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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.C. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.R. et al.

Defendants and Appellants.

E054562

(Super.Ct.Nos. J226056, J226057)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.
Schneider, Jr., Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant P.R.

Gorman Law Office and Seth F. Gorman, under appointment by the Court of
Appeal, for Defendant and Appellant C.C.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendants and Appellants D.R. and T.R.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

In September 2011, the juvenile court denied the petition of defendants and appellants D.R. and T.R. (maternal grandparents) under Welfare and Institutions Code¹ section 388 and terminated the parental rights of defendants and appellants P.R. (mother) and C.C. (father) to their children, D.C. (born in 2007) and A.C. (born in 2005) under section 366.26. Mother and the maternal grandparents contend the juvenile court erred in failing to comply with the requirements of section 361.3 to assess the maternal grandparents for placement. Mother and maternal grandparents also join in each other's arguments and those of father. Father contends:² (1) the paternal grandparents should have been evaluated for placement as requested in the maternal grandparents' section 388 petition; and (2) the juvenile court erred in failing to provide a complete assessment of the maternal grandparents. We find that any error was harmless, and we affirm.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² In his opening brief, father also contended no substantial evidence supported setting the section 366.26 hearing. However, in his reply brief, father withdrew and abandoned that contention.

II. FACTS AND PROCEDURAL BACKGROUND

A. Pre-detention Events

In response to a report of excessive bruising, a social worker visited the children's daycare facility in February 2009. A.C. demonstrated how father had pinched her and said, "Daddy mean, Daddy mad, Daddy pinch." A.C. said mother had also pinched her, and the social worker saw numerous dime- and nickel-sized bruises on A.C.'s buttocks, thighs, and back. Father and mother denied physically abusing the children.

The maternal grandparents arrived during an investigation of the parents' home and volunteered to take custody of the children. A safety plan was implemented under which the children would go to the maternal grandparents' home, and the maternal grandparents would file for legal guardianship through family court.

A background check revealed that D.R. had a weapons charge against him, but T.R. had no criminal record. The maternal grandparents knew father pinched the children; D.R. had once confronted him about the abuse. T.R. told the social worker that father was an addict and a "bad influence" on mother. The maternal grandparents and mother took the children for an examination at the Children's Assessment Center, and a physician determined that marks on both children were consistent with child abuse.

A few days after the children were placed with the maternal grandparents, D.R. informed the social worker he had returned the children to mother's care because they were missing her, and he no longer believed the parents had abused them. The social worker concluded the maternal grandparents were not protecting the children from the parents. Also, the maternal grandparents failed to bring the children to appointments for

skeletal surveys. D.R. said he did not see the need for the surveys because the children were not being abused. He said he had an attorney who would discuss the matter further with the social worker.

B. Detention of the Children

In March 2009, San Bernardino County Children and Family Services (CFS) obtained a detention warrant and went to the maternal grandparents' home. D.R. became hostile and ordered the social worker off the property. A deputy who accompanied the social worker confirmed that the children were not there. D.R. told the social worker, "You will never see these children again, they are out of state," and he threatened to file a lawsuit if social workers came on his property. T.R. apologized for D.R.'s conduct and asked if they could still file for a guardianship. The supervising social worker told her that guardianship was no longer an option because a detention warrant had been issued. T.R. said the children were with mother that afternoon, and she would contact CFS when they returned. The next day, mother contacted CFS and agreed to bring the children to them. At mother's request, her sister was assessed for placement and was approved.

CFS filed a petition under section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect) as to both children and under section 300, subdivision (j) (abuse of sibling) as to D.C. At the detention hearing, the juvenile court found a prima facie case had been established and ordered the minors detained with mother's sister. At mother's request, the court ordered that the children have no contact with D.R. The court ordered the parents to complete a family information sheet and return it to the social worker.

C. Jurisdiction/Disposition

CFS filed a jurisdiction/disposition report in March 2009. The children had been removed from their aunt and placed in a nonrelative foster home because the aunt had been unable to deal with their temper tantrums and other behavioral problems, and they had suffered multiple accidental injuries while they were placed with her.

