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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re F.M., et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.M., et al.,

Defendants and Appellants.

E063004

(Super.Ct.Nos. J247069 & J247070)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lily L. Sinfield and
Lynn M. Poncin, Judges. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and
Appellant S.M.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and
Appellant D.N.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

This is an appeal by defendants and appellants S.M. (Mother) and D.N. (maternal grandmother) (MGM) challenging the juvenile court's order terminating parental rights as to six-year-old A.M. and four-year-old F.M. (the boys).¹ On appeal, Mother argues the juvenile court erred in failing to find the "beneficial parental relationship" exception to termination of parental rights applied. MGM asserts that the juvenile court abused its discretion by failing to hold an evidentiary hearing on her Welfare and Institutions Code² section 388 petition and that the erroneous denial of her section 388 petition requires reversal of the order terminating parental rights. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the San Bernardino County Children and Family Services (CFS) on November 27, 2012, after Father left then one-year-old F.M. in an unlocked car in 40-degree weather for three hours. Upon inquiry, Father stated that he had checked on F.M. and F.M. was fine; that he had custody of F.M. and then three-year-old A.M.; and that Mother had no contact with the boys due to her mental health issues.

¹ M.R. (Father) is not a party to this appeal; as such, facts relating to Father will be minimally addressed.

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

Father was arrested for child endangerment, and Mother's whereabouts were unknown. The boys were detained and placed in foster care.

The parents had prior unfounded child protective services referrals for general neglect during the years 2010 and 2012. The parents also had a recent referral relating to neglect of the boys, the parents' acts of domestic violence, and Mother's schizophrenia and instability. That recent referral was closed on November 21, 2012, with Father agreeing to file for sole custody of the boys. However, Father never filed the paperwork to formalize custody of the boys.

On November 30, 2012, petitions on behalf of the boys were filed pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling), based on parental substance abuse and domestic violence, Mother's mental health issues, Mother's unknown whereabouts, and Father's actions of leaving F.M. unsupervised in a vehicle.

The boys were formally detained at the December 3, 2012 detention hearing, and maintained in the foster home of Mrs. O. Mother was provided with supervised visitation one time per week for two hours or two times per week for one hour.

Mother reported that she took Norco, Xanax, Soma, and medical marijuana daily, and denied that she had a substance abuse problem. She claimed that she needed the Xanax for anxiety and marijuana for her stomach polyps. Father stated that Mother is a "drug seeker," going to different hospitals and doctors to obtain her drugs and that he had "never" known Mother "to be sober." Father also asserted that Mother drank

alcohol while taking her drugs; that Mother had a history of abusing methamphetamine and marijuana; and that she had abused prescription medication while pregnant with the boys. CFS records showed that in August 2012 Mother had passed out in a parking lot after taking prescription medication and marijuana and that she fell and hit her head, requiring her hospitalization for several days. In addition, Mother and F.M. had tested positive for prescription medication at the time of F.M.'s birth.

Mother reported that the only mental diagnosis she had been given was Generalized Anxiety Disorder (GAD). Father, however, stated that Mother had mood swings, hallucinations, heard voices, and was in a “ ‘dream state all of the time.’ ” Father believed that Mother was schizophrenic.

In regard to the domestic violence allegation, Mother acknowledged slapping Father in the face in front of law enforcement in June 2009. Father reported that Mother had punched, hit, and pushed him numerous times and that Mother had anger management issues. Mother reported that Father had abused methamphetamine and marijuana and that he abused her during their relationship. Father acknowledged using methamphetamine six years ago but denied the abuse allegations.

Mother was unemployed and resided with MGM. Father described MGM as an “ ‘enabler,’ ” who took the same prescription pills as Mother and that they “ ‘share[d]’ ” their pills. Father also reported that there were pill bottles all over MGM's home; that MGM's boyfriend had once tried to attack Father; and that he did not want MGM and her boyfriend around his children. The social worker determined that placement of the boys

with MGM was not an option since Mother resided with MGM. The social worker also observed that the parents had a tumultuous relationship and blamed each other for the removal of their boys.

On January 17, 2013, the parents waived their rights, and the juvenile court sustained the petitions as amended. The boys were declared dependents of the court, and the parents were provided with reunification services. Mother's case plan required her to obtain psychological and psychotropic medication evaluations; attend a domestic violence program, general counseling, a parenting program, a substance abuse program, and substance abuse counseling; and to randomly drug test. Mother was also provided with supervised visits at least twice weekly for two hours.

By the time of the six-month review hearing, Mother continued to reside with MGM, remained unemployed, and relied on MGM for her basic needs. Mother had completed a psychological evaluation, a substance abuse program, and a parenting program, and had just begun a domestic violence program. She was also attending individual counseling and began participating in anger management , but had missed classes due to illnesses or other appointments. She had also failed to test and tested positive for marijuana and pain medications. The social worker noted that it appeared Mother had not benefitted from her services as evidenced by her continued use of pain medications without a prescription. The social worker observed that Mother's pain medication use was significant and the cause of Mother having to cancel or cut her visits short, missing scheduled appointments with CFS, failing to locate the CFS office despite

coming to the office numerous times, and impacting her visitations and interactions with her boys. MGM had also completed a parenting class.

