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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re L.W. et al., Persons Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.W. et al.,

Defendants and Appellants.

E058718

(Super.Ct.No. RIJ119159)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Jacqueline Jackson,  
Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and  
Appellant E.W.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and  
Appellant L.W.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,  
for Plaintiff and Respondent.

## I. INTRODUCTION

Defendants and appellants, E.W. (Mother) and L.W. (Father), appeal from orders terminating their parental rights and placing two children for adoption. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother and Father are the parents of L., a girl born in December 2009. Mother is also the parent of A., a girl born in January 2002.<sup>2</sup> Mother's appeal concerns both girls, while Father's appeal concerns only L.

Mother claims the court erroneously refused to assess a maternal aunt, K.W., for placement of the girls in Texas (§ 361.3), and Father joins this claim. Each parent also claims the court further erred in refusing to conduct evidentiary hearings on their section 388 petitions, filed in April and May 2013, seeking the return of one or both girls to their care, in addition to other relief. We find each of these claims without merit and affirm.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Circumstances of the Girls' Dependency*

L. and Mother tested positive for marijuana at the time of L.'s birth in December 2009. Mother also tested positive for opiates, and L.'s blood was also consistent with Mother's seizure medication. L. was placed in the neonatal intensive care unit at Loma

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

<sup>2</sup> The identity and whereabouts of A.'s father are unknown.

Linda University Medical Center (LLUMC) because she was not eating enough. Mother admitted smoking marijuana on a daily basis while pregnant with L., for medical reasons. Mother suffered from seizures and had been diagnosed with paranoid schizophrenia with hallucinations. Mother said she began using marijuana while in grammar school, but denied using marijuana while pregnant with A.

When they arrived at LLUMC before L. was born, the parents appeared to be under the influence and were behaving erratically. Father was aggressive toward Mother and threw a bag at her. Mother “[became] violent easily” and was unable to follow instructions to properly feed and care for L. Against medical advice, Mother left the hospital the same day L. was born because she felt she was being treated unfairly. Several days later, Mother came to LLUMC and threatened to kidnap L. and “kill” anyone who stood in her way. She was displaying “uncontrollable anger,” the police were called, and the parents were banned from LLUMC. The next day, plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), took L. and A. into protective custody.

*B. The Initial Dependency Proceedings*

In January 2010, DPSS filed a dependency petition alleging the children were at substantial risk of harm due to Mother’s marijuana use, and Father knew or should have known of Mother’s marijuana use during her pregnancy with L. but failed to intervene. (§ 300, subd. (b).) At a June 2010 jurisdictional/dispositional hearing, the court sustained the allegations, ordered the children removed from parental custody, and ordered

reunification services for both parents. The parents' case plans included general counseling, parenting classes, and medically fragile training in order to properly feed and care for L. Mother was also ordered to complete an anger management course and undergo a psychological evaluation and participate in an outpatient substance abuse program.

Mother was 26 years old and Father was almost 55 years old when L. was born in December 2009. Mother was sexually abused as a child and raised in foster care. In May 2009, Mother was arrested for stabbing her sister. Father also had a criminal history, including a 2005 rape charge.<sup>3</sup> Father initially refused to drug test or participate in any services because he was uncertain whether L. was his biological child. A June 2010 test confirmed Father's paternity of L.

Following her release from the hospital in January 2010, L. was placed in a foster home for medically fragile children. She required a gastrointestinal tube (G-tube) to eat and her breathing had to be monitored. She later underwent a medical procedure on her larynx to improve her breathing.

A. was initially placed with her maternal aunt D. in Beaumont, but was removed from that home in June 2010 because D.'s boyfriend, the owner of the home, also used marijuana and had a criminal history. Following a brief stay in L.'s foster home, A. was placed in a second foster home in June 2010. A. was "very out going and . . . intelligent."

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<sup>3</sup> Between 2005 and 2009, there were four referrals alleging Mother was generally neglecting A., and one was substantiated. One of the unsubstantiated referrals alleged Father was sexually abusing A. and calling A. a "slut."