Mother told the social worker that she and father had noticed marks on the children after they were in daycare. A.C. bruised easily, but a medical examination had not revealed any problem. Mother did not believe father had hurt the children. Mother admitted she had a problem with self-mutilation (cutting). She had had a troubled childhood, and her parents sold and abused drugs during most of her youth. She was taking medication for post-traumatic stress disorder, mood swings, and anxiety, and she was also taking pain medications for a back injury. Mother admitted an addiction and stated she and father had been going to Narcotics Anonymous meetings. Mother and father both admitted they yelled and argued frequently but denied physical violence.

Father told the social worker he noticed bruises on A.C.'s legs and had questioned the daycare workers about them. He did not think the bruises were caused by abuse. He believed A.C. might have been confused when she said "Daddy pinch"; he pinched his own legs because he had lost sensation from a back injury. He believed A.C. injured herself, D.C. had kicked her in his sleep, or the maternal grandmother had caused the bruises. Father denied being an addict, although he took prescribed pain killers for a back injury and also used marijuana for pain. He had a past problem with

methamphetamine, but he had undergone rehabilitation and had not used the drug for four and a half years.

Mother reported that D.R. had been diagnosed with bipolar disorder and T.R. with agoraphobia, and that T.R. spent much of her time in bed. Mother also reported that the maternal grandparents had a history of substance abuse and domestic violence, and they mentally and physically abused her when she was growing up. She found D.R. hanging from a noose when she was 16 years old and pulled him down to safety, and she said her parents had multiple suicide attempts. The social worker recommended that the grandparents and other relatives be assessed for visitation upon request.

At the jurisdiction/disposition hearing in April 2009, the juvenile court found the allegations of the petition true as amended. The court ordered weekly visitation and reunification services for both parents. The court found father to be the presumed father of the children.

D. Six-month Review

The social worker reported that in May 2009, mother was convicted of violating Penal Code section 273a, subdivision (a) and was released from custody. Father was convicted of violating Penal Code section 273d, subdivision (a) and was subsequently released on supervised probation for 48 months.

The children were healthy but had behavior problems and tantrums. They were moved to a new foster home where their behavior improved.

The parents had begun their services and were making significant progress on their case plans. In August 2009, Dr. Kenneth Meyer conducted a psychological evaluation of

mother. He found her to be a “reliable historian.” She told him that her parents had mental health problems. Her father had mentally and physically abused her, although her mother had been “fairly protective.” Dr. Meyer concluded that mother’s condition was consistent with mood disorder, possible bipolar disorder, or significant anxiety with depression. He concluded that she presented with “a significant, and severe, personality disorder,” and he recommended psychotherapy and possible psychotropic medication.

Father attended four individual therapy sessions. Although his attendance had been sporadic, he had actively participated and appeared to be eager to work on his issues. He was actively engaged in his domestic violence program and had completed a child abuse prevention program. All his drug tests were negative, and he had been attending Alcoholics Anonymous/Narcotics Anonymous (AA/NA) groups.

The section of the CFS report entitled “Relative Placements” stated: “The children were initially placed with the maternal grandparents, then the maternal aunt and uncle. The grandparents allowed the children to be returned to the parents and were in denial of the necessity for protection of the children. . . . The undersigned has asked the parents to have family members contact this worker if they are interested in having the children placed with them.” Another section of the report stated: “The undersigned has spoken with the parents regarding possible relatives who would be willing to accept placement of the children. As of this writing, there have been no relatives who have come forward to request placement of the children.”

The section of the report entitled “Grandparents” stated that T.R. had maintained monthly visits with the children, and the court had ordered no contact with D.R., but

“[h]e has contacted the undersigned several times, and has threatened to initiate a lawsuit if he is not allowed contact with the children[;] however, his requests for visits have been denied.” The section of the report entitled, “Factual Basis for Not Placing with Relative” stated: “The children were previously placed with their maternal aunt and uncle, and their maternal grandparents. The aunt and uncle were unable to care for the children and the maternal grandparents were enabling the parents, and returned the children to the parents without regard for the children’s safety.” CFS recommended one hour monthly visitation for T.R. and no contact for D.R.

At the review hearing, the court continued the children in foster care. The court found that CFS had provided reasonable services to the parents. The court authorized liberalized visitation and authorized CFS to return the children to the parents under family maintenance when deemed appropriate.