A.M. was defiant after visits with Mother. When he first arrived to foster care, he was three and a half years old, but still wore diapers and his speech was poor. Mother blamed the boys' negative behaviors on being in foster care. However, while in foster care, the foster mother, who was described as nurturing, had potty trained A.M. The boys referred to the foster mother as “ ‘mom’ ” or “ ‘mommy.’ ” Furthermore, with her guidance, A.M. had learned how to ask permission and had developed other basic manners. Additionally, F.M. preferred to be comforted by the foster mother and had reached out to her while Mother was holding F.M. in her arms. Mother appeared unable to visit the boys without MGM present. MGM was allowed to visit for one out of the two hours of Mother's visits, but at times visited alone or stayed for the entire two hours, disregarding the visitation restrictions.

The social worker believed that while Mother loved her boys, the worker doubted whether Mother could function on her own without the assistance of MGM to ensure the safety and well being of the boys. The social worker also felt that Mother's drug use and coping skills to manage her pain were hindering her ability to reunify with her boys. Mother's psychological evaluation noted that Mother, who was 36 years old at the time, began abusing alcohol at age 16 and that she had used marijuana, cocaine, methamphetamines, Xanax, and Norco. She had twice been involuntarily committed under section 5150 due to overdosing on Xanax. She was diagnosed with “Depressive

Disorder Not Otherwise Specified” and “Polysubstance Dependence,” and found to have narcissistic and histrionic traits. She did not show signs of psychosis, dementia, or any schizophrenia spectrum disorder at that time.

At the August 28, 2013 six-month review hearing, the juvenile court terminated Father’s reunification services and continued Mother’s services for an additional six months.

As the case progressed, although the foster mother was committed to caring for the boys until such time as the parents could reunify with them, the foster mother had expressed that due to her age, she was not interested in adopting the boys or becoming their legal guardians. She believed the boys deserved “younger parents.”

On November 22, 2013, both Mother and MGM filed section 388 petitions, asking the court to place the boys in MGM’s care. The juvenile court summarily denied the petitions on November 27, 2013, because they did not show Mother had moved out of MGM’s home. Again, on December 9, 2013, both Mother and MGM filed section 388 petitions, requesting that the court place the boys in MGM’s care. In those petitions, MGM asserted that a recent hip replacement surgery had prevented her from taking custody of the boys when they were first detained. She had since fully recovered and the children’s best interest would be served by placing the boys in her home because they had lived in her home for their entire lives prior to their detention. On December 10, 2013, the juvenile court again denied the petitions, finding no new evidence or change of circumstances.

By the time of the 12-month review hearing, Mother had moved to Orange County to accept a job offer with the family business and temporarily resided with her father and older sibling. As a result, Mother subsequently terminated her attendance in her domestic violence and anger management programs. A few months later, however, Mother returned to MGM's home in Ontario. On November 18, 2013, Mother entered a 90-day, non-approved inpatient drug and alcohol treatment program with an expected completion date in late February 2014. Before Mother entered the inpatient substance abuse program, she had failed to drug test and some of her tests were positive for multiple substances.

Mother continued her supervised visits accompanied by MGM, except for the two-week "blackout" period required by her inpatient program. On occasion, Mother cut the visits short, and MGM continued to remain for the entire two hours of the visits, despite the one-hour restriction for MGM. Furthermore, at one visit, Mother accidentally dropped A.M., who struck his head on the floor, and the paramedics had to be called. A.M. was taken to a hospital by ambulance. The foster mother reported that Mother had a difficult time controlling A.M. and had easily given up working with A.M. on his letters and numbers.

From December 13 to 17, 2013, while the foster mother travelled out of the country for a family emergency, CFS allowed MGM to provide respite care for the boys. However, during that time, MGM had allowed Mother to have an unauthorized visit. MGM reported that it was an oversight; however, A.M. had described how they had gone

to the mountains to visit Mother. During another extended visit with MGM over the holidays, F.M. returned to the foster mother with a black eye. MGM explained that he was hit by some playground equipment. A.M. had suffered scrapes and bruises from playing at the park. Due in part to concerns developed during the extended visits, CFS did not immediately place the boys with MGM. CFS also noted that MGM had an active restraining order against Father and was concerned whether MGM would be willing to follow court orders for father-child visits.

On January 13, 2014, Father filed a section 388 petition, requesting the boys be returned to his care and reinstatement of his services. Father claimed that he had completed components of his case plan, married a wonderful woman, and achieved modification of the restraining order Mother had obtained prohibiting his contact with the boys. He asserted that Mother sought placement of the boys with MGM, who was 62 years old, and who was not capable of caring for them. He also asserted that MGM's address in Crestline had no gas lines, and accused Mother of providing a fake rental agreement as proof Mother did not reside with MGM and claimed the agreement related to where MGM's boyfriend resided. CFS recommended reunification services be reinstated for Father, and that his visitations be liberalized. On February 19, 2014, the juvenile court granted Father's section 388 petition.

At the 12-month review hearing on January 16, 2014, the juvenile court continued Mother's services for an additional six months, and set an 18-month review hearing.

By the time of the 18-month review hearing, the social worker had initially recommended Mother's reunification services be terminated and that the boys be returned to Father under family maintenance as Father appeared to have ameliorated the problems that had caused the children to become dependents. However, after the social worker learned from Father's new wife that she and Father had engaged in domestic violence, the social worker recommended that both parents' reunification services be terminated and a section 366.26 hearing be set.