In May 2010, A. said she did not want to live with the parents because Mother hit her on the butt and lower back, Father slapped her in the face, and she often did not have enough food to eat because Mother would “spend all the money buying drugs.”

Before June 2010, the parents were terminated from their anger management and parenting courses due to poor attendance. During supervised visits with the children, Mother swore in the presence of the children and threatened DPSS staff. She also left several “belligerent and threatening messages” on the social worker’s voice mail. In August 2010, Mother told the social worker “something very bad” would happen “to all of you” if the children were not returned to her. Mother attributed her aggressive and violent behavior to a personality she called “Sexy Red.”

By December 2010, the parents had made little progress completing their case plans. Mother did not complete her medically fragile training to care for L. after she suffered a seizure during class. She did not complete her psychological evaluation because she had a seizure during the evaluation. She repeatedly refused to seek medical assistance from a physician to alleviate her seizures. The parents were again terminated from their anger management and parenting classes for poor attendance. Mother acted inappropriately during classes by getting upset and crying. Mother continued to question why she had to participate in any services. Father’s excuse for his failure to participate was that he had to care for Mother’s medical needs.

In January 2011, Mother was still having difficult time controlling her temper and still swore during visits with the children. In a voice mail message, she threatened a care

provider. Her visits with the children had improved somewhat however. She was more interactive with the children and showed concern for their well-being. Mother had changed her seizure medication, had not had a seizure in two months, and had completed her parenting course. A. expressed an interest in returning home, saying “my mother gave me a lot of cool stuff for Christmas.” In January 2011, the court terminated the parents’ services but authorized DPSS to allow the parents to continue visiting the children. A section 366.26 hearing was scheduled for May 2011.

The parents had supervised visits with the children, two hours each week, between January and May 2011. In April 2011, Mother reported having three to six seizures daily and had a seizure during an April 27 visit with A. A. said Mother sometimes had “fake” seizures and A. no longer wanted to return to Mother. A. was still doing very well in school and had no behavioral problems. A. and L. were still living in separate foster homes.

A. expressed sadness because she believed the parents focused on L. more than her. Father was “very loving” toward L. but not A. When L. could not attend two visits due to her medically fragile condition, Father told Mother to leave her visit with A. because his child L. was not there. Mother left the two visits early, upsetting A. and making her cry.

L. still had to be fed through a G-tube but could eat small pieces of food. The parents minimized L.’s medical condition and continually refused to follow her caregiver’s advice for feeding her only small pieces of solid food. As a result, L. had a

gagging incident during a visit. During visits Mother was also very emotional, took “smoke breaks,” and often discussed the children coming home even though the social worker repeatedly told Mother this was inappropriate.

The children’s caregivers were not interested in adopting them or in being their legal guardians, but DPSS believed the children were adoptable, and in May 2011, recommended adoption as their permanent plan. The May 26 section 366.26 hearing was continued to June 2, 2011.

*C. The Parents’ First Section 388 Petition (July 2011)*

On June 2, 2011, Mother filed a section 388 petition requesting that the children be transitioned back to parental custody with a “safety plan” for L. Mother noted she had completed an anger management program and took medication to stop her seizures. Father joined the petition, and the court set a hearing on the petition. DPSS filed a written opposition noting that Mother had not attended counseling since May 9 and the parenting course facilitator said the parents did not learn or improve from the course.

At a July 6, 2011, hearing on the petition, Father testified he had completed medically fragile training and counseling, he was retired, and he received \$3,400 per month in retirement benefits. He could properly care for the girls and assist Mother in dealing with her seizures. Mother testified she had a current medical marijuana card and smoked marijuana three times each day because it calmed her nerves and helped her “[i]n every way.”

Minors' counsel argued against the petition, noting that Mother's psychiatrist had indicated that marijuana was contraindicated for Mother's seizure medication. The "bigger concern," counsel argued, was that Mother was "almost continually in a state of high" and was using marijuana to manage her anger. There was also no evidence that Mother had participated in a substance abuse program or had learned the difference between using and abusing controlled substances. In addition, Father had not submitted to drug tests, and neither parent had completed counseling or all three parts of the medically fragile training to properly care for L.