E. 12-month Review

CFS reported that the children continued to be healthy, and their behavioral problems had significantly decreased. They were happy and adjusted to their foster placement. The report stated, “There are no relatives at this time who are appropriate for placement of the children.”

The parents were continuing to make progress in their case plans. Father’s attendance at individual therapy was not consistent, and he was having difficulty meeting therapeutic goals. He was making good progress in his domestic violence program and had completed outpatient substance abuse treatment. His drug tests had been negative.

The parents were visiting the children twice weekly, but CFS reported, “There have been no visits with the grandparents during the last reporting period. The maternal grandparents have not contacted the department to request visits.” CFS recommended one hour per month visitation with T.R. and no contact with D.R. CFS repeated its statements from the previous report concerning the factual basis for not placing the children with a relative and the social worker’s asking the parents about possible relatives for placement, but that no relatives had come forward to request placement.

At the review hearing, the court found that reasonable services had been provided to the parents. The court ordered unsupervised visitation twice weekly and authorized CFS to permit overnight and weekend visitation as deemed appropriate.

F. Special Hearing on Visitation

At a special hearing in July 2010, the court reduced visitation for mother to one hour per week supervised, and changed father’s visitation to unsupervised visits in a public setting with no overnight visitation. CFS had learned that in June, mother struck A.C. on her bare buttocks with a hairbrush during an unsupervised weekend visit. Father recorded the incident on his cell phone and showed the recording to his probation officer, who contacted CFS. Mother pleaded guilty to inflicting unjustifiable physical pain (Pen. Code, § 273a, subd. (b).)

Father and mother were no longer living together, and father had obtained a mutual restraining order against mother.

G. 18-month Review

CFS reported that mother was sentenced to 90 days in county jail and 48 months' probation, among other terms, for her child abuse conviction. CFS again reported there were no relatives appropriate for placement, and that parents had not provided contact information for relatives to be assessed.

The social worker was concerned that father had not done enough to prevent mother's physical abuse of A.C., and he seemed to be more focused on recording the incident on his cell phone than in stopping it. Father had completed almost all of his case plan, but the social worker expressed concern about whether he had benefited from the services. Father's therapist reported, "I am increasingly impressed and encouraged by the progress I have seen" in father, in "asking for help in completing self-inspired goals. He has secured appropriate housing, completed or is in the process of completing all programs required of him by CPS, maintained his sobriety, and is taking the steps necessary to earn his children back."

T.R. had contacted CFS and requested visits with the children; the social worker reported that T.R. had not asked for visitation for over a year. The social worker approved one hour per month supervised visitation for T.R.

The children had grown attached to their foster parents. Their behaviors and temperaments had improved, and they were developmentally on target.

Father was currently living with two adult female friends, and the social worker asked him to have his roommates contact CFS to initiate live scan procedures. The social

worker stated that father's visits should take place in a public setting until his roommates passed a live scan.

At the 18-month review hearing on October 12, 2010, the juvenile court terminated mother's reunification services but continued father's services. The court ordered a minimum of two hours visitation weekly for father, unsupervised at a neutral location, with visits to take place at father's home upon clearance.

H. Special Hearing re Visitation

A special hearing took place in January 2011 after the foster mother reported that father had been taking the children to his home for visits. The children told the social worker that A.C. had a birthday party at "Mommy and Daddy's new blue house," and their grandparents and other relatives had been there. The children reported they had been to that "new blue house" on other occasions and asked when they could go home to live there. The court ordered that visitation for both parents would be one hour per week at the CFS office, supervised.

I. Special Hearing

In a hearing in January 2011, counsel for both parents denied that mother had attended the birthday party at father's house. The court admonished father about violating court orders and ordered the social worker to live scan all persons residing in his home.

J. Status Review Report

In February 2011, the social worker reported that from August 2010 to January 2011, father's urine testing showed unusual and wide fluctuations in his creatinine levels,

and a plausible explanation was that he was “flushing”; i.e., consuming a large amount of water to dilute the sample. Father also had three positive drug tests between November 2010 and February 2011, two for opiates and one for Propoxyphene. Father was seen driving a vehicle to and from visits at the CFS office. The social worker questioned father, who first said other people drove him and then said he had a restricted license that allowed him to drive to and from work and school. The sheriff’s department informed the social worker that father’s license was suspended in 2008. Father became defensive and argumentative when confronted with that information and stated he was in the process of getting his license back.