Mother had continued to abuse marijuana and prescription medications, despite treatment in her third inpatient substance abuse program and completion of an outpatient substance abuse program. She had completed eight out of 90 days in her first drug program; 64 of 90 days in her second drug program; and approximately 60 of 90 days in her third drug program. Prior to entering her third inpatient drug program, Mother had admitted at intake to taking Soma and marijuana; and after two weeks in the program, her drug test results showed no lessening of marijuana in her system. It was suspected that Mother was still using marijuana while in drug treatment. Mother was terminated from her second inpatient drug program in January 2014 for violating the program rules of fraternizing with a male employee; other residents believed Mother's actions were affecting their sobriety and voted Mother out of the program. After being terminated from her second drug program, the social worker referred Mother for anger management and domestic violence counseling. Mother attended briefly but then informed the program she would be entering an inpatient drug program. However, it was weeks before

Mother actually entered the third drug program. In addition, Mother canceled her last visit with the boys before entering the drug program, stating she had transportation problems. The social worker later learned that Mother chose to spend her last weekend with her boyfriend. Mother stated that after she completed her third drug program, she planned to move in with the boyfriend in Crestline; however, the boyfriend had not complied with the fingerprinting process.

On May 21, 2014, the social worker learned that since Mother's admission into her third inpatient drug program, she had received several write-ups for rules violations, including five in one day (May 4) for inappropriate contact with her boyfriend during a visitation. On May 7, Mother's boyfriend had been banned from the facility; however, on May 11, staff had observed Mother's boyfriend on the premises talking to Mother. In addition, on May 18, MGM and the maternal grandfather had visited Mother even though her communication privileges had been suspended and Mother had been informed that they could only visit during Mother's monitored visits with her children. Further, Mother had engaged another resident to make a telephone call to MGM on Mother's behalf. Moreover, despite treatment for 52 days, Mother had continued to test positive for marijuana. Mother's case manager reported that Mother was barely working on step two of four required steps and that due to the violations Mother would not be graduating from the drug program. On May 23, the social worker was informed by staff at her third drug program that Mother had tested positive for marijuana and that she was pregnant. Mother

was terminated from her third drug program on June 3, 2014, after she continued to test positive for marijuana.

Visitation reports indicated that Mother had occasionally cancelled her visits, failed to frequently appear timely, or terminated her visits early. In addition, during Mother's visits, MGM had continued to frequently visit for half of Mother's allotted time. The foster mother reported that she had given both parents some schoolwork for A.M. and had asked each parent to work with A.M. during visitation. While Father worked with A.M. on his schoolwork, alternating playtime with academic learning during his four-hour once per week visits, Mother had often refused to do so, stating that there was not enough time during her two-hour, twice per week visits. The foster mother also stated that she had seen a huge difference in the boys when they visit with their parents, explaining the boys came back much calmer after a visit with their father in comparison with their mother and MGM. Mother was unable to control the boys and had allowed A.M. to run around, hit, or shove his younger brother without consequences. Mother was hesitant to discipline the boys, stating that she did not want to ruin the time she had with her boys. The foster mother further reported that when the visits are over with Mother and MGM, she had a difficult time with A.M.'s behavior and that A.M.'s school had also noticed an increase in his aggressive behavior and refusal to listen or comply after his visits with Mother and MGM. Moreover, during a May 25, 2014 visit, F.M. had appeared to not want to be with his mother and would not allow Mother to console him when he became upset. Instead, F.M. sought out the foster mother.

In December 2013, MGM had been authorized unmonitored two- to four-day visits with the boys. CFS later learned that MGM had allowed Mother to visit the boys during one of the visits without prior consent from the social worker and that MGM had failed to seek medical treatment for F.M.'s black, swollen eye injury. In January 2014, CFS held a meeting with Mother, MGM, the maternal grandfather, and a maternal uncle and his wife. During the meeting, a visitation agreement was issued to all parties with specific limitations to the maternal grandparents' unmonitored visits. The plan was in effect until April 2014 when MGM and the maternal grandfather violated the agreement by bringing a maternal uncle to a visit at Mother's third drug treatment program without approval from the social worker. MGM's visitations thereafter became monitored. The social worker noted that it was evident MGM was not willing to abide by rules established by CFS and felt "the rules d[id] not apply to them." The maternal grandparents had again continued to push the limits of the visitation guidelines at the May 25 visit. MGM spoke about Father and the maternal grandfather provided Mother with a cellular phone, despite Mother having lost the privilege by her program, and asking the foster mother if the boys could speak to a relative.

Furthermore, statements made by MGM suggested that she would not protect the boys, believing Mother's drug use was related to pain medication given to Mother by her doctors. MGM also claimed that Mother was being punished for testing positive for "pot" and that Mother no longer used "pot." MGM believed that Mother did not present any risk to the boys and that she was in a stable relationship with a " 'wonderful man.' "

MGM denied that Mother had mental health issues or a serious drug problem and suggested that the boys remained removed from Mother's custody only because Mother suffered from medical issues like "restless leg syndrome, panic attacks, [and a] seizure disorder." When a social worker visited MGM at her home in Ontario, the worker noticed that MGM used a walker when answering the front door. MGM stated that she was mobile and in perfect health, although she walked slowly with a limp. An inspection of the home revealed an unusual odor with wires within reach of a child. The worker also noted that the garage was full, some plumbing was unstable, and the rooms were cluttered and not child proof. MGM also reported that she took Ambien and Oxycodone nightly for sleep and pain, but did not know the dosage, and could not locate the bottles. MGM appeared confused about when the social worker was scheduled to visit that day; about when she had visited the boys; and her relationship with her boyfriend, referring to him as her boyfriend and also as a worker who lived in her other home in Crestline. In addition, when discussing permanency planning options for the boys, MGM clearly preferred guardianship over adoption so that Mother could eventually reunify with the boys. The social worker concluded that the Ontario home was not likely where MGM resided, but MGM used it solely for CFS placement assessment purposes. The social worker believed that there were more suitable families for the boys who could also provide them with more permanency.

