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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.F.,

Defendant and Appellant.

E060616

(Super.Ct.Nos. J243599 & J243600)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl Kersey,
Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Defendant and appellant C.F. (Grandmother) is the paternal grandmother of six-year-old K.D and five-year-old J.D. She challenges the juvenile court’s denial of her Welfare and Institutions Code¹ section 388 petitions to modify the court order where she sought placement of the children in her care after paternal rights were terminated and the children were freed for adoption. On appeal, Grandmother contends that the juvenile court abused its discretion in denying her section 388 petitions. We find no error, and will affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

K.D. (Father) and R.A. (Mother) had an extensive history of substance abuse, referrals with child protective services, and a substantial criminal history.² They also had a history of domestic violence in front of the children, as well as mental health issues. Both parents had described themselves as “functioning addicts,” who abused drugs for many years, and on occasions smoked methamphetamine together while the children were in their care.

On April 4, 2012, San Bernardino County Children and Family Services (CFS) took the children into protective custody after the parents were arrested following an arrest warrant on an occupant of an apartment in Rancho Cucamonga. When the officers

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Mother had two other children; one who resided with the maternal grandmother/legal guardian and another who had been adopted through a private adoption agency.

executed the warrant, they found the children residing at the apartment, as well as the subject of the warrant, Mother, Father, and another adult (all four of whom were under the influence). The officers also found a sawed-off shotgun with ammunition in Father's bedroom. In the common areas, stolen property, numerous methamphetamine pipes, pills, hypodermic needles, and other drug paraphernalia were found. Stolen property was also recovered from Grandmother's garage; Father had at times stayed at that home and stored items in the garage. The children and their clothing were dirty, and there was a foul odor in the apartment.

On April 6, 2012, CFS filed petitions on behalf of the children pursuant to section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The children were placed with Grandmother.³

The children had previously lived with Grandmother and had adjusted well to her household. The children had appeared to be well bonded to Grandmother and had interacted freely in the home. Grandmother had initially expressed a desire to adopt the children if reunification failed. However, on June 11, 2012, Grandmother reported that "she could no longer care for the children as she needed to 'go back to work' and had no means of providing for their care when she was away at work." A week later, Grandmother stated that she wanted to "keep the kids" because she had them in daycare.

³ Grandmother resided with her husband R. R. is variously referred to as grandpa, paternal grandfather, "PaPa", Father's stepfather, and "Grampee." For the sake of clarity, we will refer to R. as Grandmother's husband.

At the June 25, 2012, jurisdictional/dispositional hearing, the children's counsel informed the court that "after going out and observing the children, my main concern . . . is that Grandmother seems a little over stretched and going back to work." CFS had expressed the same reservations about Grandmother.

Following mediation, the juvenile court found the allegations in the petition true as amended, declared the children dependents of the court, and granted reunification services to the parents. The court also maintained the children in the care of Grandmother.

By the six-month review hearing, the social worker recommended terminating Father's reunification services. The social worker noted that Father was still incarcerated and had done nothing to participate in services. The social worker further noted that Grandmother was enabling Father, noting that Grandmother believed Father's current incarceration, past criminal convictions, poor parenting skills, and failure to sustain employment was not his fault, but Mother's fault. Grandmother also did not believe that Father had a substance abuse problem. On the other hand, the social worker saw hope for Mother, who had been released on probation in November 2012 and had participated in services. As such, the social worker recommended further reunification services for Mother.

In addition, the social worker continued to have concerns about the children's placement with Grandmother. For example, Grandmother failed to comply with the social worker's repeated requests for medical information about the children; Grandmother required "numerous and persistent prompts" before she completed the

intake process at SART; and J.D.'s attendance at SART was described as "sporadic." The clinic manager at SART wondered how much Grandmother was "actually absorbing" the suggestions made to assist J.D.'s learning process, and described Grandmother as "high strung." Initially, the children's behavior was impulsive, demanding, angry, and defiant, and Grandmother had admitted to locking the children in their room. The social worker thereafter ordered Grandmother to remove the external lock on the children's room and counseled Grandmother as to how to deal with the children and referred Grandmother and the children to SART.

