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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.P. et al., Persons Coming Under the
Juvenile Court Law.

B262544
(Los Angeles County
Super. Ct. No. CK98469)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Philip Soto,
Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant
County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and
Respondent.

* * * * *

Seven-year-old R.P. and five-year-old A.P. were removed from their mother and father (who is not a party to this appeal) in March 2013, due to mother's and father's substance abuse, mental health problems, and history of domestic violence. The boys' physical condition was abysmal, and they were severely developmentally delayed.

Despite receiving reunification services for nearly two years, mother made little progress toward achieving stability, and she still did not comprehend the gravity of the boys' special needs, or the fact that her alcohol and drug abuse and general neglect were the cause of their complex medical, mental, educational and developmental delays and disorders.

The boys require constant attention, which they have received in the home of their prospective adoptive mother, a stay-at-home mother who has extensive training to deal with their unusually disruptive and difficult behaviors, and who has seen to it that they receive the extensive special services they so desperately needed.

Shortly after the boys were detained, the Los Angeles County Department of Children and Family Services (Department) had evaluated maternal grandmother as a possible placement for the children, but her husband's criminal history involving allegations of sexual abuse of his girlfriend's daughter prevented placement with her.

One and one-half years after the boys had been detained, for the first time, mother asked the Department to consider other maternal relatives for placement. The Department spoke with each relative whose name and contact information mother provided, none of whom had seen the boys in years, if ever, and none of whom asked to be evaluated for placement.

In a section 388 petition filed after mother had received almost two years of reunification services, mother for the first time asked the juvenile court to order the Department to place the boys with her cousin, whom she had never previously mentioned for a possible relative placement. The cousin was an approved foster mother, but she did not have special training to care for the boys' special needs, nor had she ever visited them during the years they had been in foster care; indeed, the cousin had not even seen the boys since November 2012, four months before they were detained.

Mother N.P. appeals the juvenile court's orders denying her section 388 petition and terminating her parental rights. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Circumstances Leading to the Children's Detention.

In January 2013, the Department received a referral that mother and her boyfriend were smoking marijuana in the presence of the children. On February 5, 2013, the Department received a call from a School Attendance Review Board (SARB) counselor, complaining that R.P. had unexcused absences, and was very behind in school because of his poor attendance. Mother neglected to meet with school officials to address R.P.'s attendance problems. Also, according to the SARB counselor, mother had been jailed in November 2012 for a domestic violence incident with father, after which she moved out of the family home (at the time, the family was living with maternal grandmother). Father confirmed that mother and the children were living with mother's boyfriend. The social worker attempted, without success, to contact mother at her boyfriend's house, and at maternal grandmother's home.

On March 8, 2013, the Department social worker was able to contact mother at maternal grandmother's home. She had moved back in with father and maternal grandmother after her boyfriend asked her to leave. Mother admitted that father used to "beat [her] up" when the family lived in Virginia. Mother had left father two years before, and moved to California to start a new life. She and the children moved in with her boyfriend. However, father learned of mother's whereabouts from maternal grandmother, and moved in with maternal grandmother. Father had threatened to obtain custody of the children, so mother returned to father. Mother denied any current domestic violence, but reported that father was controlling and accused her of cheating on him.

Mother did not have any concerns about the boys. She believed they were "normal" and developmentally on target. Seven-year-old R.P. was enrolled in school and had an IEP. Five-year-old A.P. was not enrolled in school because mother had not "had time" to enroll him.

Mother admitted that she was depressed. She had a hard time getting out of bed some mornings to take R.P. to school. Mother also admitted to having a history of methamphetamine use, beginning in high school. She had used methamphetamine in the last month to “escape from stress.” Mother agreed to abstain from using drugs, to drug test, to ensure that R.P. attended school, and to attend a Team Decision-Making Meeting (TDM).

The social worker tried without success to interview R.P. He was easily distracted and unable to make clear statements. A.P. was also unable to make any meaningful statements. The social worker could not understand statements made by either child.

On March 12, a Department social worker called mother and asked her to drug test. She said she lacked transportation to go to the testing facility. The following day, the social worker again asked mother to test, but mother reported that her car was not working, and that she did not know when her car would be repaired.

A TDM was held on March 19, 2013. Mother admitted to using drugs two days before, and that she did not take R.P. to school three days the week before. Father said he was schizophrenic but took no medication despite being unable to sleep due to the voices in his head.

The Department obtained a removal warrant for the children. At the time the children were detained, R.P.’s school attendance was so poor that his school could not “even gauge to see if he’s learning disabled or to figure out what services he needs.” According to the SARB counselor, R.P. had missed 43 days of school during the 2012 to 2013 academic year. The school had offered school-based psychological services for R.P., but mother never followed through. Mother was also neglecting the children’s medical needs. She did not have health insurance for the children, and neither child had seen a doctor in two years.

The Department initially filed a petition under section 300 subdivisions (a) and (b) based on mother and father’s domestic violence, mental health problems, and mother’s substance abuse. A first amended petition was later filed adding allegations that father also abused substances.