Father’s therapist reported that while father and the therapist agreed therapy was no longer indicated, father continued to demonstrate occasional lapses in judgment and had a limited ability to foresee the consequences of his actions; his improvement in that area had been minimal.

Father was currently living with mother’s male cousin, the cousin’s wife, and their children. The social worker asked the roommates to have a live scan before allowing visitation at father’s house. The female roommate was cleared in December 2010, but on February 1, 2011, the male roommate’s results showed a past and present criminal history that would preclude placement of the children in the home.

Father allowed the maternal grandparents and mother to have unmonitored visitation with the children at least once, and father had violated the court “no contact” order by allowing D.R. to visit the children. He also violated the court order by taking

the children to his home before his roommates had cleared the live scan. The social worker stated that father's behavior indicated he had not benefited from his services.

In an addendum report, CFS repeated that father had not benefited from his two years of reunification services. He was using highly addictive prescription drugs despite his history of addiction; his drug test results were questionable; and he had not provided proof of attendance at AA/NA meetings. He had driven home from a court hearing with mother despite having an active restraining order against her, and he lied to his therapist about doing so. He also lied about having a "restricted license" when in fact his license had been suspended in 2008.

At the status review hearing on April 20, 2011, the juvenile court terminated father's reunification services and set the matter for a section 366.26 hearing. In June 2011, the maternal grandparents filed a petition under section 388, asserting that mother's probation officer conflicted with their efforts to have the children placed in their care. The juvenile court denied the petition summarily on the ground that the request did not state new evidence or a change of circumstances. The court also ordered that a "copy of this request to be provided to CFS social worker for consideration consistent with WIC 361.3."

K. Nonappearance Review Hearing Re: Visitation

At a hearing in June 2011, it was reported that the children had a supervised visit with T.R. scheduled at the CFS office. Both T.R. and D.R. arrived for the visit and hugged and kissed the children. The monitor told D.R. to leave, and D.R. told the children he was working hard to get them back. T.R. said D.R. had never been served

with any order, so they believed he could visit the children. D.R. agreed to leave and said he was going to call his attorney. When the social worker left the office, D.R. was standing in the parking lot. He called out to the social worker in a loud and angry tone that “They know me and I know them.” A security officer reported that D.R. said he had written down the social worker’s license plate number, “and I know what she drives and I’ll find her.” He told the security officer he knew the social worker was “married to a cop” and had children. The social worker said T.R. had attempted to convince the visitation monitor that D.R. was allowed to see the children. She made promises to the children and tried to find out their foster family’s last name. The juvenile court terminated T.R.’s visits with the children and issued a no-contact order as to her.

L. Section 366.26 Report

In July 2011, CFS requested that the section 366.26 hearing be continued for 60 days so that an adoption assessment could be completed. The report stated that the maternal grandparents had been assessed for placement at the inception of the case, but the court found them to be nonprotective, and they had been ruled out for placement. A prospective adoptive family had been identified, and the children were being transitioned to that home.

Father had last visited the children in late April 2011 and had not contacted the social worker since then to request visits.

M. Section 388 Petition

In July 2011, the maternal grandparents filed a petition under section 388 requesting “[p]erm[anent] placement with family members as first option rega[rding]

placement of said children,” and stated that the change would be better for the children because “[p]arental right[s] terminated and order to move forward with permanent placement have been fil[ed]. Paternal grandparents have come forward to petition for g[ua]rdianship or perman[ent] placement.”

Also in July, father and the paternal grandmother, L.R.-A., faxed various materials to the juvenile court ex parte. Among those documents was a declaration of L.R.-A. stating, in part, that the social worker “has refused to accept any and all phone requests: [¶] 1. Asked several times for request for Livescan. [¶] 2. Permission to discuss case with her from [father] – both in writing and on phone. [¶] . . . [¶] 4. She has falsified, concealed covered up by trickery, or has fals[e]ly written statements untrue about my family & [father]! NO GOOD Plan EX[ISTS]! [¶] . . . [¶] 6. Also, has denied my family our rights to see our grandchildren & denied [father] to visit them by moving them far away & lying about his progress!” (Underlining and capitalization in original.)