Eventually, CFS ruled out Grandmother and her husband's home as a potential concurrent planning home. Grandmother's husband was "adamantly opposed to raising the children after enduring years of providing and rescuing [Father] into adulthood and raising another extended family member's adolescent." Grandmother's husband stated that the parents needed to "grow up and take care of their own kids." Meanwhile, Grandmother believed that she needed to watch the children, that she did not want them to go anywhere, and that she wanted to wait until a good home was found for them.

The six-month review hearing was continued to January 7, 2013, and the matter set contested on behalf of the children. The children's counsel was opposed to the social worker's recommendation for continued services to Mother.

On January 7, 2013, the social worker informed the court that Grandmother had wavered from reporting that she wanted to adopt the children, to reporting that she only wanted custody of J.D., and finally to reporting that she wanted the children removed from her home. Specifically, on December 26, 2012, Grandmother told the social worker

that CFS needed to take K.D. and move him somewhere else, because she did not want him, but ““only”” wanted to keep J.D. The following day, Grandmother requested that the social worker ““come get the children now.”” Grandmother also stated that “the children need to go”” and “that she wanted CFS to ‘move the children’ permanently from her care.” The social worker further informed the court that there were no known relatives willing and available to care for the children.

At the continued contested six-month review hearing on January 7, 2013, the court continued Mother’s reunification services, but terminated services for Father. The children were maintained with Grandmother.

On January 18, 2013, section 387 supplemental petitions for a more restrictive placement were filed on behalf of the children. The social worker reported that Grandmother continued to request that the children be removed from her care. Grandmother stated, “I can’t do this anymore. It’s too much. I can’t have them here. I have too much going on in my life and they are just too much’ to care for.” Additionally, in early January, Grandmother reported that “her marriage was in jeopardy” and that her husband had “left her over their caring for the children.” Grandmother’s husband would not attend counseling. Grandmother and her husband, however, soon reconciled. And, on January 16, 2013, Grandmother reported that the children could not stay with her. Accordingly, with Mother’s consent, the children were moved to the home of Mr. and Mrs. B.

On January 22, 2013, the juvenile court sustained the section 387 petitions, finding placement with Grandmother was no longer appropriate in view of section 361.3 criteria.⁴

By the 12-month review hearing, CFS recommended terminating Mother's reunification services and setting a section 366.26 hearing. Mother was taken into custody in April 2013, and then disappeared after being released. In addition, her participation in services during the last six months was nearly nonexistent. Father had been released from custody in April 2013 but violated probation less than two months after his release. Furthermore, the maternal and paternal grandmothers continued to enable the parents. For example, even though the maternal grandmother knew there was a warrant for Mother's arrest and that Mother had allegedly burglarized the maternal grandmother's neighbor's home, the maternal grandmother welcomed Mother and Father into her home and protected Mother. Following Father's violation of probation and arrest, Grandmother was "quick to advise" the social worker that "[Father] didn't do anything wrong. He was just with someone that he knew he wasn't supposed to be with, because he needed a ride to visit the kids. It's my fault."

Meanwhile, the children were fostering in the home of the B. family. The children reported that they loved their placement with the B. family. K.D. had adjusted well in the home of the B. family, and appeared "very relaxed, happy, spontaneous, and confident." Mr. and Mrs. B. "adore[d]" the children, desired to adopt them, and were committed to

⁴ These criteria include "the best interest of the child," the "wishes of the . . . relative," and "[t]he ability of the relative to . . . [¶] Provide legal permanence for the child if reunification fails." (§ 361.3, subd. (a)(1), (2), & (7)(H).)

providing the children with “whatever they will need.” The children’s behavior, however, changed following visits with Father, and J.D. was again referred to SART to address her enuresis. Additionally, J.D. had recently disclosed being molested while residing with Grandmother and another alleged molestation having occurred at an earlier time.⁵

On June 20, 2013, Grandmother filed a request for de facto parent status as to each child.