2. The Department’s Investigation and Placement of the Children.

The Department’s March 26, 2013 detention report indicated that “[t]here are relatives to consider for placement” and identified maternal grandmother. The detention report included CLETS results for maternal grandmother and maternal grandfather. Maternal grandmother had a misdemeanor conviction for theft of personal property, and had a “prefiling deferral” for battery on a person. Maternal grandfather’s CLETS results showed “[s]odomy with a person under 18 years” with an unknown disposition, and a misdemeanor conviction for driving under the influence.

At the March 26 detention hearing, there were “various paternal and maternal relatives present” The juvenile court ordered that “[a]ll relatives interested in placement are to LiveScan forthwith.”¹ The juvenile court gave the Department discretion to place the children with “any appropriate relative.” The Department conducted an assessment of the maternal grandmother as a possible placement for the children. However, the Department reported the children could not be placed there because “adults residing in the home have a criminal history, which require a waiver for AFSA approval.”^[2] The family has been advised of such requirements and documents have not be ascertained by DCFS from the potential caregivers. Once received, DCFS will submit an AFSA referral for assessment of the home.”

The children had significant issues that made them difficult to place. On March 25, R.P.’s initial foster placement reported that R.P. wet the bed, and that mother told her that he sometimes defecated on himself. A.P. was having a difficult time

¹ Live Scan is certified and approved by the Department of Justice (DOJ) to provide electronic fingerprinting services. Live Scan rolls the fingerprints and then electronically transmits them to the DOJ, FBI and/or the Child Abuse Central Index, as requested. (See <<https://oag.ca.gov/fingerprints>> [as Dec. 14, 2015].)

² The federal Adoptions and Safe Families Act (ASFA) of 1997 has requirements for the approval of relative caregivers with which California agencies must comply. (See <<http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl00/pdf/00-85.PDF>> [as of Dec. 14, 2015].)

adjusting, and cried himself to sleep. Moreover, A.P. was difficult to understand, and was believed to suffer from a speech impediment. On April 10, the children were placed in the home of foster mother, Mrs. A., after their first foster parent could not handle their behavioral problems and gave a seven-day notice to have the children removed. Mrs. A.'s home qualified for special funding due to her high level of training to care for children with special needs due to a mental health diagnosis ("D-rate funding"). The children adjusted well in her home.

At the April 24 jurisdictional hearing, the juvenile court sustained the first amended petition. The juvenile court limited parents' right to make educational decisions for the children, and designated Mrs. A. as the children's educational representative. The juvenile court ordered mother to participate in reunification services, including a full drug program with aftercare, weekly drug testing, parenting classes, mental health counseling, to take all prescribed psychotropic medications and individual counseling to address case issues.

Maternal grandparents, maternal aunt, and paternal grandfather were all present at the April 24 hearing. The juvenile court ordered the Department to provide an "update regarding placement with the maternal grandparents." Specifically, the Department was ordered to "submit [a] report on placement with [maternal grandparents] If placement is not approved, [the] Dep[artment] [is] to indicate why and what else is necessary in order to effectuate placement with [maternal grandparents]. [¶] . . . In the event [the] Dep[artment] cannot place with [maternal grandparents] Dep[artment] to make best efforts to place the children closer to the parents in Los Angeles."

3. The Children's Severe Physical and Mental Disabilities and Disorders, and Their Progress in the Home of Mrs. A.

R.P. and A.P. had medical examinations on April 6, 2013. R.P. suffered from dental disease, and had one decayed molar. His vision was also impaired, though he had no glasses, and he had green foreign bodies in both of his ears. R.P. was not "within age appropriate development." He had "very limited" verbal skills and comprehension. He received a Regional Center referral. R.P. was enrolled at a new school near his foster

home in Victorville. He was assigned to the second grade and was scheduled to have an IEP evaluation. He was also enrolled in counseling.

A.P. also suffered from dental disease, had very limited verbal abilities and comprehension, was developmentally delayed, and also received a referral for the Regional Center. A.P. was disruptive and hyperactive, and would not cooperate for vision and hearing screenings. A.P. was enrolled in kindergarten at a school near his foster home in Victorville. An IEP evaluation was to be scheduled.

A May 2013 MAT (Multidisciplinary Assessment Team) assessment more fully disclosed the boys' severe development problems. Seven-year-old R.P. suffered from cognitive and speech delays. His speech was difficult to understand, and he had a stutter, and a very limited vocabulary. R.P. would not engage in conversations with those around him, and used speech only to have his needs met. R.P. was also experiencing motor skill delays. He was unable to hold a pencil correctly, to form numbers, or tie his shoes. He required significant assistance with grooming such as brushing his teeth and bathing. Despite his age, he was not fully toilet-trained. He could not get dressed on his own, as he had difficulty with zippers, buttons, and snaps. R.P. engaged in aggressive behaviors, and fought daily with A.P. He had daily tantrums. He wet his bed every night. He turned to food for comfort, and was constantly hungry. Consequently, he was also obese.

The MAT assessors reported that five-year-old A.P. was aggressive at home, in school, and in the community. He masturbated throughout the day. He screamed loudly when asked to follow directions. A.P. was not toilet trained, and would urinate in a trash can instead of the toilet. He spit and wet his bed. A.P. also suffered from mood swings, and would run away and hide when in public. A.P. had almost no vocabulary, limited to only a few words. He used signals such as pointing or nodding yes or no to communicate his needs. He was hyperactive and disinterested in others. When upset, he became angry and volatile and would hit others, scream, or throw things. If told "no," he would punch himself in the face. His motor skills were also delayed, and he required significant assistance with all aspects of dressing and hygiene (including toileting). He was unable to hold a pencil.