On July 22, 2014, Father filed another section 388 petition, seeking placement of the children. On July 29, 2014, the juvenile court denied Father's section 388 petition,

and began a contested 18-month review hearing. Mother was not present at the hearing; Father and MGM were present. Following an evidentiary hearing, on July 31, 2014, the juvenile court terminated reunification services for both parents and set a section 366.26 hearing.

On August 4, 2014, both MGM and Father filed notices of intent to file writ petitions. This court dismissed MGM's petition. Father filed a writ, contending the court erred in finding it would be detrimental to return the children to his care. On November 6, 2014, this court affirmed the judgment and denied Father's writ petition. (See *M.R. v. Superior Court* (Nov. 6, 2014, E061716) [nonpubl. opn.])

On September 15, 2014, the boys were placed in a non-relative prospective adoptive home with Mr. and Mrs. E. following successful visitations. The boys had adjusted well to the transition, were bonded to their caretakers, and had expressed a desire to remain placed with them. The E.'s were committed to adopting the boys and providing them with stability and permanency. The time the boys had spent time with the E.'s doing activities and going to parks and play dates had made a significant impact on the boys' attachment to them. F.M. referred to his placement as " 'our home,' " A.M. referred to Mrs. E. as " 'mommy,' " or " 'mommy E.' " Both children had embraced Mr. and Mrs. E. as their family.

The maternal grandfather also sought placement of the boys in his care. The maternal grandfather, however, did not have appropriate housing until August 21, 2014, when he signed an apartment lease. Prior to that time, the maternal grandfather had lived

at his place of business. The social worker had submitted an assessment for relative approval, which was approved on October 1, 2014. When the social worker met with the maternal grandfather, who was 71 years old at the time, the maternal grandfather stated that his motivation for placement and interest in adopting the boys, who were then three and five years old, was based on his status as their grandfather. When asked why he did not seek placement earlier, the maternal grandfather believed he was “ ‘overlooked,’ ” and also because he thought the boys would be returned to either Father or Mother. Based on the maternal grandfather’s failure to seek placement sooner, allowing the boys unauthorized contact with Mother, failure to follow visitation orders, lack of parenting experience, and lack of ability to care for two young children, the social worker believed the maternal grandfather did not have a sincere motivation to seek placement of the boys and be a single parent to two active boys.

On November 6, 2014, the maternal grandfather filed a section 388 petition, seeking to have the boys placed in his care. On January 14, 2015, the court denied the petition, finding the petition failed to state a change in circumstances and that it did not promote the children’s best interest.

Mother and the maternal grandparents continued to visit the boys consistently. However, the social worker noted concerns with the visitations, such as Mother and MGM making negative remarks about the boys’ clothing and shoes, MGM crying as she spoke with the boys on the phone, and Mother asking questions to the boys to determine the boys’ placement location. During several of the visits, F.M. would become upset

with Mother or the maternal grandfather, and would refuse to engage with them afterwards and ignore them. Mother would not implement any consequences on the boys for their negative behaviors, and would only do so if brought to her attention by the visitor monitor. Mother, however, brought healthy snacks, water, art projects, educational toys, and books for the boys. She also would often tell the boys how much she loved them and missed them.

Both the boys continued to participate in therapeutic services through the Screening, Assessment, Referral, and Treatment (SART) program to address sibling interactions and processing grief and loss issues and feelings. Both boys had shown significant improvement due to Mr. and Mrs. E.'s implementation of a consistent routine, structure, and ability to set limits to the boys to promote structure and safety. A.M. was described as a very playful, engaging, affectionate, and happy child who struggled with some behavioral issues and sibling rivalry. F.M. was described as a playful and happy child who could often be reserved and withdrawn from others when upset. Since placement with the E.'s, the boys had become equally outgoing and willing to communicate with words rather than acting out or withdrawing. A.M. had marked improvements in school and had received positive notes from school staff regarding his daily behavior. The boys had also been observed happily greeting the E.'s and would run to them to share their daily events or activities. The boys spoke positively of Mr. and Mrs. E., gave them hugs for no apparent reason, and stated that they wanted to stay with

them. Both boys also stated that Mr. and Mrs. E. made them feel good and that they loved them.

Mr. and Mrs. E. were sensitive to the needs of the boys and attuned to the attention the boys required to give them assurance and security in their home environment. The couple would take time to attend the boys' appointments, seek feedback from their therapist on how to continue to help the boys adjust to their current circumstances, and were committed to adopting the boys. The social worker opined that the boys had benefitted from the care and attention given to them by the E.'s.

On January 7, 2015, MGM filed another section 388 petition, asking the court to place the boys in her home and claiming she sought adoption of the boys. In support, MGM declared that she had cared for the boys throughout their lives before they were removed from Mother's custody; that she had taken advantage of all visits offered by CFS; that she was willing to abide by all CFS orders and requests; that Mother was no longer living in her home, was in a stable relationship, and had recently given birth to another child; and that she had obtained a temporary restraining order against Mother and Father to prevent them from coming to her home. MGM had also attached a letter from her doctor noting that she was fully recovered from her hip surgery, in perfect health, and capable of playing with her grandchildren for "hours." MGM also attached to her petition several reference letters attesting to MGM's character, honesty, and bond with the boys.