The contested 12-month review hearing was held on June 26, 2013. At that time, the juvenile court terminated Mother’s services and set a section 366.26 hearing. The court also denied Grandmother’s requests for de facto parent status and continued to suspend the children’s visits with Grandmother and her husband.

In October 2013, the social worker reported that the children were developing well emotionally, physically, and developmentally and that the children appeared comfortable and happy with Mr. and Mrs. B. The children sought comfort and attention from Mr. and Mrs. B., and Mr. and Mrs. B. were committed to adopting the children and providing them with a loving, nurturing, and permanent home.

⁵ A suspected child abuse report was filed on June 13, 2013. On appeal, Grandmother’s counsel erroneously represents that J.D. had accused her brother K.D. of touching her. However, J.D. had actually accused “PaPa”, which meant Grandmother’s husband. J.D.’s counsel informed the court that the perpetrator was “Paternal Grandfather.” The court took this as a reference to Grandmother’s husband, and suspended visitation for both Grandmother and her husband so that J.D. could be interviewed by a doctor without their influence. Grandmother later confirmed to the court that J.D. had accused her husband, not her brother K.D. The results of the investigation concerning J.D.’s disclosure are not in the record on appeal.

On November 1, 2013, Father filed a section 388 petition, requesting the court to extend services for Father for a period of six months. In support, Father claimed that he had engaged in his case plan services on his own initiative; that he did not maintain a relationship with Mother; and that he had changed his circumstances. The social worker recommended denying Father's petition, noting with a detailed report that Father had lacked insight, and was immature, self-centered, narcissistic, and continued to treat the children, the prospective adoptive parents, and his own visitation coach with disregard. Additionally, Father was still living with Grandmother and her husband, where he had been residing for the past six months.

At a hearing on November 12, 2013, the juvenile court denied Father's section 388 petition. Thereafter, the court terminated parental rights and referred the children for adoptive placement.

Father subsequently appealed from the termination of his parental rights and the denial of his section 388 petition. This court dismissed Father's appeal after his appellate counsel found no issue. (See case No. E060114.)

On January 7, 2014, the children were removed from Mr. and Mrs. B.'s home after the children disclosed the caregivers were hitting them. Once Grandmother became aware of the children's removal from the B. home, she filed section 388 petitions, seeking placement of the children in her care.

Grandmother's section 388 petitions were heard on January 31, 2014. At that time, CFS was in the process of assessing the children's new placement for possible adoption. CFS counsel argued Grandmother's section 388 petitions should be denied for

various reasons, such as Grandmother had not shown change of circumstances or best interest of the children; Grandmother testified at the section 366.26 hearing that she did not want the children and that they had to be removed; and CFS had discretion as to appropriate placement following termination of parental rights. The children's counsel joined in denying Grandmother's petitions, and also noted that J.D. had disclosed sexual abuse allegedly perpetrated by Grandmother's husband. Grandmother's counsel argued that it was in the children's best interest to be placed with their natural family and that it was not good for the children to go from home to home. Grandmother's counsel also asked the juvenile court to consider Grandmother's statements; however, Grandmother did not make a statement. The juvenile court denied Grandmother's petitions, noting that some of the children's movement between families had been due to Grandmother's own decisions. The court found that the petitions did not state new evidence or change circumstances and that it was not in the children's best interest to grant the petitions. This appeal followed.

II

DISCUSSION

Grandmother argues that the juvenile court abused its discretion in failing to grant her a "full" evidentiary hearing on her section 388 petitions.

CFS responds that because the juvenile court had referred the children to a licensed adoption agency when parental rights were terminated, CFS has the power, not the court, to determine where a child should be placed after parental rights are terminated pending adoption. Citing section 366.28, subdivision (a), CFS further responds that after

parental rights have been terminated, the Legislature has expressly recognized that a juvenile court intervenes in placement “only in exceptional circumstances.” Finally, CFS asserts that the juvenile court did not abuse its discretion in denying Grandmother’s section 388 petitions.