A.P. did not want to get out of Mrs. A.'s car when she took him to school. Mrs. A. would wait in the car with A.P. for a couple of hours until he agreed to go into the classroom. When in school, A.P. engaged in disruptive behaviors such as hiding under tables, refusing to stand in line, screaming at others, and not sitting still during class.

The MAT assessors observed Mrs. A. to be warm, nurturing, and family oriented. She was a stay-at-home mother who provided a "stable and loving home" for the boys. She was attuned to their needs and understood their academic and behavioral problems.

The MAT assessment indicated that mother had regular visitation with the children, and that both R.P. and A.P. wanted to be returned to their mother. The assessor observed a visit between mother and the children on April 30, and found mother to be nurturing. Mother appropriately engaged R.P. in various activities. Both mother and R.P. enjoyed the visit, as evidenced by their laughter and smiles. A.P. was detached and disruptive during the visit, but mother responded thoughtfully and calmly to his behaviors.

The children were placed with a new foster family in late June 2013, so that they could be closer to mother for visitation. However, after less than two weeks, their new placement gave a seven-day notice to have them removed because of their severe behavioral problems. The children were returned to Mrs. A. in Victorville on July 17, 2013. They were thriving in this placement, were bonded to Mrs. A., and their needs were being met.

The Department's October 23, 2013 status review report noted that the children were "thriving as their behaviors have improved greatly and they appear to have a close bond with foster mother." Mother's visits had been consistent and appropriate. "[S]he is bonded to her children." Mother visited with them for two hours on Sundays, at a location halfway between the children's foster placement in Victorville and the San Fernando Valley. Mrs. A. supervised the visits, and reported them to be appropriate. Sometimes, maternal grandmother and maternal aunt would attend the visits as well.

The children were doing well in school, and A.P. now enjoyed attending school on a daily basis, and was responding well to having a consistent and stable routine.

R.P. had seen a specialist to treat the foreign bodies in his ears, but they could not be removed. R.P.'s doctor recommended removing the foreign bodies under general anesthesia. R.P. had seen a dentist to treat his extensive cavities and the tooth which was decayed down to the gum line. However, the dentist could perform only a cleaning and fluoride treatment because R.P. would not cooperate with further treatment. R.P. was diagnosed with ADHD and Enuresis Nocturnal (nighttime bedwetting), and was prescribed medications to address these issues. He also was diagnosed with oppositional defiant disorder, and obesity. However, his eating habits had improved since his placement with Mrs. A.

R.P. was also assessed at the Regional Center, but was found ineligible for services. He had an IEP, based on his Specific Learning Disability and Speech or Language Impairment. It was determined that he could advance to the third grade, and would be enrolled in special education math and English courses, as he was performing below grade level for these subjects, but "mainstream" social studies, science, and art classes.

Mother did not participate in his special education assessment; however, Mrs. A. participated.

R.P. was also assessed for his eligibility to receive "D-rate" special funding, which is provided to foster parents who have received special training to care for children with special needs due to a mental health diagnosis. The Department mental health evaluator concluded that R.P. appeared to be eligible, based on meeting the diagnostic criteria for Post-Traumatic Stress Disorder and Disruptive Behavior Disorder. The evaluator reported that R.P. had symptoms related to past trauma, and was hyper vigilant and in constant fear of danger or harm. The evaluator described R.P. as very aggressive and defiant. Nevertheless, Mrs. A. reported that she had a positive relationship with R.P. She had to constantly redirect him, and assist him significantly with grooming. The assessor reported that "[t]he current foster mother appears to be well trained and attuned to client's needs with the context of his history, which has impacted his behavior." Also, R.P. was

attached to Mrs. A. The assessor was concerned that R.P. may have been prenatally exposed to drugs, based on his developmental delays.

A.P. also received medical and dental care. He had dental cavities and two teeth decayed to the gum line. Like his older brother, A.P. would not cooperate with the dentist to receive treatment other than a cleaning and fluoride treatment. He was diagnosed with ADHD and Oppositional Defiant Disorder. He was receiving medication for these conditions. He was also found to be ineligible for Regional Center services. His poor academic performance required him to repeat kindergarten. A.P. also suffered from social deficits. The assessor believed they were attributable to his ADHD rather than autism. However, symptoms reported by Mrs. A. demonstrated that it was “very likely” that A.P. suffered from autism. A.P. qualified for special education classes.

Mother did not attend A.P.’s initial IEP meeting, which was held on June 6, 2013. Mrs. A. attended.

A.P. also appeared eligible for “D-rate” funding based on his ADHD and Disruptive Behavior Disorder. The assessor noted that A.P. required “constant and consistent redirection” from his caregiver. He required “intensive supervision” or he would put himself in harmful situations. When A.P. was first placed with Mrs. A., he urinated in a trash can and masturbated constantly, but these behaviors had subsided. Getting A.P. to complete personal care tasks such as bathing and brushing his teeth was a daily “battle.” There were concerns that he, too, was prenatally exposed to drugs, based on his deficits and behavior.