The court denied the petition, finding the parents presented well and were credible but had not shown changed circumstances. Still, the court encouraged the parents to refile their petition because there was no permanent plan for the children and it appeared it would be difficult to find an adoptive home for the two of them. The court increased the parents' visits to three times weekly pending the section 366.26 hearing on October 3, 2011, provided Father tested clean, Mother enrolled in medically fragile training, and both parents enrolled in counseling and consistently visited the children.

Following the July 6, 2011, order denying their section 388 petition, Mother was still unable to complete medically fragile training because she had a seizure during a July 2011 training class. In early July 2011, Father submitted to several saliva drug tests and the results were negative, but he refused to submit to further drug tests. The parents consistently visited the children, but neither enrolled in counseling and their visits did not improve. Mother continued to use foul language during visits and was hostile to the

children's caretakers and DPSS staff. In addition, the parents were no longer getting along with each other. On July 16, Mother called A. in hysterics, saying Father hit her, which upset A. During a July 18 visit, Father appeared upset with Mother and did not initiate contact with A. or L. Mother continued to call and send text messages to A., upsetting A. and disrupting her foster care placement.

On August 3, 2011, A. had to move to another foster home, against A.'s wishes, due to Mother's continued threatening and disruptive behavior and A.'s "concerning behaviors" of lying and manipulating to gain attention in the foster home. The social worker then contacted a maternal aunt in Texas, K.W., a mental health social worker, who expressed an interest in the children's placement. On August 8, the court reduced the parents' visits to once each week, and authorized DPSS to liberalize or further restrict the visits. The court also authorized DPSS to evaluate K.W. for placement pursuant to an Interstate Compact Placement Contract (ICPC).

The October 3 section 366.26 hearing was continued to allow DPSS more time to evaluate K.W. and other relatives for placement. K.W. changed her mind and declined the ICPC referral in November 2011. Meanwhile, the maternal aunt, D., from whom A. was removed in June 2010, expressed an interest in the children's placement. As of November 14, 2011, no other families were interested in adopting both children. DPSS considered D. ineligible because A. had previously been removed from her care.

*D. The Parents' Second Section 388 Petition (March 2012)*

In December 2011, Mother filed a second section 388 petition, again seeking the return of the children to her and Father's home, but not additional services. In the petition, Mother claimed she no longer suffered from seizures because in October 2011 she had surgery to remove a cyst in her brain that caused her seizures. The court ordered a hearing on the petition, and Father joined the petition at the time of the March 2012 hearing. Minor's counsel and DPSS opposed the petition.

At the time of the March 2012 hearing, A. was 10 years old and was living in the same foster home she moved to in August 2011. L. was two years old and was still living in the foster home for medically fragile children. L. still had a G-tube and was still considered medically fragile. Her breathing was easily obstructed. The girls were bonded to each other despite their age difference. DPSS was having difficulty finding an adoptive home for both girls given their age difference and L.'s medical needs.

Mother testified she was currently using marijuana four to six times each week to deal with her stress and depression, and she was attending therapy. DPSS reported Mother's marijuana use was against the advice of her primary care physician, however, and that Mother still had problems controlling her anger. In January 2012, Mother ran out of the DPSS office, using expletives to refer to her attorney and the social worker, after she was told the court would decide whether the children would be returned to her following the hearing on her petition. A security guard had to calm Mother for her bi-weekly visit with the children.

As of March 2012, Mother had completed an anger management program but not the rest of her case plan, including medically fragile training or counseling, and she had not undergone a psychological evaluation. In addition, Mother's cyst had not been completely removed and she was expected to require further surgery in 5 to 10 years. Father testified he attended "some counseling" but stopped after the provider moved from the Riverside area. Father also attended "a few" anger management classes but stopped after the instructor told him he did not need to complete the program. Anger management was not part of Father's original case plan. Father affirmed he was committed to caring for Mother and both girls.