On January 8, 2015, the juvenile court summarily denied MGM's section 388 petition, finding the petition did not present new evidence or establish the change in order would promote the children's best interest.

The section 366.26 hearing was held on January 14, 2015. Mother was not present, and her counsel requested a continuance because Mother had "gotten sick and was throwing up and had left." Mother's counsel also indicated that Mother wanted to hire private counsel. The court denied the request for continuance. A secondary social worker and an adoption social worker assigned to the case thereafter testified.

The secondary social worker testified that Mother's visits had been one hour weekly, supervised visits, shared half of the time with the maternal grandparents. However, between July 31, 2014 and January 14, 2015, Mother had missed four visits. She had missed one visit because she needed to care for the maternal grandmother who had fallen; another because she was upset about something; another because she was ill; and for another she had failed to show up or call CFS. The social worker later learned that Mother had missed the last visit because she had given birth on the previous day. At the beginning of the visits, the boys would run up to Mother, give her a hug, and show Mother the toy they had brought along to the visit. They would sometimes call her "mom" and often "miscall her" "Vanessa." Mother was appropriate during the visits and properly disciplined them, but the worker had to intervene when Mother asked the boys questions in an attempt to discover confidential information. The boys enjoyed the visits and were happy playing with the items Mother brought, but there was not a lot

of conversation between Mother and the boys. When Mother told the boys she loved them, they would tell her they loved her too but would not voluntarily state they loved her. The social worker did not believe the boys had an emotional relationship with Mother and that, if the boys had a bond with their parents, they would be upset or cry when the visits ended. However, these boys were not upset and did not cry when the visits ended.

The adoption social worker testified that the boys told Mr. and Mrs. E. twice that they did not want to go to the visits; that they had been upset during visits because a toy broke or they did not get what they wanted; and that the boys had told her they like the visits with Mother, but they had not been forthcoming in providing her with much information about their feelings for Mother. The boys spoke well about their current caretakers and spoke a lot about the activities they did with their caretakers. The boys called Mother “[m]om,” and told Mother that they loved her, but in response to Mother’s initiation. The children never told Mother that they missed her, and at the end of visits, they would leave happily. The boys stated that they wanted to live with Mr. and Mrs. E and that they loved them.

Following argument, the juvenile court found by clear and convincing evidence the children were adoptable and that the parental bond exception to adoption did not apply. In regard to Mother’s parental bond exception, the court found Mother had maintained regular visitation with the boys, but that “having a mere bond or having good visits is not enough for the Court to find the parental bond exception.” The court

explained that it “needs to make a finding that terminating the parental relationship would be so emotionally detrimental to these children that that detriment outweighs any benefit of permanency afforded by adoption.” The court further commented: “Sure, the children like their visits. Mother is a friendly face. They know who she is. They go. They visit. They play their games. They leave without problem. There is no evidence that they need psychological or counseling because of their missing their mother. There is no evidence that they are upset at the end of the visits. They merely say goodbye and go home with Mr. and Mrs. E who they are looking to be their family. So the mere fact of, you know, good visits is not parental—does not make the parental bond. [¶] The Court in determining the degree of bond looks at the parental role that the mother has played, and mother has played no parental role for these children in 26 months. The children were removed back in November of 2012. At that time [A.M.] was three. He is now five. [F.M.] was one. He is now three. They have spent a good portion of—probably half their life outside of mother’s role as a parent. [¶] Mother in 26 months has had supervised visitation once a week and that is it. She has not performed a parental role. She has not been able to maintain any bond she may have had with these children due to the fact they have not been in her care for over two years.” The court thereafter terminated parental rights.

On February 18, 2015, Mother filed another section 388 petition, asking the court to change its order. The court summarily denied the petition on that same date.

On February 18, 2015, Mother filed a notice of appeal objecting to the termination of her parental rights. MGM also filed a notice of appeal on that date, objecting to the denial of her most recent section 388 petition.

II

DISCUSSION

A. *Mother's Appeal*

Mother contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A), did not apply to preclude the termination of parental rights, because she and her boys were “So Strongly Bonded That the Children Would Suffer Detrimentally If Deprived of the Parent-Child Relationship.” We disagree.

After reunification services are denied or terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; see § 366.26, subd. (c)(1).) “ ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and

permanent future the Legislature had in mind for the dependent child.’ ” (*In re Celine R.*, *supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where “[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B), italics added) because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i); see *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.)

Here, the juvenile court found Mother had maintained regular visitation with the boys, although she had missed visits at times. Regardless, since Mother’s visits were mostly regular, we focus on the issue of whether the boys would benefit from continuing the relationship with Mother.

In deciding whether the parent-child beneficial relationship exception applies, “the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) The parent-child relationship must “promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Ibid.*)

The parent-child relationship “exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent.” (*Id.* at p. 1350.) Even a “loving and happy relationship” with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

“The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) “[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact.” (*Ibid.*) “Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction.” (*Ibid.*) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the

Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; see *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re C.B.* (2010) 190 Cal.App.4th 102, 133-134; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) A juvenile court’s finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court’s determination that the relationship does or does not constitute a “compelling reason” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) A juvenile court’s ruling on whether there is a “compelling reason” is reviewed for abuse of discretion because the court must “determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption.” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, italics omitted.)