A.P.’s psychological assessment noted that his poor speech had improved 70 percent over the first six months he was placed with Mrs. A.

Mrs. A. was interested in adopting the children if they failed to reunify with their parents. Mrs. A. already had an approved home-study from the foster family agency.

4. The Juvenile Court Continues to Provide Reunification Services Despite Mother’s Lack of Progress.

The Department’s October 23, 2013 status review report stated that mother was not making progress with her reunification services. In June, she was discharged from

her drug program. She reenrolled in another program, but was not in compliance with the program's requirements to drug test and participate in individual counseling sessions. Mother had not enrolled in parenting classes or individual counseling. She was a "no show" for 10 random drug tests between April and September 2013. She did, however, submit four negative tests, in the months of April, May, June, and August. She was homeless, though she was employed part time, working 4 to 6 hours per week at a Halloween store for \$8 per hour.

The Department recommended that mother's reunification services be terminated, and that the juvenile court set a section 366.26 hearing. However, at the six-month review hearing, the juvenile court continued mother's reunification services. The juvenile court also gave the Department discretion to liberalize mother's visitation, and to permit overnight visits.

The Department's May 7, 2014 status review report noted that mother was unemployed and still did not have stable housing. Mother still had not enrolled in parenting classes. Mother missed 11 out of 12 drug tests, but tested negative once in October 2013. She reportedly missed her drug tests because she was depressed.

Mother routinely and consistently visited with the children, and the visits went well. Mrs. A. continued to monitor the visits. Sometimes, maternal grandmother attended the visits. R.P. reported that he "like[s] the visits" with mother.

5. Maternal Grandmother's Section 388 Petition.

On May 23, 2014, maternal grandmother filed a section 388 petition, requesting placement of the children with her. As pertinent to our discussion, the petition asserted that on May 14, 2013, the Department told maternal grandmother that the children were not placed with her because of her husband's criminal history. Maternal grandfather explained to the Department that he was only detained on false accusations and released. Maternal grandfather moved out of the home in June 2013 to facilitate placement of the children, but he returned in January 2014, as the children were never placed with maternal grandmother. The Department later provided maternal grandmother with a copy of the police report concerning maternal grandfather's arrest.

Maternal grandfather provided a declaration in support of the petition, attesting that he was detained in 2001 based on false allegations of inappropriate sexual conduct with his girlfriend's 17-year-old daughter. He was released and never charged. He was willing to move out of maternal grandmother's home so the children could be placed there.

The police report was attached to the petition. In the report, maternal grandfather was accused of penetrating the anus of his girlfriend's daughter with his penis. His girlfriend came home to find maternal grandfather "bumping up against [her daughter's] rear end with his naked pelvis." The victim told police she loved maternal grandfather romantically, and that they were about to have sex when interrupted by her mother. She denied ever having sex with maternal grandfather before, but admitted they had kissed in the past. The victim was transported to the hospital for a sexual abuse examination and changed her story about what happened a number of times. Officers believed the victim was lying to protect maternal grandfather. Eventually, she told officers that maternal grandfather had attempted to sodomize her, and that it hurt.

The juvenile court summarily denied the petition, finding that the requested order was not in the best interests of R.P. and A.P. Maternal grandmother filed a second section 388 petition on July 11, 2014, seeking to set aside the juvenile court's previous order denying her earlier section 388 petition. The juvenile court denied that petition as well.

6. The Juvenile Court Again Extends Reunification Services for Mother.

The Department's June 17, 2014 interim review report noted that mother had been discharged from her drug program for nonattendance, and had tested positive for methamphetamine on April 15, 2014. Mother was also a no-show for numerous drug tests. She still had not enrolled in a parenting class. Mother consistently visited the children. The Department recommended that her reunification services be terminated.

At the June 17, 2014 permanency planning hearing, again the juvenile court continued mother's reunification services against the recommendation of the Department, and gave the Department discretion to release R.P. and A.P. to "any appropriate relative."

The juvenile court also ordered the Department to “facilitate reasonable visitation for the maternal grandmother.” The juvenile court ordered that mother and father were to be notified of any medical or dental appointments for the children at least one week in advance.

7. After 18 Months, the Juvenile Court Eventually Terminates Mother’s Reunification Services.

The Department’s September 15, 2014 status review report noted that R.P. and A.P. were thriving in their placement with Mrs. A., who had attended their IEP meetings, psychiatric, medical, and dental appointments. The children “speak highly of” their foster mother and her care. A.P. also expressed his love for his brother, mother, and father.

Mother was not enrolled in a drug treatment program, and missed intake interviews. She also was a no-show for all of her drug tests. Additionally, mother’s visitation had become inconsistent. The children had “many tantrums and melt down[s] due to parents missing their scheduled visits.” Mother missed more than half of 13 scheduled visits between June and early August 2014. Between mid-August and late September 2014, mother only saw the children three times, and failed to show up for multiple scheduled visits. Once, mother promised to take the children to Chuck E. Cheese’s, but then failed to show up. This caused the children to have negative emotional outbursts. The children were very resentful and were struggling with abandonment issues due to mother’s irregular visitation.