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

When a child is declared a dependent of the court and removed from parental custody, the social services agency is authorized to select a suitable interim placement for the child pending reunification or adoption. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1490; § 361.2, subd. (e).) Likewise, “[o]nce a dependent child is freed for adoption, the agency to which the child is referred for adoption is responsible for the child’s custody and supervision. The agency is entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. [Citations.]” (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71 (*Shirley K.*)) Further, the agency is “authorized to exercise its discretion to reassess the suitability of the environment in

which it had placed the child and, if deemed unsuitable, move the minor to an improved situation.” (*In re Cynthia C.*, at p. 1490.) Accordingly, the agency has discretion to terminate an interim or adoptive placement at any time before the petition for adoption is granted. (*Shirley K.*, at p. 71.)

As noted by CFS, “[t]he Legislature recognizes that the juvenile court intervenes in placement decisions after parental rights have been terminated only in exceptional circumstances” (§ 366.28, subd. (a).) However, the agency’s discretion concerning adoptive placement “is not unfettered.” (*Shirley K.*, *supra*, 140 Cal.App.4th at p. 72.) The juvenile court retains jurisdiction over the child, among other things, to ensure that adoption is completed as expeditiously as possible and to ascertain the appropriateness of the placement. (*Ibid.*) The agency’s placement decisions are subject to judicial review for abuse of discretion. (*In re N.M.* (2011) 197 Cal.App.4th 159, 171; *In re C.B.* (2010) 190 Cal.App.4th 102, 123, fn. 5; *Shirley K.*, at p. 72; § 366.26, subd. (n)(3).)

Accordingly, section 366.26, subdivision (n), provides in relevant part that, at the hearing to determine whether the child shall be removed from the custody of a prospective adoptive parent, “the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child’s best interest, *and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child’s best interest.*” (§ 366.26, subd. (n)(3)(B), italics added.)

Likewise, when reviewing a request for modification under section 388, the court considers whether the petitioner, here Grandmother, demonstrated by a preponderance of the evidence that there is a change of circumstances or new evidence and the requested modification would be in the best interest of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526-527, & fn. 5; accord, *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.)⁶ That is, “[i]t is not enough . . . to show just a genuine change of circumstances under the statute. The [petitioner] must show that the undoing of the prior order would be in the best interests of the child. [Citation.]” (*In re Kimberly F.*, at p. 529.)

A juvenile court’s decision to grant or deny a section 388 petition will not be disturbed on appeal absent a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) We must give the juvenile court’s decision “““[b]road deference””” and view the evidence in the light most favorable to the court’s decision. (*In re Levi H.* (2011) 197 Cal.App.4th 1279, 1291.) We do not substitute our judgment for that of the

⁶ Section 388 allows a parent or guardian to petition the court for a hearing to modify or set aside any previous order on the grounds of change of circumstance or new evidence, such that the proposed change would be in the child’s best interest. By its terms, section 388 applies to requests to modify court orders. (§ 388, subd. (a).) However, the section has also been used for requests to modify agency decisions. (See, e.g., *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1052; *In re Shirley K.*, *supra*, 140 Cal.App.4th at pp. 70-71; see discussion in *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1072, fn. 14; see also *In re Cynthia C.*, *supra*, 58 Cal.App.4th at pp. 1481, 1485, 1489-1490, fn. 8 [section 388 modification motion is proper procedure to use when petitioner seeks return of dependent child to foster home; the motion seeks change of court order giving social service agency discretion to decide placement]; accord *In re Matthew P.* (1999) 71 Cal.App.4th 841, 847, 848-849.) The parties have not disputed the applicability of section 388 in this case, and we assume its applicability.

trial court and cannot reverse “““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].”” [Citations.]” (*In re Stephanie M.*, at p. 318.)

The juvenile court shall order that a section 388 hearing be held if it appears that the child’s best interest may be promoted by the proposed change of order. (§ 388, subd. (d).) The court may deny the section 388 petition *ex parte*—i.e., without a hearing—if the petition does not state a change of circumstance or new evidence that might require a change of order or fails to demonstrate that the requested modification would promote the child’s best interest. (Cal. Rules of Court, rule 5.570(d).)