The court denied the petition on the grounds neither parent had shown changed circumstances or that the best interests of the children would be served by returning them to the parents' custody. (§ 388.) The court expressed concern that neither parent had completed medically fragile training or the rest of their case plans, even though they had had ample time to do so. The court confirmed the section 366.26 hearing for May 29, 2012.

#### *E. The Parents' Separation and Further Proceedings*

By May 2012, the parents had separated. Mother had a new boyfriend, and was living in Long Beach with her mother. On May 29, the court continued the section 366.26 hearing to allow DPSS more time to find an adoptive home for the girls. No prospective adoptive parents were indentified for the children, but on April 30, the

maternal aunt, K.W., changed her mind again and asked to be evaluated for an ICPC placement in Texas.

Although DPSS requested it in an addendum report, the court did not expressly authorize DPSS to assess K.W. for placement on May 29. Instead, the court granted Mother's request to assess a nonrelated extended family member and licensed foster parent, T.D., for placement. It appears that DPSS's request to assess K.W. for placement was forgotten when the court authorized DPSS to assess T.D. for placement. The court reduced the parents' visits to once each month.

On May 16, Father filed a section 388 petition, his third, seeking family maintenance services only for L., but Father withdrew his petition in July 2012. A copy of the petition is not in the record. DPSS opposed the petition and reported that Father drank excessively, "at least 12 cans [of beer] each day" and that A. was strongly opposed to placing L. with Father "due to his corporal punishments and [his] inappropriately touching [A.] in the past." The court authorized DPSS to assist Father with random drug testing.

In June 2012, DPSS located a couple in New York who were willing to adopt the children, and in July the court authorized DPSS to begin an ICPC assessment of the New York couple. On September 26, the court ordered DPSS not to place the children with the New York couple without prior court authorization. DPSS then put its ICPC assessment of the New York couple on hold pending its assessment of T.D. for

placement. In September 2012, DPSS asked the court to continue the section 366.26 hearing once again.

T.D. failed to stay in contact with the social worker, missed several visits with the girls, and missed a scheduled EMS public health nurse meeting, but said she was still interested in the girls' placement. On October 15, T.D. moved in with her sister, further complicating T.D.'s placement approval. The sister's background had to be checked and it appeared there was no room for the girls in the sister's home. On October 15, DPSS proceeded to assess the New York couple for placement. The New York couple was interested in adopting the girls. T.D. did not contact DPSS after October 15.

By September 2012, Mother had moved from Long Beach to Los Angeles to live with her new boyfriend. The parents missed their October 2012 visit with the girls, but had not missed any previous visits. Father was showing up for visits under the influence of alcohol. On October 23, L. was no longer considered medically fragile and was placed in A.'s foster home. A. was one of the top students in her fifth grade class. L. had an "excellent vocabulary" and advanced verbal skills compared to her peers. L. was able to walk and run, go up and down stairs, and liked to have books read to her.

On October 25, 2012, Mother filed a third section 388 petition seeking the return of the children to her care. By this time, DPSS agreed that Mother had completed 14 weeks of parenting education, 17 weeks of anger management classes, and 17 weeks of life skills training, and had been enrolled in an outpatient drug treatment program since March 2012. Mother tested negative for drugs in June and from August to October 2012.

Mother's boyfriend denied he lived with Mother and refused to submit to live scan fingerprinting. The court ordered a hearing on Mother's third section 388 petition, but the hearing was ultimately continued to March 14, 2013.

In December 2012, the ICPC was approved for the New York couple and they visited the girls in California from January 9 to January 13, 2013. The New York couple was still committed to adopting the girls. In February 2013, the girls visited the couple in New York. By this time, A. was 11 years old and L. was three years old. A. wanted to be placed with the New York couple as soon as possible and L. said she liked the couple.

Meanwhile, the parents continued to visit the children, though Father missed his December 2012 visit. Mother was upset during visits due to the children's possible adoption and move to New York. She cried and yelled during a January 24 visit and left the visit shouting foul language. During a monitored telephone call on February 25, Mother threatened to kill A. unless A. was returned to her care. Mother also threatened A.'s caregivers. Mother's visits and telephone contacts with the girls were then suspended. The court issued a temporary restraining order prohibiting Mother from visiting or contacting the children, but authorized Mother to contact the girls in writing.

