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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re DAVID Y., a Person Coming Under  
the Juvenile Court Law.

2d Juv. No. B241479  
(Super. Ct. No. JV50216)  
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

TOBY M.,

Defendant and Appellant.

Toby B., the presumed father of 11-year-old David Y., appeals from a juvenile dependency order, returning David to live with his mother, stepfather, and half-siblings. (Welf. & Inst. Code, § 388)<sup>1</sup> We affirm and conclude that the trial court did not abuse its discretion in ordering a change of placement. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

*Procedural History*

On August 15, 2011, San Luis Obispo County Department of Social Services (DSS) placed David and his half-siblings (Trinity and Waylon Jr.) in protective custody based on reports that mother (Elizabeth G.) was neglecting the children and using drugs.

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

Mother lived with the siblings' father (Waylon M., Sr.) and had a history of child neglect, physical and emotional abuse, and not providing for Waylon Jr.'s (age two) medical needs.

DSS filed a second amended petition for failure to protect (§ 300, subd. (b)) and reported that David's father, appellant, last saw David when he was three years old. When mother (age 16) gave birth to David, appellant (age 28) feared he would be charged with statutory rape. Appellant had two daughters, one of which he lost to adoption. He did not want any further relationship with David and moved away.

On October 19, 2011, appellant, mother, and stepfather entered into a mediation agreement providing that mother and stepfather would receive counseling and drug and alcohol services, that DSS could place the children with mother and stepfather on 30-day home visits, and that appellant would have unsupervised visits. It was agreed that David would begin counseling and provide input on visitation.

Mother and stepfather tested clean for drugs and signed a safety agreement providing that stepfather would immediately move out if there was even a hint of drug use. Based on mother's and stepfather's high level of cooperation, the trial court returned Waylon Jr. home on November 22, 2011, under court ordered family maintenance.

At the December 14, 2011 contested jurisdiction/disposition hearing, David was still in foster care and wanted to return home. David considered stepfather to be his "dad" and was just beginning to establish a relationship with appellant. The case worker noted an obvious tension between appellant and mother and opined that it would be detrimental to rush David into a relationship with appellant. David and his half-sister Trinity were "highly parentified" in their relationship with Waylon Jr. and felt responsible for ensuring that Waylon Jr. was properly cared for.

The trial court sustained the amended petition and ordered services and visitation. It found that the children have a strong bond and that "all parties are to make every effort to foster that closeness. . . ." David remained in foster care and Trinity was placed with her maternal aunt a few blocks away from mother's home. Based on mother's and stepfather's progress, Trinity was returned home on March 15, 2012. David was returned home for a 30-day trial visit on March 29, 2012.

### *Section 388 Petition*

On April 6, 2012, DSS filed a section 388 petition to change David's placement on the ground that the children were already back at home and mother and stepfather were in full compliance with the case plan. Appellant complained that the change of placement was premature and would disrupt David's schooling.

The trial court ordered that David stay with mother and stepfather pending a contested hearing on the petition. At the May 9, 2012 hearing, DSS reported that David was enrolled in his old school, was happy to be home, and "very, very much wants to be at home" with his mother, stepfather, and siblings. The case worker testified that mother had been very diligent in following the case plan and that "if the two-year-old [Waylon Jr.] is safe, the 11-year-old [David] would be safe as well."

The trial court spoke with David in chambers about home, school, and visits with appellant. Granting the petition, it ordered David returned home with family maintenance services and that appellant begin overnight visits.

### *Abuse of Discretion*

Section 388 authorizes a trial court to modify a child's placement where a change of circumstances exists and it is in the best interests of the child. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The evidence shows that David has been living at home on a trial basis and is doing well. It is uncontroverted that mother and stepfather are in full compliance with the case plan, have consistently tested clean for drugs, and are providing the children a safe and loving home.

Appellant claims that a change in placement will interfere with David's schooling, but there is no evidence that is so. During the 30 day trial visit, David enrolled in his old school and resumed training with his reading specialist. David missed his family and believed his mother has changed and can provide David and his siblings a safe home.

Appellant argues that the change of placement is premature due to mother's and stepfather's history with child welfare services. Mother and stepfather, however, are in full compliance with the case plan and providing the children a safe home. The trial court was aware of the prior referrals and ordered family maintenance services to facilitate the

significant progress that has already occurred. Before it granted the section 388 petition, the court considered the seriousness of the problem leading to the dependency, the strength of David's bonds with his parents and siblings, and the degree to which the child neglect and drug abuse problems have been ameliorated. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

David's wishes are not determinative of his best interests, but it is "powerful demonstrative evidence. . . ." (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087.) In the words of the trial court, "this kid really has his head on straight, [and] has a real sense of what he wants . . . . I don't get to see many children that have that sense of confidence and well being. He was articulating what he wanted. There's no coercion going on with this young man."

#### *Conclusion*

Substantial evidence supports the finding of changed circumstances and that the change of placement is in David 's best interests. (*In re Stephanie M., supra*, 7 Cal.4th at pp. 317-318.) The case plan goal is, and always has been, to reunify David with his mother, stepfather, and siblings. "If circumstances warrant modifying an existing order, it is in the best interest of all involved that the change take place sooner rather than later." (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 879.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda Hurst, Judge

Superior Court County of San Luis Obispo

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Roni Keller, under appointment by the Court of Appeal, for Appellant,

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