CFS filed a response recommending denial of the maternal grandparents’ section 388 petition.

N. Adoption Assessment

In September 2011, CFS filed an adoption assessment. The social worker again reported that father had not visited the children since April and had not contacted her to request visits.

O. Hearing on Section 388 Petition

In September 2011, the juvenile court held a hearing on the petition. Mother testified that she agreed with the maternal grandparents’ request for placement of the

children with them. She stated that she had previously lied to the social worker about her parents because she was angry, and she feared that if the children were placed with them, she would not be able to see the children again. It was not true that her parents had used or sold drugs; there had been no physical or emotional abuse and domestic violence between her parents when she was growing up; and to her knowledge, her parents did not have any mental health diagnoses or suicide attempts. She further testified, however, that she was “possibly” aware of her father being diagnosed as bipolar and that as a teenager, she had walked in on her father hanging from a noose. She denied having spent time in a group home or ever obtaining a restraining order against her parents. She asked the court for a no-contact order against her father at the detention hearing because she had been angry at her father. She did not have any concerns that he or her mother would be a risk to the children. She testified that her parents were loving and caring people who had raised her right.

T.R. testified that she and D.R. had domestic violence, in the form of “very verbal confrontations” during mother’s childhood, and the last episode was in 1991. D.R. had been treated for domestic violence “from [his] doctor and different medication.” She and D.R. used drugs in their youth, but not since mother was born. She had never been diagnosed with agoraphobia, but she suffered from occasional panic disorder. D.R. was diagnosed with bipolar disorder “in the early ‘80s and ‘90s . . . and, now, it is borderline personality dis[order].” Neither she nor D.R. had ever physically or emotionally abused mother. T.R. admitted she attempted suicide in 2006. She had heard from mother that mother had walked in on D.R. in an apparent suicide attempt when mother was 16, but

T.R. believed mother “might have been on some mind-altering drugs at the time.” D.R. had been arrested for possession of an illegal gun in 2008 and for possession of cocaine in 1986. He also had a criminal record in Utah based on a “pretty bad fight” with his brother.

Father confirmed that he had not visited or talked to the children for five months. He testified that the social worker told him he could not visit and then told him he could visit the children for half an hour every month or two. Father moved to the Bay Area in March 2011 but had recently returned to Southern California.

The juvenile court denied the section 388 petition, finding there was no change of circumstances, and placement of the children with the maternal grandparents would not serve the children’s best interests.

P. Section 366.26 Hearing

Immediately following the hearing on the section 388 petition, the juvenile court held the section 366.26 hearing. The court found the minors adoptable and terminated mother’s and father’s parental rights.

III. DISCUSSION

A. Requirements of Section 361.3

All appellants contend CFS and the juvenile court failed to evaluate the maternal grandparents for placement under section 361.3.

“In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” (§ 361.3, subd. (a).)

The statute sets forth a nonexclusive list of factors for the agency and the court to consider in determining whether relative placement is appropriate and continues: “The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. . . .” (§ 361.3, subd. (a)(8).)

Section 361.3, subdivision (d) provides: “Subsequent to the hearing conducted pursuant to Section 358 [the disposition hearing], whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child’s reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child.” (§ 361.3, subd. (d).)

Grandparents are among the relatives entitled to preferential placement. (§ 361.3, subd. (c)(2).)

A prior removal of children from a grandparent’s care does not necessarily constitute unsuitability under section 361.3, subdivision (d) and “does not bar a relative

from being evaluated and considered for placement of a dependent child under section 361.3.” (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 378; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1027 [a grandmother’s prior child protective history did not bar her from being evaluated and considered for placement].) We will therefore assume for purposes of argument that the maternal grandparents should have been evaluated for placement under section 361.3.