Section 388 petitions “are to be liberally construed in favor of granting a hearing to consider the [petitioner’s] request. [Citations.] The [petitioner] need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) “There are two parts to the prima facie showing: The [petitioner] 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 Anthony W.* (2001) 87 Cal.App.4th 246, 250, italics added.) The prima facie showing may be based on the facts in the petition and in the court file. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 463.) “The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

As a change of circumstances or new evidence, Grandmother’s petitions stated that the children were removed from their prospective adoptive home following allegations of physical abuse and that “[t]he children have loving grandparents who wish to provide them a permanent home.” CFS concedes that removing the children from their prospective adoptive home was a change in circumstance, but argues it was the type of change that is expected and unfortunate in posttermination proceedings. Although the record is not clear as to whether the court in this case found that Grandmother’s petitions established the required prima facie showing, it did grant Grandmother a hearing on her petitions.

Section 388 does not specify the nature or conduct of the hearing that “the court shall order,” or whether and what type of additional evidence must be received. That question is governed by rule 5.570(h) of the California Rules of Court.⁷ (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1339 [Fourth Dist., Div. Two]; *In re Lesly G.* (2008) 162 Cal.App.4th 904, 913.) That rule specifies three situations in which the court is required to conduct the hearing on a section 388 petition “as a dispositional hearing”—i.e., a hearing at which (among other requirements) the “court must receive in evidence and consider . . . any relevant evidence offered by . . . the parent or guardian [or petitioner].” (Rules 5.570(h)(2), 5.690(b).) These situations arise when: “(A) The request is for removal from the home of the parent or guardian or to a more restrictive level of placement; (B) The request is for termination of court-ordered reunification services; or

⁷ All further references to rules are to the California Rules of Court.

(C) There is a due process right to confront and cross-examine witnesses.” (*In re E.S.*, at p. 1339, citing Rule 5.570(h)(2).) The first two situations are patently inapplicable here. The third was not raised below and is not asserted on appeal.

When, as here, the situation is not among the three specified in rule 5.570(h)(2), the rule further provides that “proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.” (Rule 5.570(h)(2); see *In re Lesly G.*, *supra*, 162 Cal.App.4th at p. 913.) This rule is in accord with the long-held understanding “that juvenile proceedings need not be ‘conducted with all the strict formality of a criminal proceeding.’ [Citations.]” (*In re Lesly G.*, *supra*, at p. 914.) Thus, even when the petition and its supporting evidence are sufficient to entitle the petitioner to a hearing, “the right to a hearing does not necessarily entitle the petitioning party to a full evidentiary hearing.” (*In re E.S.*, *supra*, 196 Cal.App.4th at p. 1340; see also *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1080-1081 [hearing requirement of § 388 satisfied by hearing limited to receipt of written evidence and substantial argument from counsel].)

Here, at the time of the January 31, 2014 section 388 hearing, Grandmother did not identify what additional evidence she would have presented, even though she had an opportunity to make a statement to the court. The court received and considered the documentary evidence attached to Grandmother’s section 388 petitions. Grandmother did not make a further offer of proof or otherwise indicate what evidence she would have offered if a “full evidentiary hearing” had been held. For example, Grandmother did not indicate that she desired to testify or requested to cross-examine a social worker about

statements in the reports. As such, under these circumstances, we cannot find the court abused its discretion in failing to hold a full evidentiary hearing.

On appeal, citing to her petitions, Grandmother asserts that she had “offered to prove that the children had known her all their lives, had lived with her more than with their parents, and had a loving relationship with her and [her husband].” She also asserts that she had “offered to prove and she was prepared to cope with their behaviors and that they would be better off with her than with strangers”; “offered to prove that she had provided medical and dental care” for the children and had ensured their educational needs were met; and that she had regretted having given the seven-day notice to have the children removed from her care. However, these offers of proof were already presented to the court in her petitions as documentary evidence. Grandmother does not identify additional evidence other than what was already contained in the petitions and in the record.