R.P. was participating in individual counseling. He had melt downs that lasted for hours when mother failed to show up at a scheduled visit, or if something unplanned occurred. According to R.P.’s therapist, Mrs. A. “is doing a phenomenal job with [R.P.] in helping himself sooth his tantrums and practicing his relaxation breathing.” R.P. had nightmares related to horror movies he saw while in mother’s care. Mrs. A. did not allow the children to watch scary movies.

Mrs. A. informed mother of various medical appointments, and the children's first day of school. Mother failed to attend any appointments or show up for school. The Department recommended that family reunification services be terminated.

The September 15, 2014 status review hearing was continued to October 15, 2014.

According to the Department's October 15, 2014 interim review report, the children were thriving in their placement with Mrs. A., and were strongly bonded to her. They called her "Nanny." Mrs. A. was patient and helpful, and attended all of their medical and educational appointments and meetings. Both children spoke very highly of her, and she was meeting all of their needs with "great care and affection."

The children also expressed their love for their parents, but had recently engaged in some regressive behaviors such as screaming, kicking, crying, and bedwetting due to their parents' failure to attend scheduled visits.

Mother still was not participating in court-ordered programs, and tested positive for marijuana in September 2014. Mother was very defensive and deflected responsibility for her failure to participate in services to others. She also had very little insight about why the children were detained, and blamed father and others for the Department's involvement with her family. The Department recommended that family reunification services be terminated.

The October 15, 2014 interim review report stated the Department had continually requested information about relatives for placement but the parents failed to provide any information, until quite recently. On September 24, one and one-half years after the boys had been detained, mother and maternal grandmother provided the Department with information about relatives to be considered for placement. The Department contacted each of these relatives. Gabriela G. was not interested in caring for the children. Walter S., mother's cousin, had only recently learned of the dependency case from maternal grandmother. He had not been in contact with the children "in a long time." He said he would discuss with his wife the possibility of having the children placed with them. Cecilia A. only recently learned of the detention of the children from maternal grandmother. She did not have a relationship with mother, but said she would speak to

her husband “about possibly building a relationship with the children.” None of the relatives asked to be evaluated for placement.

At the October 15 hearing, the juvenile court denied mother’s request for further assessment of maternal relatives for placement. The juvenile court ordered only one monitored visit per month, and that the parents confirm the visit 24 hours in advance. The juvenile court found that mother was not in compliance with her case plan, and terminated mother’s reunification services.

8. Mother’s First Section 388 Petition.

Mother filed a section 388 petition on December 5, 2014, challenging the juvenile court’s October 15 order denying her request to place the children with a relative. The petition argued that mother’s cousin, Dolores S.—whose name and contact information mother had only just provided to the Department—was available to take the children into her care. The petition alleged Ms. S. was a licensed foster parent with the Bienvenidos foster agency, and that she had space for both children in her home.

On December 16, the juvenile court summarily denied the petition.

9. Mother’s Second Section 388 Petition.

On January 16, 2015, mother filed a second section 388 petition. It was nearly identical to her first one, but this time included letters (not declarations) from mother and Ms. S. In her letter, Ms. S. said she was interested in fostering the children. She had met them on December 12, 2011, and had visited with them on three occasions in May, August, and November 2012. She had a bedroom available for the boys. Mother’s letter stated that she gave Ms. S.’s name to the Department social worker in August 2014, and two of her prior attorneys, but that no one contacted Ms. S. The juvenile court granted mother a hearing on this petition.

On February 5, 2015, the Department filed a report in response to mother’s section 388 petition. The report stated that since the October 15, 2014 hearing, no other relatives had come forward seeking placement of the children, and that the relatives it had contacted (Gabriela G., Walter S. and Cecilia A.) had not said they were available to care for the children, and did not have relationships with the children.

The proposed foster parent, Ms. S., had never contacted the Department, and the children had no idea who she was. Moreover, the children were very well bonded to their foster mother, and she was qualified to deal with children with special needs. Removing them from her home “puts them at risk of regressing.” Ms. S. was only certified as a “regular resource foster family” and had no special training or certifications to care for children needing intensive treatment or psychotropic medications.

At the February 10, 2015 hearing on mother’s section 388 petition, the juvenile court heard the arguments of counsel and denied the petition, concluding that the requested order was not in the best interests of the children because they were placed with someone who was willing to adopt them, and had the special training to care for them.

10. The Department Recommends Termination of Parental Rights.

The Department’s February 10, 2015 section 366.26 report stated that mother had only visited the children three times from May until September 2014,³ and had missed several scheduled visits, causing the children to be “extremely hurt.” She visited twice in October 2014, and had regularly visited once per month starting in November 2014. The children were happy to see mother, and mother was playful and appropriate during visits, although she did not take on a strong parental role. Maternal grandmother also had monthly visits with the children, separate from mother’s visits. The children enjoyed seeing her. Maternal grandmother took on a parental role, setting clear limits for the children. “The children are vocal in regards to the love they have for biological parents.” The visits were being monitored by a Department social worker, who reported that mother interacted well with the children.

The children’s foster parents, Mr. and Mrs. A., were still committed to adopting them. They shared a very close bond with the children, and they had an approved home study.