On March 14, 2013, the court ordered the girls placed with the New York couple. On the same date, Mother withdrew her October 25, 2012, section 388 petition. She filed a fourth section 388 petition on April 2, 2013, seeking "any additional services" and the "transition" of the girls to her care and custody. She also requested an ICPC evaluation of K.W. in Texas, which K.W. had requested in December 2012. On April 4, the court

summarily denied Mother's petition without a hearing, finding Mother did not present any new evidence, show changed circumstances, or show that the best interests of the girls would be served by granting her petition.

The girls were placed with the prospective adoptive couple in New York on March 25, 2013. The girls and the couple formed a close attachment. A. was excited about being adopted and L. was calling the couple "mama and daddy." The prospective adoptive mother had a master's degree in social work. L. no longer required a G-tube and was able to consume most of her nutrition by mouth.

The section 366.26 hearing was held on May 7, 2013, after an adoption assessment was completed for the New York couple. DPSS recommended termination of parental rights and adoption as the girls' permanent plan. On the date of the hearing Father filed another section 388 petition, his fourth, seeking family maintenance services for L. The court denied the petition on May 7, after hearing argument on its merits.

The court then proceeded to the section 366.26 hearing. A. testified on the telephone from New York that she wanted to be adopted by the New York couple and felt safe in her new home with them. When asked whether she wanted to have any contact with Mother, A. said "[n]o," but said "[s]ure" when asked whether she wanted to be able to talk to Mother. Father testified he was capable of properly caring for L., he did not have a drinking problem, and he was not offered any telephone contact with L. after she moved to New York. Mother was not present at the hearing but told the court over the

telephone that she no longer had seizures, had sufficient income, and was able to properly care for the girls. Mother wanted the girls returned to her custody.

After finding the girls were adoptable and none of the exceptions to the adoption preference applied, the court terminated parental rights and selected adoption as the girls' permanent plan. Each parent appealed.

### III. DISCUSSION

#### *A. The Court Did Not Abuse Its Discretion in Refusing to Consider K.W. for Placement*

Mother claims the juvenile court abused its discretion when, on March 14, 2013, it ordered the girls placed with the New York couple without first requiring DPSS to make a diligent effort to assess K.W. for placement. For this alleged error, Mother seeks reversal of the orders terminating parental rights and the assessment of K.W. for placement. Father joins this claim without additional argument. We find it without merit.

##### 1. Relevant Background

The parents' reunification services were terminated in January 2011, one year after the girls were taken into protective custody. After A. had to be moved to another foster home on August 3, 2011, due to Mother's threatening behavior toward A.'s foster parents, the social worker contacted K.W., who lived in Texas, and asked K.W. whether she was interested in the girls' placement. K.W. said she was interested in taking A., but was concerned about taking L. because of L.'s medical needs. At the end of the

conversation, K.W. agreed to take placement of both girls subject to an ICPC approval. K.W. said she was a mental health social worker and had extra room for the girls.

On August 8, 2011, the court authorized DPSS to evaluate K.W. for the placement of both girls. At some point K.W. changed her mind and said she was only interested in having A. placed in her home. Then, in November 2011, K.W. changed her mind a third time and declined the ICPC even for A., saying she was pursuing a higher education. Pursuant to K.W.'s request, the ICPC evaluation was closed. On April 30, 2012, K.W. reported she had put her higher education plans on hold and wanted to be considered for the girls' placement after all.

In a May 29, 2012, status review report, DPSS asked the court to *again* authorize an ICPC referral for the placement of the girls with K.W. in Texas. In court on May 29, neither DPSS, the parents, nor minors' counsel asked the court to authorize the ICPC referral for K.W. Instead, the court granted Mother's request to assess T.D., a nonrelated extended family member and licensed foster parent, for placement. T.D. was never fully evaluated for placement because she stopped contacting DPSS and apparently lost interest in the girls' placement.