Moreover, even if we determine the court erred in failing to conduct a “full hearing on her section 388 petitions,” Grandmother cannot demonstrate returning the children to her care would be in the children’s best interests. The children had been previously placed in Grandmother’s care; however, during that time, Grandmother had vacillated between wanting the children to having them immediately removed. Furthermore, it appears that Grandmother had difficulties caring for two young children with behavioral needs. Moreover, although Grandmother and her husband were apparently still together as a married couple, there is no indication that Grandmother’s husband desired to have the children placed back in his home, much less wanting to adopt

them, or that it was in J.D.'s best interest to be placed with him without resolving the sexual abuse allegations. Furthermore, Grandmother was still enabling Father and allowing him to reside in her home, despite his recent probation violation, admittance of being a “functioning [drug] addict,” and unresolved substance abuse issues. Given these circumstances, the record shows that it was not in the children's best interest to place them back with Grandmother and her husband.

Grandmother argues that return of the children to her care would be in the children's best interest because she had known them all their lives, the children had lived with her more than their parents, and the children had a loving relationship with her and her husband. The record does not show the children's best interest were ignored when the court denied Grandmother's section 388 petitions. The court was resolving difficult questions about what was best for the children.

Relying on *In re Antonio G.* (2007) 159 Cal.App.4th 369, Grandmother contends that CFS failed to evaluate Grandmother for placement and the court erred by not considering her for placement pursuant to section 361.3. *In re Antonio G.*, is distinguishable from the instant case. As Grandmother acknowledges, *In re Antonio G.*, involves an analysis concerning relative placement under section 361.3 *before* parental rights had been terminated. Here, parental rights had been terminated, and section 361.3 is inapplicable. (See *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032 [relative preference applies “when a new placement becomes necessary after

reunification services are terminated but before parental rights are terminated and adoptive placement becomes an issue”].)⁸

Grandmother, nonetheless, argues that “section 361.3 can also apply *after* parental rights are terminated in certain circumstances.” To support her contention, Grandmother relies on *Shirley K.*, *supra*, 140 Cal.App.4th 65. In *Shirley K.*, the appellate court concluded that the juvenile court failed to properly recognize its role in evaluating the child’s best interest, and failed to recognize that the grandparents were not seeking to delay the permanency order but rather were claiming changed circumstances warranting return of the child to their home or liberal, unsupervised visitation. (*Id.* at p. 73.) Accordingly, the appellate court remanded the matter to the juvenile court to determine whether the child’s best interest would be served by return of the child or, alternatively, liberal visitation. (*Id.* at p. 75.)

Although *Shirley K.* is procedurally similar to this case, it is distinct in significant ways from the present situation in that the grandmother, with whom the child had lived for most of her short life, was proactive in her efforts to protect her granddaughter. For example, unlike this case where evidence showed Grandmother was enabling her son, the grandmother in *Shirley K.* immediately reported her daughter’s drug use both to law enforcement and the social worker, and also arranged for drug treatment. (*Shirley K.*,

⁸ “During the reunification period, the preference applies regardless of whether a new placement is required or is otherwise being considered by the dependency court.” (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 795.) The relative placement preference does not apply after parental rights have been terminated and the child has been freed for adoption. (*In re Cesar V.*, *supra*, 91 Cal.App.4th at p. 1031.)

supra, 140 Cal.App.4th at p. 74.) Also unlike in this case, the social worker had overstated the problems in the home and had demonstrated bias against the grandparents. (*Ibid.*) Finally, in *Shirley K.*, a psychologist who had conducted a bonding study concluded that the child was significantly attached to her grandparents and would experience a “psychologically damaging loss” were she to not maintain very significant visitation with them. (*Id.* at p. 70.) Here, although the children had been with Grandmother for most of their lives and the court did not doubt Grandmother’s love for them, the children did not show great distress at being removed from her home or appear to have significant attachments to Grandmother and/or her husband. Moreover, the juvenile court here expressly referred to, and applied, the best interest of the child standard. The court’s decision is supported by the record, and there is no basis for reversal.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

CODRINGTON

J.