³ However, earlier Department reports make clear that she visited more than this, although she missed many scheduled visits.

The children's therapists reported that the children had made progress in treatment, and were achieving their therapeutic goals.

According to Mrs. A., the children's behaviors had improved significantly, and R.P. had stopped wetting the bed. Mrs. A. was very proud of the children, and happy with their improvements.

On November 26, 2014, the social worker met with the children's behavioral specialist at Mrs. A.'s home. Both children had improved, but A.P. continued to have severe temper tantrums, and R.P. was sometimes anxious and upset. The social worker who monitored visits reported that mother's most recent visit had gone well, and that mother was appropriate. However, after the visit, R.P. wet his bed. R.P. became anxious and worried after each visit with mother.

But the next month, on December 22, 2014, the Department social worker who monitored the visits noted that the children "have a great time" with mother. Moreover, the children were calm after visits with mother, and no longer wet the bed.

The children's doctor referred them to a neurologist to assess comprehension and behavioral issues. In December 2014, R.P. and A.P. had initial examinations by the neurologist. R.P. was diagnosed with ADHD, bipolar disorder, a learning disability, and indications of schizophrenia. R.P. was also assessed to determine if he suffered from autism. A.P. was diagnosed with autistic disorder and ADHD.

On January 15, 2015, the Department interviewed the children. They denied any concerns about visits with mother. R.P. stated he has fun with mother. The children appeared comfortable with Mrs. A. They hugged her and asked her for food and drinks. Mrs. A. was extremely patient, loving, and attentive to the children.

The Department recommended termination of mother's parental rights.

The Department filed a supplemental report on March 12, 2015. On February 12, 2015, Mrs. A. said "she would like to adopt the children . . . once the pending neurologist results have been completed. She would like to ensure that the specialized Adoption Assistance Program rate for the two children is appropriate.

11. The Hearing on Mother’s Third Section 388 Petition and the Section 366.26 Hearing.

On March 6, 2015, mother filed a third section 388 petition asking the juvenile court to modify its October 15, 2014 and February 10, 2015 orders denying her request to place the children with her cousin, Dolores S. She additionally sought to revise or set aside the orders denying maternal grandmother’s two section 388 petitions. She argued that there was no impediment to placing the children with maternal grandmother, as her husband had moved out. Ms. S. and maternal grandmother had enrolled in a two-day D-rate certification program, to be held on March 20 and 27, 2015 at Los Angeles City College. Mother asked the juvenile court to take the section 366.26 hearing off calendar so that her relatives could be evaluated for placement. The petition argued that the requested order would be in the best interests of the children because it would allow them to grow up with family members with whom they had meaningful relationships.

On March 12, 2015, after a hearing, the juvenile court denied the petition, finding that the requested order was not in the best interests of the children. The juvenile court stated its tentative view that it was “not inclined” to grant the motion. The juvenile court then asked mother’s counsel “is there anything not in your papers that you want to put forward on the record?” Counsel replied that everything was in the papers. After hearing counsel’s argument that the Department did not follow protocol regarding relative placement, the juvenile court denied the petition.

The juvenile court then turned to the contested section 366.26 hearing. The Department’s reports were admitted into evidence without objection. The juvenile court also took judicial notice of its case file, including its orders made on mother’s and maternal grandmother’s section 388 petitions.

Mother’s counsel stated that she wanted to call mother and R.P. as witnesses. When asked for an offer of proof regarding their testimony, counsel argued “mother will talk about the visits and the relationship she has with the children, and the children’s desire to live with the mother. . . . I believe that [R.P.], when he testifies, will say exactly the same thing. And the fact that he is under the impression that he’s going to be

returned to his mother.” The Department objected that the “the children are not of an age where the court cannot make a decision without them.” Counsel also objected on relevance and Evidence Code section 352 grounds. Children’s counsel joined the objections. The juvenile court permitted mother to testify, but not R.P.

Mother’s counsel then indicated that she would like maternal grandmother to testify, “[t]o tell the court what she has observed when she’s gone with mother for the visits” but the juvenile court was already aware that recent visits had gone well and found maternal grandmother’s testimony would be an undue and unnecessary consumption of court time.

Mother testified she had visited the children regularly since the beginning of the case. She missed some visits because she was having problems with her car, and was sick and hospitalized, and because of a freeway closure in October, that prevented the foster mother from transporting the children for visits. Mrs. A. told mother she could come to Victorville for visits, but mother was unable to travel to Victorville. Mrs. A. never arranged make-up visits for the visits missed due to the freeway closure. Mother’s visits were monitored over the duration of the case. The visits were initially monitored by the foster parents, but then by a Department social worker.

Mother testified that the children would always run to her and hug her at the beginning of visits. They would cry when the visits ended. They would tell her they did not want to go, and that they wanted to come home. They did not understand why they were living with the foster mother.

Mother testified that the children told her they wanted to go home about three times each visit. R.P. and A.P. also told mother that they told the social worker they wanted to be returned home. Mother testified that maternal grandmother often attended visits. The children told mother that they wanted to be with their family. They often talked about their family members. The children would cry and cling to mother at the end of visits. During visits, mother would ask the children about school, and about how they were doing.

