well with his new prospective adoptive parents.

In sum, the juvenile court did not exceed the bounds of reason when it found that Vera had not satisfied her burden of showing by a preponderance of the evidence that changed circumstances made a return to her care in the best interests of Irving. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Rather, the court reasonably concluded that

Irving's interest in stability and continuity would not be best served by a return to Vera's home. (See *id.* at pp. 318-319 [primary consideration in determining child's best interests is goal of assuring stability and continuity].) There was no abuse of discretion.

DISPOSITION

The appeal by the Agency in case No. A132677 is dismissed as moot. The order appealed from by Vera K. in case No. A133201 is affirmed.

Kline, P.J.

We concur:

Haerle, J.

Richman, J.