Meanwhile, DPSS continued to search for an adoptive home for the girls. In June 2012, DPSS located the New York couple, who were willing to adopt the girls, and in July 2012 the court authorized DPSS to begin an ICPC assessment of the New York couple. The ICPC assessment of the New York couple was put on hold until October 15,

2012, when it was apparent that T.D. was no longer interested in the girls, and was approved on December 11, 2012.

On June 28, 2012, after the New York couple was located, the social worker spoke with A. regarding her adoption preference and gave A. three possible adoption placement options: T.D., K.W., and the new York couple. A. told the social worker she preferred to be adopted by the New York couple and “clearly stated” she did not want to be “within her mother’s influence” or to possibly be returned to Mother following any placement with T.D. or K.W. A. also “voiced strong opposition” to L. being returned to Father.

On December 6, 2012, only five days before the ICPC for the New York couple was approved on December 11, K.W. changed her mind once again and said she wanted to be approved for an ICPC placement after all. K.W. said her circumstances had changed and she wanted to adopt the girls.

Thereafter, DPSS did not seek court authorization to evaluate K.W. for placement. After the girls visited the New York couple in January and February 2013, DPSS instead asked the court to approve the girls’ placement with the New York couple. The court ordered the girls placed with the couple on March 14, 2013, and the girls were placed there on March 25. The girls and the couple formed a close attachment, and on May 7, 2013, the court terminated parental rights and placed the girls for adoption.

## 2. Applicable Law and Analysis

When a dependent child is removed from parental custody or requires a new out-of-home placement before parental rights are terminated, “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); *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) “‘Preferential consideration’ means that the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).)

In determining whether a relative placement is appropriate, the social services agency and the court are required to consider several factors, including, but not limited to: (1) the best interests of the child, including his or her emotional needs; (2) the wishes of the parent, the relative, and the child, if appropriate; (3) the placement of siblings and half siblings in the same home; (4) the nature and duration of the relative’s desire to care for and provide legal permanency for the child; and (5) the ability of the relative to protect the child from his or her parents. (§ 361.3, subd. (a); see, e.g., *In re H.G.* (2006) 146 Cal.App.4th 1, 11-12 [listing additional statutory criteria].)

The juvenile court is required to exercise its independent judgment in reviewing the social services agency’s relative placement decision, rather than merely review the agency’s placement decision for an abuse of discretion. (*Cesar V. v. Superior Court, supra*, 91 Cal.App.4th at p. 1034; § 361.3, subd. (a).) “The statute [section 361.3] expresse[s] a command that relatives be assessed and *considered* favorably, subject to the juvenile court’s consideration of the suitability of the relative’s home and the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320.)

### 3. Analysis

On this record, it is clear that the court did not abuse its discretion in refusing to ensure that K.W. was assessed for placement before the court ordered the girls placed with the New York couple on March 14, 2013. In June 2012, very soon after DPSS located the New York couple as prospective adoptive parents for the girls, A. made it clear to the social worker that she wanted to be placed with the New York couple and not with K.W. She feared K.W. was subject to Mother's influence, and if she were placed with K.W. she would eventually be returned to Mother. A. also wanted to be placed with L. It was appropriate for the social worker and the court to consider A.'s wishes in refusing to assess K.W. for placement or place the girls with K.W. (§ 361.3, subd. (a)(2) [child's wishes to be considered "if appropriate"].) A. was 10 years old in June 2012, she was very intelligent, and she did not change her mind about her wish to be placed with the New York couple at any time between June 2012 and March 2013.

Additionally, K.W. proved herself to be wholly unreliable as a placement prospect for the girls. (§ 361.3, subd. (a)(6) [relative's desire to care for child and provide legal permanency may be considered].) K.W. changed her mind several times about whether she wanted to accept placement of the girls. First she only wanted to take placement of A., then both girls, then neither. After saying she would accept an ICPC placement in August 2011, she declined the placement referral in November 2011. More than a year later, in December 2012, K.W. changed her mind again and abruptly claimed she wanted to adopt the girls. At the section 366.26 hearing, the court noted that the relatives who

came forward for placement, including K.W., had failed to follow up with DPSS. By contrast, the New York couple consistently wanted to adopt the girls, from June 2012 until the time they accepted placement of the girls in March 2013.