After mother's testimony concluded, the children's counsel argued that it was in the children's best interests that parental rights be terminated, and that they be freed for adoption. Mother's counsel asked the juvenile court to consider guardianship. She argued there was a strong bond between mother and the children, and that severing that relationship would be detrimental to the children.

The Department argued that mother had not played a parental role in the children's lives, and therefore no exception to the termination of parental rights applied. The Department also argued that the children were adoptable, and that Mrs. A. was willing and able to adopt them.

The juvenile court acknowledged that mother loved the children, and that the children loved mother, but found that mother had not acted as a parent. "The caregiver has been doing all the parenting, taking care of the children, making sure that they go to the doctor, dental and all of the appointments are met None of [these things] have been done by the parents." The juvenile court found the children to be adoptable, and terminated mother's and father's parental rights. Mother filed a timely notice of appeal.

DISCUSSION

1. The Third Section 388 Petition

Mother contends that the juvenile court erred in not granting a hearing as to her third section 388 petition. Mother has mischaracterized the record. On March 12, 2015, the juvenile court considered mother's petition, stated its tentative view that it was "not inclined" to grant the petition, and explained there had been no change in circumstances, the children were being well taken care of by their prospective adoptive mother, and it was in their best interests to remain there. The juvenile court then asked mother's counsel "is there anything not in your papers that you want to put forward on the record?" Counsel responded that everything was in the papers. The juvenile court then denied the petition.

The juvenile court did not abuse its discretion. "Section 388 permits '[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court' to petition 'for a hearing to change, modify, or set aside any order of court

previously made or to terminate the jurisdiction of the court' on grounds of 'change of circumstance or new evidence.' (§ 388, subd. (a).)" (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) A parent must "establish[] 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. [Citation.] 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. [Citation.]" (*In re S.J.* (2008) 167 Cal.App.4th 953, 959.)

" "Since the interest of a parent in the companionship, care, custody, and management of his [or her] children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford him [or her] adequate notice and an opportunity to be heard. [Citations.]" [Citation.] ¶ . . . When a parent makes a prima facie showing of changed circumstances under section 388, he or she has a due process right to a full and fair hearing on the merits. [Citation.] . . . However, a parent's right to due process is 'limited by the need to balance the "interest in regaining custody of the minors against the state's desire to conclude dependency matters expeditiously" [Citation.] Accordingly, in dependency proceedings, '[t]he court must control all proceedings with a view to quickly and effectively ascertain[] the jurisdictional facts and all information relevant to the present condition and welfare of the child.' [Citation.]" (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1463-1464.)

" "[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition.' [Citations.] . . . [Citation.] ¶ The appellate court "will not disturb [a] decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." [Citation.]" (*In re Mary G.* (2007) 151 Cal.App.4th 184, 205.)

Mother argues that the juvenile court, time after time, wrongfully failed to consider maternal family members for placement. The record provides no support for

this argument. The Department can hardly be faulted for failing to investigate relatives it knew nothing about. The only relative who expressed interest in the boys before reunification services were terminated was maternal grandmother. However, her husband had been investigated by police for sex abuse of the 17-year-old daughter of his former “common law wife” whom he had helped raise for nine or ten years. Mother’s brief repeats he was not charged or convicted of the offense. The record suggests that for some reason the juvenile court was not aware of evidence that maternal grandfather was neither arrested nor charged with an offense arising out of the incident. Nevertheless, we see no likelihood that such evidence would have caused the juvenile court to consider the case differently. The salient point is that maternal grandfather never went in for a Live Scan though he and grandmother were told he had to do so. Maternal grandfather’s declaration in support of grandmother’s section 388 petition said nothing about submitting to a Live Scan.

Mother’s evidence in support of her section 388 petition did not establish that it would benefit R.P. and A.P. to be removed from the home where they had lived for nearly two years, where they were thriving with a caregiver specially trained to care for their needs. None of the proposed relative caregivers whose names mother provided to the Department late in these dependency proceedings had any special training to care for the children. Ms. S. was a stranger to the boys. She had not visited them even once during the years they were in foster care. Maternal grandmother had failed to protect and provide for the needs of the children when they were living in her home with mother and father. None of the proposed relatives provided a better alternative to the adoptive home where the children were placed. Mother’s evidence in support of her section 388 petition did not establish a prima facie case that the proposed change would be in the best interests of R.P. and A.P. (*In re Mary G.*, *supra*, 151 Cal.App.4th at p. 205.)

Accordingly, we find no error.

2. Termination of Parental Rights

Mother contends the juvenile court made a number of erroneous and prejudicial evidentiary rulings, barring R.P.’s testimony; excluding statements that R.P. and A.P.

wanted to return home to their family; barring maternal grandmother's testimony; and restricting the scope of mother's testimony. Mother argues it was reasonably probable that she would have had a better outcome but for the juvenile court's errors. Mother does *not* contend that substantial evidence does not support termination of her parental rights. We find no merit in any of her contentions.