Initially, Mother argues that the juvenile court misapplied the law when it stated Mother had not advanced to unsupervised visits. We disagree with Mother's claim that the juvenile court misapplied or misunderstood the law in determining whether the beneficial parental relationship exception applied. Mother incorrectly focuses on the court's visitation comments and the children's lack of " 'spontaneous declarations' " in isolation, rather than viewing the court's statement in its entirety. The court had spoken at length about the applicable legal standards and had demonstrated a clear understanding of the law and facts in this case. The record clearly indicates the court understood the scope of its discretion and properly applied the law when determining the application of the beneficial parental relationship exception.

Mother also contends that the beneficial parental relationship exception applied in this case and the juvenile court's conclusion to the contrary was not supported by substantial evidence. However, since it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence compels such a finding as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is "typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*Ibid.*) When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether

substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [Mother's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [in Mother's favor].' [Citation.]" (*Ibid.*) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

Here, there is no evidence to show the boys had a "substantial, positive emotional attachment" to Mother. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 299 (*S.B.*)) A.M. was a three year old, and F.M. was a one year old when they were detained and placed in foster care while living with their father. By the time of the January 14, 2015 section 366.26 hearing, the boys were five and three years old, respectively. The children had lived the majority of their young lives without Mother and in foster care. Even if Mother had contact with the boys in their early years, the record suggests that the parenting was accomplished by Father, MGM, or the paternal

grandmother. Mother was reliant on MGM and appeared to be unable to visit the boys without MGM present. Although Mother had visited the boys, showed her commitment and love to the boys, and the visits went well, the evidence regarding Mother's visitation in no way showed that she occupied a parental role in the boys' lives. Rather, Mother's interactions with the children appeared to be more akin to a friendly visitor or non-parent relative, such as an aunt. It does not appear the boys were upset when the visitation sessions ended, or that they were particularly anxious to visit Mother, or that Mother had occupied a parental role. F.M. had tended to ignore requests from Mother at visits, or refused to engage with her at times, and preferred to be comforted by his foster mother. The boys at times called Mother "mom," but were also confused and would often "miscall her." Indeed, the social worker observed that the boys did not appear to have any emotional relationship with Mother as evidenced by the boys' demeanor when ending visits. In addition, although the boys told Mother that they loved her and hugged her, they did so only after Mother made the statement first and hugged her after Mother's prompting.

Even if Mother had established the existence of a beneficial parental relationship, she cannot show the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the children as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound

discretion of the juvenile court. (*In re Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 (*Stephanie M.*)) “ “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ ’ (*Id.* at p. 319.)

Here, Mother did not introduce any evidence showing the boys would be greatly harmed by the termination of her parental rights. The boys were strongly bonded to their caretakers, and saw them as their parents. The boys had expressed their love for Mr. and Mrs. E. and had shared positive information about them to the social worker. They stated that they wanted to live with them, and called Mrs. E. “mommy.” The E.’s loved the boys as well, and were committed to providing them with a stable, loving home. They were attentive to the boys’ developmental, educational, and emotional needs, and the boys looked to them for attention, comfort, and security. The E.’s were attuned to the children’s needs, and provided them with a safe home—a place the boys called “our home.” There was no evidence to show that the boys were deeply upset or cried following their visits with Mother. Rather, the record indicates that the boys left visits happily, and were attached, happy, and well bonded to the E.’s and that they were thriving in their home. There was no evidence whatsoever that the boys would suffer great detriment if parental rights were terminated. Consequently, the juvenile court could

reasonably conclude that termination of Mother's parental rights would have no detrimental impact on the boys.

Mother asserts the juvenile court erred because the boys continued to know Mother as their mother, the boys enjoyed being with her, she was appropriate during the visits and brought games, puzzles, and healthy snacks, and they said they loved her and hugged her. We agree there is evidence supporting a finding of a positive relationship between Mother and her boys; however, there is also evidence supporting a reasonable conclusion that the boys would gain the greater benefit from being placed in a permanent adoptive home, because while Mother and the boys had positive interactions, their bond did not rise to the level of a parent and child.

Mother relies on *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*), which held that the juvenile court erred by failing to find that the parental relationship exception applied (*id.* at pp. 689-691) to support her position. The evidence in *Amber M.*, however, was strikingly different from the evidence here. There, a psychologist had concluded that the mother and the children shared “ ‘a primary attachment’ ” and a “ ‘primary maternal relationship’ ” and that “ ‘[i]t could be detrimental’ ” to sever their relationship. (*Id.* at p. 689.) One child's therapist believed the child had “a strong bond” and it was “important” that the relationship continue. (*Ibid.*) A court-appointed special advocate opposed adoption “due to the bond and love between Mother and the children” (*Id.* at p. 690.) Finally, the social worker, who was “the only dissenting voice among the experts,” had done “a perfunctory evaluation” of the relationship and had improperly

considered the mother's current inability to provide a home for the children. (*Id.* at p. 690.)