*B. The Court Did Not Abuse Its Discretion in Summarily Denying Each Parent’s Fourth and Final Section 388 Petitions Without Evidentiary Hearings*

Each parent claims the juvenile court erred in summarily denying their fourth and final section 388 petitions without conducting evidentiary hearings on the petitions. We disagree.

1. Applicable Legal Principles

Section 388 states, in pertinent part: “(a)(1) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] (d) If it appears that the best interests of the child *may* be promoted by the proposed change of order . . . the court *shall order that a hearing be held . . . .*” (Italics added.)

A section 388 petition must state a prima facie case in order to trigger the right to proceed by way of a full evidentiary hearing. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) That is, the petition must make a prima facie showing of facts sufficient to sustain a favorable decision if the facts are credited. (*Id.* at p. 593; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) The court must liberally construe the petition in favor of its sufficiency (see Cal. Rules of Court, rule 5.570(a); *In re Angel B.* (2002) 97 Cal.App.4th

454, 461), which is to say the petition must be “liberally construed in favor of granting a hearing to consider the parent’s request. [Citations.]” (*In re Marilyn H.*, *supra*, at pp. 309-310; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1414.)

“There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079 [Fourth Dist., Div. Two].) “[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.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; *In re C.J.W.*, *supra*, at p. 1079.)

We review the juvenile court’s summary denial of a section 388 petition for an abuse of discretion. (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 382.) If the liberally construed allegations do not make the required prima facie showings of changed circumstances or new evidence and best interests, the denial of the petition without a hearing does not violate the petitioner’s due process rights. (*In re Angel B.*, *supra*, 97 Cal.App.4th at pp. 460-461.)

## 2. Mother’s Petition

Mother filed her fourth and final section 388 petition on April 2, 2013, seeking “any additional services” and the “transition” of the girls to her care and custody. In her petition she also requested an ICPC evaluation of K.W. in Texas, which K.W. had most

recently requested in December 2012. On April 4, the court summarily denied the petition without a hearing, finding Mother did not present new evidence, show changed circumstances, or show that the best interests of the girls would be served by granting her petition. This was proper.

First, Mother's petition made no prima facie evidentiary showing of changed circumstances or new evidence. The petition showed the circumstances that led to the girls' dependency, including Mother's chronic marijuana use and uncontrolled rages, were changing but had not yet changed. To Mother's credit, she had finally completed most of her case plan, she had been enrolled in an outpatient substance abuse treatment program for many months, and she was consistently testing negative for marijuana.

But the record showed Mother still had significant problems controlling her anger. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189 [in determining whether a petition makes the required prima facie showing, the court may rely on entire factual and procedural history of the case].) The record showed that as recently as February 25, 2013, Mother threatened to kill A. unless A. was returned to her care, and also threatened A.'s caregivers. On January 24, 2013, Mother was upset because the girls were visiting the New York couple and left a visit shouting foul language.

Nor did Mother's petition make a prima facie showing that it was in the girls' best interests to be placed with K.W. in Texas. As discussed, K.W. changed her mind several times about the girls' placement. The petition made no prima facie showing that K.W. would not change her mind again and not want the girls. Finally, the girls were happy

with the New York couple and A. wanted to be adopted by them. On this record, an evidentiary hearing on Mother's petition was not required.

3. Father's Petition

Father filed his fourth and final section 388 petition on May 7, 2013, the date of the section 366.26 hearing, seeking family maintenance services only for L. Father was not seeking custody of A. because he and Mother were no longer in a relationship. The court denied Father's petition after considering counsel's arguments but without taking additional evidence. This was proper. An evidentiary hearing on Father's petition was unwarranted because the record unequivocally showed that it was in the best interests of both girls to be placed in the same adoptive home, not in separate homes as Father was requesting. Thus, Father's petition did not make a prima facie showing that it was in the best interest of either A. or L. to grant his petition.

IV. DISPOSITION

The judgment terminating parental rights to A. and L. is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.