In *In re Joseph T.* (2008) 163 Cal.App.4th 787, the court found that error in failing to afford relative placement preference to the child’s paternal aunt was harmless. (*Id.* at p. 798.) The court stated that “compelling reasons” in the record supported the juvenile court’s action, including that the aunt lived in another county, and moving the child there would have frustrated the child’s best chance of reunification with his mother and would have separated the child from his half sibling. (*Ibid.*) The court also found harmless error in the juvenile court’s failure to state the reasons for its decision: “Because the reasons for denying placement are clear from the evidence and discussion at the hearing and support the court’s decision, the court’s failure to make findings is harmless. It is not reasonably probable such findings, if made, would have been in favor of [the] appellant. [Citation.]” (*Ibid.*)

Here, the reasons militating against placement with the maternal grandparents are even more compelling than the reasons found sufficient in *In re Joseph T.* Before the section 300 petition was filed, D.R. subverted the safety plan for the children, denied that the children had been abused, and later failed to take them to their appointment for skeletal surveys. He was belligerent to the social worker and falsely claimed the children

had been taken out of the state. Later, he made threats to the social worker. Mother reported to the social worker that D.R. physically abused her as a child and that the maternal grandparents used drugs, had diagnosed mental illnesses, and had multiple suicide attempts. Although she later recanted those allegations, she had made the same allegations to her psychological evaluator, who found her to be a “reliable historian.” At the hearing on the section 388 petition, T.R. confirmed that D.R. had a 2008 conviction for possession of a firearm, and he had only recently been discharged from probation. She also admitted he had been arrested for possession of cocaine in 1986 and had been arrested in connection with a “pretty bad fight” with his brother in Utah. She testified there had been domestic violence in her home before 1991, for which D.R. received medical treatment. She admitted she and D.R. had experimented with illegal substances, although not since mother was born. She was diagnosed with panic disorder in 2000 and had a panic attack in June 2011. She confirmed that D.R. had been diagnosed with bipolar disorder in the 1980s and 1990s, but in 2001, the diagnosis had changed to borderline personality disorder. She admitted attempting suicide in 2006.

In light of the record before us, we conclude it is not reasonably probable the children would have been placed with the maternal grandparents.

B. Evaluation of Paternal Grandparents

Father argues that CFS did not properly evaluate his parents for placement under section 361.3.

Under section 361.3, subdivision (a), relatives who request placement of a dependent child are to be given preferential consideration, which means that placement

with such relative should be the first to be considered and investigated. (§ 361.3, subd. (c)(1).)

1. *Paternal grandfather*

As recounted above, the *maternal* grandparents stated in their section 388 petition that “Paternal grandparents have come forward to petition for guardianship or perman[en]t placement.” Apart from that statement, the record contains no indication whatever that the paternal grandfather had any interest in the case. The paternal grandfather never signed any documents, never appeared in court, never contacted CFS, and never had any documented contact with the children.

In his reply brief, father stated that by “paternal grandfather,” he actually meant the paternal grandmother’s husband, and argues that the paternal grandmother’s husband had requested placement. He relies on *In re Rodger H.* (1991) 228 Cal.App.3d 1174, in which the court held that when the grandmother stated at the jurisdiction hearing, “Excuse me, Your Honor, is it possible to get an attorney appointed for my husband and myself—so we can try to get little Rodger until he goes back to his parents,” the duty to investigate the grandparents for placement was triggered. (*Id.* at pp. 1184-1185.) That case is distinguishable on its facts: Unlike in the present case, the grandmother in *In re Rodger H.* actually appeared in court and requested assistance. In contrast, nothing in the record before us suggests that CFS’s duty to evaluate the paternal grandmother’s husband for placement was ever triggered.

2. *Paternal grandmother*

Father's social history indicates his parents separated when he was three years old. He lived with his mother until she remarried and sent him to live with his father in Texas at age nine. Father reported his mother was "heavily into drugs" and physically abused him. During a visit when he was 12 years old, she made him smoke crack cocaine. Much later, father moved back to Sacramento with her, "claiming he thought that by moving in with her and using drugs with her, he would make her stop using. When he realized this was not working, he left"

Other than the paternal grandmother's ex parte fax sent to the juvenile court in July 2011, nothing was heard from the paternal grandmother throughout the proceedings. In her declaration included in that fax, she did not state *when* she had attempted to call the social worker, *when* she had requested a live scan, or even that the live scan had been requested for herself. Notably, moreover, she did not suggest in the fax that she wanted the children placed with her. Although the *maternal* grandparents stated that the "Paternal grandparents ha[d] come forward to petition for guardianship or placement," the record contains no indication that the paternal grandmother had in fact come forward requesting placement. Thus, the duty to evaluate the paternal grandmother for placement was never triggered.

IV. DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

KING

J.

CODRINGTON

J.