Mother also relies on *In re Scott B.* (2010) 188 Cal.App.4th 452 (*Scott B.*). In *Scott B.*, the appellate court reversed an order terminating parental rights, holding instead that the parent-child exception to termination applied, and ordered legal guardianship as the minor's permanent plan. The mother had a limited ability to care for her autistic son, Scott, who was nine years old at the time of his removal. His behavior, communication, and social skills improved dramatically in foster care, and ultimately, the foster mother indicated that she wanted to adopt Scott. Scott's mother had visited him regularly. Although Scott loved his foster family, it was clear that he wanted to be with his mother. (*Id.* at p. 463, 465, 471-472.) The court appointed special advocate (CASA) repeatedly stated that the mother and the minor had a very close relationship to which disruption would be detrimental. (*Id.* at p. 471.) The appellate court recognized that, although it might not ever be in Scott's best interest to be returned to his mother's care, he had a very strong emotional bond with her, she provided stability in his life, and given his precarious emotional state and his history of running away and regressing when under stress, there was a very good chance that he would experience a severe setback if visitation with his mother did not continue. (*Id.* at p. 472.) Here, none of those facts exist. The boys were three and one years of age when they were removed from parental custody. And, unlike in *Scott B.*, there is no indication in the record the boys had an emotional attachment to

Mother and no CASA or other professional expressed an opinion that the boys were bonded to Mother such that adoption would be detrimental to them.

Mother also cites to scientific literature suggesting disruption of a primary parental attachment may devastate a child. Although that may be true, there is no evidence Mother had a “primary attachment” with the boys. There must be evidence that the relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents” and that severance of the relationship “would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Here, there simply is no such evidence.

In sum, the record supports the juvenile court’s determination that the beneficial parent-child relationship exception did not apply in this case.

B. *MGM’s Appeals*

MGM asserts that the juvenile court erred in summarily denying her January 2015 section 388 petition seeking placement of the boys, because she had met the prima facie burden justifying an evidentiary hearing on her petition. CFS responds MGM had forfeited the placement order by failing to file a writ petition after the July 2014 18-month review hearing addressing the placement issue. In the alternative, CFS argues the juvenile court properly exercised its discretion in summarily denying MGM’s section 300 petition, because the petition failed to establish a prima facie case for a hearing.

We find MGM did not forfeit her challenge to appeal the summary denial of her January 2015 section 388 petition. MGM is not arguing that the juvenile court erred in declining to place the boys with her at the July 2014 18-month review hearing; rather, “[s]he is arguing that *new evidence* developed *after* the 18-month review hearing showed that it was at least possible that circumstances had changed to a point justifying modification of the prior placement order.” We will therefore address MGM’s claim on the merits.

Section 388, subdivision (a), permits anyone having an interest in a dependent child to petition the juvenile court for a hearing to change, modify or set aside a previous order on the ground of changed circumstances or new evidence. A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) The juvenile court’s ruling will not be disturbed on appeal unless the court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*Stephanie M., supra*, 7 Cal.4th at pp. 318-319.) “ “ “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]’ [Citations.]”

(*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522 (*Kimberly F.*))

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 (*Anthony W.*), *italics added.*) The *prima facie* showing may be based on the facts in the petition and in the court file. (*In re Angel B., supra*, 97 Cal.App.4th at p. 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.)

General or conclusory allegations are not enough to make a prima facie showing under section 388. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593 (*Edward H.*.) The petition must include “specific allegations describing the evidence constituting the proffered changed circumstances or new evidence.” (*Ibid.*) “Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence.” (*Anthony W., supra*, 87 Cal.App.4th at p. 250.) Indeed, “[i]f a petitioner could get by with general, conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the decision to grant a hearing on a section 388 petition would be nothing more than a pointless formality.” (*Edward H.*, at p. 593.) If the petition fails to make the required prima facie showing, summary 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.)

A section 388 petition brought to change an earlier placement order after reunification efforts have terminated, the California Supreme Court has instructed that “the predominant task of the court [is] to determine the child’s best interests” (*Stephanie M., supra*, 7 Cal.4th 295, 320.) “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that

continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*Id.* at p. 317, citing *In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 309.) Having reviewed the record as summarized above, we conclude the juvenile court properly exercised its discretion by summarily denying MGM’s January 2015 section 388 petition.

Even if MGM had shown a genuine change of circumstances by living apart from Mother and showing she was a viable option for the boys’ placement, MGM had failed to establish that the proposed change would be in the boys’ best interest. MGM asserts in her petition that the boys’ placement in her care would serve the boys’ best interest, since they had been with her since birth, with the exception of when they resided in foster care, and that the boys were happy, comfortable, and secure living in her home. She further maintains in her brief that there is “uncontradicted evidence” that the boys had been raised in MGM’s home continuously from the time they were born up until they were detained and that she had maintained a significant relationship with the boys by taking advantage of every visit offered to her by CFS.

However, the evidence showed that the boys were residing with Father when they were detained and removed from parental custody. Furthermore, it appears that A.M. had suffered prolonged parental neglect. A.M. was three and a half years old when he arrived in foster care but still wore diapers. He was also defiant and aggressive, his speech was poor, and he lacked most social graces. The foster mother and A.M.’s teachers reported

that A.M.'s behavior deteriorated following his visits with Mother and MGM. Further, following an extended visit with MGM, the boys had suffered injuries while at the playground in MGM's care. MGM's ability to handle two young boys remained in question. Moreover, throughout the dependency proceedings, MGM had refused to follow orders and minimized Mother's drug problem. The extent of MGM's use of prescription medication also remained a concern. For these reasons, the juvenile court could reasonably conclude a change in placement would not serve the best interest of the boys.