A. R.P.'s and maternal grandmother's testimony

Mother argues the juvenile court erroneously concluded that R.P.'s testimony was not relevant, and that R.P. was entitled to have the juvenile court consider his wishes. Section 366.26, subdivision (h)(1) provides that “[a]t all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.” While R.P.'s wishes are a necessary consideration for the juvenile court, that does not mean the juvenile court was required to hear him testify about his wishes. The statute “require[s] the juvenile court to receive direct evidence of the children's wishes regarding termination and adoption at the permanency planning hearing. This evidence may take the form of direct formal testimony in court; informal direct communication with the court in chambers, on or off the record; reports prepared for the hearing; letters; telephone calls to the court; or electronic recordings.” (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480; see also *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1089 [a “juvenile court judge in a proper case may refuse to require the attendance and testimony of the child who is the subject of the litigation”].) Here, the Department's reports made clear that R.P. loved his mother and had said he wanted to return home to her.

Moreover, the juvenile court had broad discretion to exclude R.P.'s testimony as cumulative of other evidence under Evidence Code section 352, and its ruling will be upheld on appeal unless its “decision was palpably arbitrary, capricious, or patently absurd, and resulted in injury sufficiently grave as to amount to a miscarriage of justice.” (*People v. Lamb* (2006) 136 Cal.App.4th 575, 582.)

For this same reason, we find no error in excluding maternal grandmother's testimony. Mother contends that maternal grandmother's testimony was relevant to demonstrate the quality of the visits between mother and the children, and the bond

between mother and the children. However, mother's testimony concerning the visits, and the Department's reports, fully described the visits, at great length and with a great deal of detail. At this stage in the proceedings, the critical issue was whether mother occupied a parental role in the children's lives. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954.) Mother has not specified what more maternal grandmother could have offered that mother herself was unable to offer during her own testimony on this narrow issue.

B. Limitations on mother's testimony

Mother contends the juvenile court erroneously circumscribed her testimony about the children's desire to return home to her, and denied her due process right to be heard. Mother points to a single question to which a hearsay objection was sustained, and another where an attorney-client privilege objection was sustained, but ignores the many statements mother made about the boys' wishes to which no objection was made, which were admitted into evidence.

Mother testified at length about the wishes of the boys, and was permitted to offer testimony about what she did during visits and the quality of the visits. The juvenile court did limit mother's discussion about the frequency of visits, finding that this was adequately addressed by the Department's reports. However, it is clear that mother's regular visitation was not at issue; all parties agreed that she generally visited regularly. The juvenile court's decision to terminate parental rights rested on whether mother occupied a *parental role* in the lives of the children, not on the frequency of her visits.

It is the parent's burden to show that termination of parental rights would be detrimental. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) "To meet the burden of proof . . . , the parent must show more than frequent and loving contact or pleasant visits. [Citation.] . . . [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]" (*In re L. Y. L., supra*, 101 Cal.App.4th at pp. 953-954.) The relationship between the parent and child must be sufficiently significant that the child would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) The

juvenile court must balance the strength and quality of the parent-child relationship against the security and sense of belonging that a stable family would confer on a child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

Mother’s evidence and arguments concerning her visitation and the quality of her relationship with the boys were heard by the juvenile court. Mother’s visits had been monitored for the entire dependency, and over time, they became briefer in duration. R.P. and A.P. enjoyed their visits with mother, but mother did not attend the children’s medical and educational appointments, or provide the day-in and day-out care of a parent. Mrs. A. was the primary parent in the boys’ lives, and both children were thriving in her care. Even though the children shared a bond with mother, this bond did not outweigh the benefits the children would achieve from the permanency of adoption.

3. Adoptability

Lastly, mother contends the juvenile court’s order finding the children adoptable is not supported by substantial evidence because Mrs. A. would not commit to adopting the children until receiving the results from their neurological exams.

<https://advance.lexis.com/document/?pdmfid=1000516&crid=88f501b0-ef15-4dbf-bf8c-c646afdbb7a4&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5C6P-2741-F04B-S0HR-00000-00&pddocid=urn%3AcontentItem%3A5C6P-2741-F04B-S0HR-00000-00&pdcontentcomponentid=4860&pdshepid=urn%3AcontentItem%3A5C66-91Y1-J9X5-R0D0-00000-00&pdshepcat=initial&pdteaserkey=sr4&ecomp=f8-g&earg=sr4&prid=a4303fef-c4ec-4fce-80cd-a23540760cc6>“It is well established that if a child has special needs which render the child not generally adoptable, a finding of adoptability can nevertheless be upheld if a prospective adoptive family has been identified as willing to adopt the child and the evidence supports the conclusion that it is reasonably likely that the child will in fact be adopted within a reasonable time.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292-1293.) Moreover, absent evidence of a legal

impediment to adoption, a foster parent's interest in adopting a child is sufficient to support the juvenile court's finding of general adoptability. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

We find there is substantial evidence in the record that R.P. and A.P. are adoptable. Mrs. A. has demonstrated a consistent commitment to adopting the boys. Her request to postpone the adoption until the neurological examination results were completed does not suggest she was unwilling to adopt the boys. She explained she wanted to ensure the foster care adoption program financial assistance was adequate to address the children's needs. The request was reasonable and responsible, and demonstrated her concern that she would continue to have the funds to meet the boys' extensive, specialized needs. Her prudence does not undermine her commitment to the children, or the likelihood the children would be adopted.

DISPOSITION

The orders are affirmed.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.