Relying on the relative placement provision of section 361.3, MGM asserts in her brief that the request to place the boys in her care so she could adopt them served the boys' best interest because "a dependent minor's interests are best served through relative placement" Section 361.3, subdivision (a), provides in part: "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." Subdivision (a) also enumerates the factors that the court and social worker must consider in determining whether the child should be placed with a relative. (§ 361.3, subds. (a)(1)-(8).)

The terms "preferential consideration" and "relative" are defined in the statute.

Section 361.3, subdivision (c), provides: "For purposes of this section: [¶]

(1) 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated. [¶] (2) 'Relative' means an adult who is

related to the child by blood, adoption, or affinity within the fifth degree of kinship, including . . . all relatives whose status is preceded by the words ‘great,’ ‘great-great’ or ‘grand’ However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.”

Thus, “when a child is taken from his [or her] parents’ care and requires placement outside the home, section 361.3 assures an interested relative that his or her application for placement will be considered before a stranger’s request. [Citations.]” (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) However, the relative placement preference established by section 361.3 does not constitute “a relative placement guarantee.” (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798, italics omitted.) Nor does section 361.3 “create an evidentiary presumption that relative placement is in a child’s best interests.” (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855; see *Stephanie M.*, *supra*, 7 Cal.4th at p. 321 [construing former section 361.3].)

The relative placement preference does not apply after reunification services are terminated. (*In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493-1494, superseded by statute on other grounds as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) “[O]nce the juvenile court determines at a permanency planning hearing that reunification [with the parents] is no longer possible and that a child should be freed for adoption, there is no longer any reason to give relatives preferential consideration in placement. The overriding concern at this point is to provide a stable, permanent home in

which a child can develop a lasting emotional attachment to his or her caretakers. It is for this reason that in any subsequent decision on adoptive placement, a foster parent to whom the minor already has ‘substantial emotional ties’ necessarily is entitled to preference over all other candidates. [Citation.]” (*Ibid.*; see *In re Jessica Z.* (1990) 225 Cal.App.3d 1089, 1098 [the child’s best interest may require that placement with a grandmother be rejected], superseded by statute on other grounds as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.)

In *Stephanie M.*, the maternal grandmother requested placement after Stephanie was detained and placed in foster care. (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 303-304.) The social worker recommended against placement with the grandmother because the grandmother did not believe that the parents had abused Stephanie. As the case progressed, Stephanie remained with the foster parents, who had applied for de facto parent status and who wished to adopt her. (*Id.* at pp. 305-306.) After the juvenile court set a section 366.26 permanency planning hearing, the court heard a contested section 388 petition regarding whether Stephanie’s placement should be changed from the foster parents to the grandmother. The juvenile court denied the section 388 petition on the ground that the change of placement was not in Stephanie’s best interest. (*Id.* at pp. 307-308.)

On appeal, the appellate court reversed the order, finding that the juvenile court had failed to give sufficient weight to the relative placement preference set forth in section 361.3. The California Supreme Court disagreed, stating that “the issue being

litigated at the hearing was whether a change of placement to the grandmother's home would be in the best interests of the child. The juvenile court, unlike the Court of Appeal, properly focussed on the child's interests, rather than the grandmother's interest. From the point of view of the child, the grandmother's intervention did come too late; the child was already bonded to foster parents." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 323.)

The *Stephanie M.* court also ruled that even assuming that the relative placement preference set forth in section 361.3 applies at a late stage of the dependency proceedings, "on the motion for change of placement, the burden was on the moving parties to show that the change was in the best interests of the child at that time. Evidence that at earlier proceedings the court had not sufficiently considered placement with the grandmother was not relevant to establish that at the time of the hearing under review, placement with the grandmother was in the child's best interests." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 322, italics omitted, fn. omitted.)

Our Supreme Court therefore concluded in *Stephanie M.* that "[t]he Court of Appeal erred in giving too great weight to the grandmother's interest in maintaining a family tie with the child and substituting its judgment for that of the juvenile court. Putting aside the question whether the grandmother had any cognizable interest at all, and treating her as a parent, her interests were not significant compared to the need of the child for stability. [Citation.]" (*Stephanie M.*, *supra*, 7 Cal.4th at p. 324.) The court concluded, "[t]he Legislature has declared that a dependent child has an interest in

continuity and stability in placement. [Citations.] This interest was served by the order denying change of placement.” (*Id.* at p. 326.)

Here, MGM failed to make a prima facie showing that placing the boys in her care would serve the best interest of the boys. Although the boys had been residing with their adoptive family only since September 15, 2014, the record clearly shows that the boys were bonded to the E.’s; and that they were happy, well-adjusted, and thriving in their home. Since being placed with Mr. and Mrs. E., the boys had become more outgoing, communicative, and referred to their placement as “our home.” They referred to Mrs. E. as “mommy E.” The E.’s were committed to providing the boys with a permanent, safe, loving, stable, and nurturing home. The E.’s and the boys had developed a mutual attachment. MGM’s arguments supporting the best interest prong merely amount to general, conclusory allegations.

The boys’ interest in the permanency and stability they had found outside their relative and parents’ care was paramount. MGM cannot show that placing the boys in her home would benefit the boys in any way. As previously noted, “After the termination of reunification services, . . . ‘the focus shifts to the needs of the child for permanency and stability’ [citation]” (*Stephanie M., supra*, 7 Cal.4th at p. 317.) Those needs could best be met by letting the boys be adopted by their caregivers.

Under these circumstances, we cannot conclude the juvenile court abused its discretion in summarily denying MGM’s January 2015 petition without an evidentiary hearing.

III
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.